



**Testimony submitted to the Joint Committee on Labor and Workforce Development
In Support of H.1890/S.1184 An Act relative to the defense against abusive waivers (DAWA)
By Janis Soma, LWVMA Legislative Specialist, Women's Issues
May 9, 2023**

The League of Women Voters of Massachusetts supports H.1890/S.1184 because the League believes in securing equal rights and equal opportunity for all under state and federal law regardless of race, color, gender, religion, national origin, age, sexual orientation, or disability. The League also supports strategies that are designed to provide equal access to employment.

Massachusetts has some of the best laws that prohibit workplace abuses in the country. Currently, employers can undermine these protections and violate the civil rights of employees by requiring them to sign pre-dispute waivers of their rights in their employee contracts or as a pre-condition of their employment. H.1890/S.1184 is attempting to provide a more adequate legal remedy for those who have suffered from workplace sexual harassment/abuse, discrimination, wage theft, and retaliation.

The scope of the problem addressed by this legislation is enormous. The prevalence and impact of binding arbitration clauses in workers' contracts have increased steadily over the last 20 years. Sexual harassment, for example, affects approximately 5 million employees in this country every year. Most victims of sexual harassment (98.8%) do not report this abuse or file a formal discrimination charge; those who do generally experience disappointing outcomes.¹ Mandatory arbitration is written into the contracts of 56.2% of private-sector nonunion employees. This means that about 60.1 million American workers no longer have access to the courts as individuals, or as part of a class action suit, to address their grievances.²

If the Federal Arbitration Act (FAA) is overturned, workers will have additional benefits under H.1890/S.1184. The FAA started out in the 1920's as a method for companies to deal with disputes among themselves; it was not intended to manage disputes between employers and workers. Congress is actively reconsidering the FAA. If Congress eliminates the reach of the FAA law, workers will have H.1890/S.1184 in place to protect them from abusive waivers immediately. These vital protections include the use of our powerful state labor laws through court lawsuits both for individuals and class actions. Note that some progress has been made in the realm of sexual harassment/abuse with the passage of the federal law commonly known as the Speak Out Act that was signed into law in December of 2022. The bill nullified pre-dispute non-disclosure and non-disparagement agreements but only in cases of sexual harassment/abuse.³

The League would encourage your committee to focus on the immediate, as well as the eventual benefits of DAWA. The immediate benefits would include the nullification of worker nondisclosure agreements which would help workers gather evidence as they attempt to rectify workplace abuses. Another key benefit would prevent employers from requiring a Massachusetts worker to arbitrate a dispute in a different state with less protective labor laws.

The League, which represents 44 local Leagues from Cape Cod to the Berkshires, urges you to report H.1890/S.1184 favorably. Thank you for your attention and consideration.

¹ McCann, Carly, et.al., Employers Responses to Sexual Harassment, University of Massachusetts Amherst (<https://www.umass.edu/employmentequity/employers-responses-sexual-harassment>)

² Colvin, Alexander J.S., The growing use of mandatory arbitration, April 6, 2018, Economic Policy Institute (<https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/>)

³ President Biden Signs Speak Out Act, Curbing Use of Non-Disclosure Agreements in Harassment Cases, National Law Review, December 9, 2022, Volume XII, Number 343 (<https://www.natlawreview.com/article/president-biden-signs-speak-out-act-curbing-use-non-disclosure-agreements-harassment>)