

HENRY C. "HANK" JOHNSON, JR.  
4TH DISTRICT, GEORGIA

COMMITTEES:  
JUDICIARY  
ARMED SERVICES

Congress of the United States  
House of Representatives  
Washington, DC 20515-1004

December 14, 2016

SUBCOMMITTEES:  
RANKING MEMBER,  
REGULATORY REFORM, COMMERCIAL,  
AND ANTITRUST LAW  
CONSTITUTION AND CIVIL JUSTICE  
SEAPOWERS AND PROJECTION FORCES  
INTELLIGENCE, EMERGING THREATS  
AND CAPABILITIES  
STRATEGIC FORCES

Mr. Brian Chesky  
CEO  
Airbnb, Inc.  
888 Brannan Street  
San Francisco, CA 94103

Dear Mr. Chesky:

As you know, the Civil Rights Act of 1964 and other state and federal statutes prohibit discrimination on the basis of race and other protected categories. But as important as these laws are to protecting critical rights—such as ensuring equality of opportunity and freedom from harassment on the basis of race or other protected category—it is profoundly clear that these fundamental rights can only be adequately enforced through the public court system where the rule of law applies, as opposed to the secretive and often for-profit dispute resolution process known as private arbitration. Nancy Zirkin, executive vice president of The Leadership Conference on Civil and Human Rights, notes that the “tremendous progress” achieved through decades of tireless work by civil rights advocates “is threatened by the growing use of forced arbitration.”<sup>1</sup> I strongly agree.

Pre-dispute forced arbitration clauses are often inserted into the fine print of Terms of Service agreements. These clauses operate to deprive American consumers of their day in court, so that when companies *clearly* violate the law consumers are still unable to seek redress in public courts of law. The rule of law does not always apply in the forced arbitration process, and it also lacks the procedural safeguards and precedential value inherent to civil litigation that is crucial to developing case law applicable to state and federal statutes.<sup>2</sup> Congress expressly provided for private rights of actions in the civil rights laws with the intent that these laws are actually enforceable in public courts.<sup>3</sup> Worse still, as the Consumer Financial Protection Bureau (CFPB)

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<sup>1</sup> Nancy Zirkin, *Civil and Human Rights Coalition Applauds Bill to End Forced Arbitration on Civil Rights Protections*, THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS (Feb. 4, 2016), <http://www.civilrights.org/press/2016/forced-arbitration-leahy-bill.html?referrer=https://www.google.com/>

<sup>2</sup> Joshua M. Frank, *Stacked Deck: A Statistical Analysis of Forced Arbitration*, CENTER FOR RESPONSIBLE LENDING 1–2 (May 31, 2009) (“Companies that have more cases before arbitrators get consistently better results from these same arbitrators,” while arbitrators “who favor firms over consumers receive more cases in the future.”), [http://www.responsiblelending.org/credit-cards/research-analysis/stacked\\_deck.pdf](http://www.responsiblelending.org/credit-cards/research-analysis/stacked_deck.pdf); see generally, CONSUMER FIN. PROTECTION BUREAU, ARBITRATION STUDY REP. TO CONG., PURSUANT TO DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT § 1028(a) (2015).

<sup>3</sup> See, e.g., 29 USC § 626(c) (2016) (age discrimination civil actions); 42 USC § 12117(a) (2016) (disability civil actions); 42 USC § 2000e-5(f) (2016) (civil rights actions).

found in its exhaustive study on forced arbitration required by Congress, consumers do not receive the benefit of reduced costs or equal rights through forced arbitration.<sup>4</sup>

I am therefore disappointed to learn that notwithstanding Airbnb's recent statements in support of non-discrimination and equal rights for all of its users, your company's Terms of Service agreement contains both a forced arbitration clause and class-action waiver.<sup>5</sup> In response to public reports of exclusionary practices on Airbnb's booking platform, your company has made strong, laudable commitments to prevent and address discrimination in all facets of Airbnb's platform.<sup>6</sup> But as Airbnb recognized in its report on ending discrimination and promoting inclusion in the Airbnb community, there is no single solution to eliminating bias and discrimination on Airbnb, and ending the "odious and objectionable behaviors cannot be accomplished with one modification [sic] or initiative."<sup>7</sup>

While I appreciate Airbnb's initial steps and public commitments to correct this issue, as you have observed, ending discrimination and bias on the Airbnb platform "requires a sustained and multifaceted approach."<sup>8</sup> As the Ranking Member of the House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law, which exercises jurisdiction over this issue, I look forward to working with Airbnb and other companies on this matter.

Sincerely,



Henry C. "Hank" Johnson, Jr.  
Ranking Member  
Subcommittee on Regulatory Reform, Commercial and  
Antitrust Law  
Committee on the Judiciary

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<sup>4</sup> *Id.* at 397 ("Using two measures of credit offered, we did not find any statistically significant evidence that companies that eliminated arbitration provisions reduced the credit they offered.").

<sup>5</sup> Specifically, the policy dictates that "[disputes] will be settled by binding arbitration, except that each party retains the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights." AIRBNB, *Updated Terms of Service*, <https://www.airbnb.com/terms> (last visited December 7, 2016). Puzzlingly, this policy does not appear to apply to certain intellectual property disputes. It is unclear why the enforcement of intellectual property rights—but not civil rights or other critical rights guaranteed by state and federal law—are exempt from this unjust system.

<sup>6</sup> Laura W. Murphy, *Airbnb's Work to Fight Discrimination and Build Inclusion*, AIRBNB (Sept. 8, 2016), [http://blog.airbnb.com/wp-content/uploads/2016/09/REPORT\\_Airbnbs-Work-to-Fight-Discrimination-and-Build-Inclusion.pdf](http://blog.airbnb.com/wp-content/uploads/2016/09/REPORT_Airbnbs-Work-to-Fight-Discrimination-and-Build-Inclusion.pdf).

<sup>7</sup> *Id.* at 16.

<sup>8</sup> *Id.*