Enabling Unlawfulness: *One Year After The Tie-Breaking Vote That Killed CFPB's Arbitration Rule*

Christine Hines, Legislative Director **Policy Brief, October 2018**[1]

Introduction

Last October, Congress had the chance to stand up for American consumers and support financial rights and protections that the Consumer Financial Protection Bureau had recently restored in its arbitration rule. But instead, the lawmakers abetted bankers and the big-business lobby when they voted to repeal the rule. A year later, consumers in the financial marketplace remain vulnerable to corporate wrongdoing because bankers and predatory lenders can and are continuing to erase their customers' right to go to court.

For example, in a case decided this February, payday lender Cash Biz used the criminal court system to threaten and encourage criminal prosecution of its Texas customers to force repayment of loans, the Texas Supreme Court concluded that using the judicial process in this way was not a "waiver" of Cash Biz's forced arbitration clause and class action ban in its customer loan terms. Cash Biz would still be allowed to block customers from banding together in court even though it had itself aggressively used the public court system against them.

What happened to Cash Biz's customers is now common in the financial marketplace. Through forced arbitration clauses, ordinary consumers' routinely have their rights purged in their transactions with big banks, lenders, credit reporting agencies, debt collectors, and other entities.

As it searched for ways to level the playing field for consumers who were devastated by the 2008 financial crisis, Congress created and tasked the CFPB to study the problem of forced arbitration clauses in consumer financial contracts and write a rule to address it. The bureau's rule, issued in July 2017, would have restored consumers' right to band together in class actions, empowering them to seek remedies in court for losses caused by bad actors in the financial sector.

But nearly a decade after the economic meltdown, lawmakers with a tie-breaking hand from U.S. Vice President Mike Pence, voted simple majority votes in favor of a Congressional Review Act resolution to kill the new CFPB rule. In doing so, they turned their back on justice, American consumers, and the exhaustive, years-long, taxpayer-funded, public rulemaking process.

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[1] Sophia Huang, NACA Advocacy and Outreach Associate, edited this document.
[2] *CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 132 S. Ct. 665 (2012) and *Rent-A-Center, W., Inc. v. Jackson,* 561 U.S. 63, 130 S. Ct. 2772 (2010).
[3] *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 133 S. Ct. 2304 (2013).

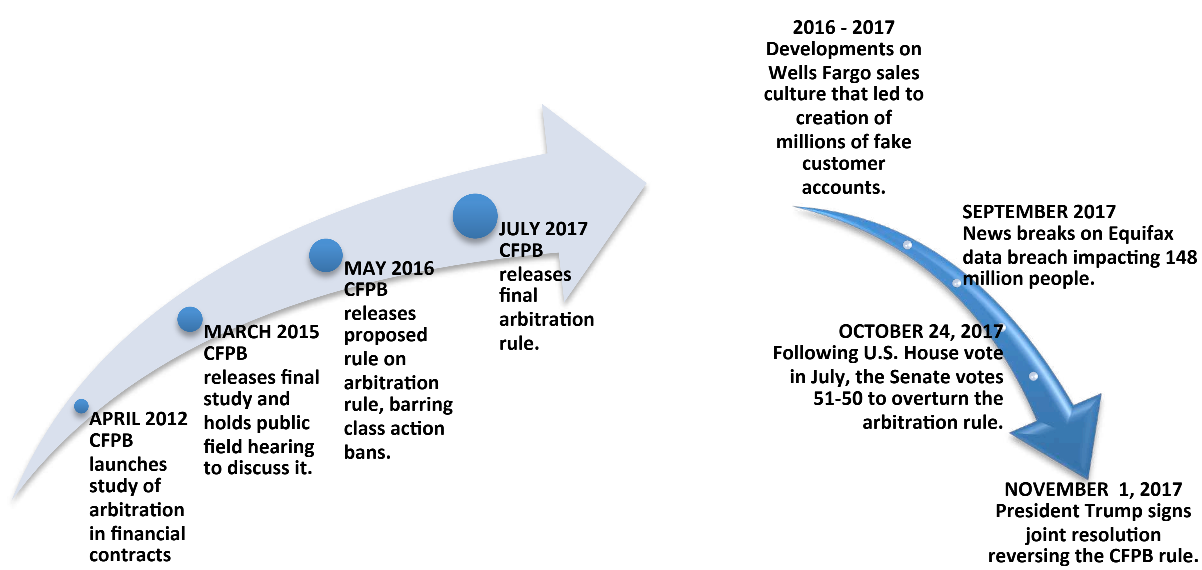
Adding to the frustration of this striking retreat from consumer protection, the vote took place amid the ongoing public scandals of two large financial entities: Wells Fargo & Co. and Equifax, Inc., avid users of forced arbitration clauses and class action bans against their customers. Both had come under intense public scrutiny for their reckless, and in the case of Wells Fargo, fraudulent mistreatment of consumers' private information.

Wells Fargo's hardline and cynical sales tactics led to the opening of millions of sham accounts for customers and non-customers without their consent. Meanwhile Equifax's inadequate security practices led to a data breach that put the private information of 148 million people at risk. The widespread financial harm resulting from the entities' delinquency reverberated across the country. Consumers needed protection more than ever.

As implementation of CFPB's arbitration rule grew imminent, Equifax and Wells Fargo's extensive wrongdoing and the ensuing public outrage emerged as a timely, compelling argument for keeping the CFPB's new safeguard. Yet, the financial industry and big-business lobby's longstanding influence over Congress outweighed consumers' interests, and secured just enough votes to kill the arbitration rule.

The rule would have ended class action bans in forced arbitration clauses beginning with financial contracts entered into in March 2018. Without it, consumer financial cases over the past year continue to show an unevenly applied justice system that favors corporate interests. The fate of consumers' claims against financial institutions hinges, not on their merits, but on a court's interpretations of the minute details of an arbitration clause.

At the first opportunity, a new Congress should review the massive amount of collected evidence on forced arbitration and its continuing harm to consumers. It should also pass laws that will meaningfully restore Americans' right to go court, and that shield federal regulatory protections, like the arbitration rule, from political whims.



Forced arbitration sanctioned by the highest court is a scourge against ordinary people.

Across the country, millions of consumers and workers everyday are forced to bring their claims against big businesses in a private, secretive arbitration process instead of in the public court system. Predispute binding mandatory arbitration requirements (or forced arbitration) are ubiquitous in American consumer and worker contracts. They can be found in the terms and conditions of banks, credit cards, loans, cell phone and Internet services, nursing homes, employment contracts and other essential products and services, usually on a take it or leave it basis.

A typical arbitration provision also prohibits individuals from joining their claims together in class actions. When corporations injure a large number of consumers, whether through widespread illegal charges and fees, systemic discrimination, or rampant fraud, class actions are the most effective way for consumers to hold them accountable. By using forced arbitration to bar class actions, corporations write themselves get-out-of-jail-free cards.

Corporate defenders of forced arbitration argue that the practice is efficient and cheaper. But the truth is, forced arbitration promotes a rigged system. By erasing group claims and blocking access to the courts, it removes the industry's incentive to comply with state and federal laws because there is little else in the marketplace outside of limited government actions to hold the industry responsible for consumer harm. Meanwhile, redress for consumers, especially for relatively small-dollar losses, is elusive because they cannot practically pursue these cases alone in arbitration.

Forced arbitration's growth is owed to the Supreme Court's broad interpretation of the obscure Federal Arbitration Act of 1925, which was intended to facilitate business to business agreements. However, the Court has favored arbitration clauses written into nonnegotiable corporate contracts with consumers in most disputes brought before it. An arbitration clause can override a federal statutory right to sue in court and can even grant biased arbitrators the authority to decide whether the arbitration terms are fair.[2]

The most sweeping case, *AT&T Mobility v. Concepcion,* permits corporations to block class actions and require individual arbitration to resolve disputes, even when consumers' individual claims are too small for the forum and are more suitable for a group lawsuit. The Court has even upheld class action bans when the complainants can show that the costs of individual arbitration make it economically impossible for them to vindicate their rights in that forum.[3]

CFPB takes the lead after its empirical data show a rigged justice system.

Given the Court's stance, restoring consumers' rights became a job for Congress and regulatory agencies. The post-crisis Dodd-Frank Wall Street Reform and Consumer Protection Act

[2] *CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 132 S. Ct. 665 (2012) and *Rent-A-Center, W., Inc. v. Jackson,* 561 U.S. 63, 130 S. Ct. 2772 (2010).
[3] *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 133 S. Ct. 2304 (2013).

authorized the CFPB to study arbitration and write a rule to limit or restrict the practice in consumer finance. Over the years, academics,[4] journalists,[5] and consumer advocates[6] have collected data, anecdotes, and other evidence highlighting the injustice in the system. But it was the CFPB's investigation of forced arbitration that revealed the extent and impact of the corporate practice on ordinary people's rights and access to remedies.[7]

The study showed that tens of millions of consumers that use financial services and products are bound by forced arbitration clauses and class action bans, including in the terms of credit cards, checking accounts, prepaid cards, and payday loans. Almost all of the arbitration clauses that the CFPB studied forbid consumers from participating in class actions.

The study found that few consumers can go to arbitration, especially for small-dollar claims, which make up the bulk of financial complaints. Only about 25 cases per year involving a consumer claim of $1,000 or less go to individual arbitration. The data show that individual arbitration requirements are silencing consumers' claims of harm against financial institutions. On the other hand, the data also show that participation in class action lawsuits had a different effect. According to CFPB data, class actions returned $2.2 billion to 34 million consumers, after deducting attorneys' fees and court costs.[8]

Following the three-year long data collection, analysis, and consideration of public feedback, the bureau spent the next two years preparing a rule in response. The final rule would not have ended forced arbitration, but it would have eliminated class action bans in response to data showing that such terms comprehensively removed access to remedies for consumers with small-dollar claims. The final rule would have also set up a program to monitor and collect data on existing individual arbitration cases that were not a part of a class action.[9]

Banks, payday lenders, and big-business lobbyists gang up against consumers.

The bureau paved a meticulous path backed by substantial evidence leading to the rule. But the financial industry and big-business sector strenuously opposed it from the beginning and throughout the process.[10] After the rule's release, an alliance of bank and business lobby groups, including the U.S. Chamber of Commerce and the American Bankers Association, sued the CFPB

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[4] See, e.g. Brian Fitzpatrick, *The End of Class Actions?*, 57 ARIZ. L. REV. 161 (2015); Myriam Gilles and Gary Friedman, *After Class: Aggregate Litigation in the Wake of AT&T Mobility v Concepcion*, 79 U. CHI. L. REV. 623 (2012); Jean R. Sternlight, *Tsunami: AT&T Mobility LLC v. Concepcion Impedes Access to Justice*, 90 OR. L. REV. 703 (2012).
[5] See, e.g., Jessica Silver-Greenberg and Robert Gebeloff, *Arbitration Everywhere, Stacking the Deck of Justice*, NEW YORK TIMES, Oct. 31, 2015, https://www.nytimes.com/2015/11/01/business/dealbook/arbitration-everywhere-stacking-the-deck-of-justice.html
[6] See, e.g. *Cases That Would Have Been: Three Years After AT&T Mobility v. Concepcion, Claims of Corporate Wrongdoing Continue to Pile Up,* April 2014, https://www.consumeradvocates.org/sites/default/files/2014_05_01_Concepcion3rdAnniversary_2.pdf.
[7] Consumer Financial Protection Bureau, *Arbitration Study: Report to Congress 2015*, https://www.consumerfinance.gov/data-research/research-reports/arbitration-study-report-to-congress-2015/
[8] CFPB Arbitration Study, Section 8, at 24.
[9] Final rule; official interpretations, 82 Fed. Reg. 33210, July 19, 2017. CRA revocation of the rule, 82 Fed. Reg. 55500, Nov. 22, 2017.
[10] Jared Bennett, *Who is killing the CFPB's arbitration rule?,* THE CENTER FOR PUBLIC INTEGRITY, July 28, 2017, https://www.publicintegrity.org/2017/07/28/21028/who-killing-cfpb-s-arbitration-rule

and its former director Richard Cordray to challenge the rule's validity.[11] In response, Cordray pointed out the irony of the corporate lobby lawsuit:

"[T]he Chamber of Commerce, a staunch opponent of the arbitration rule, has now sued to block it, banding together on behalf of many companies to keep consumers from banding together to assert their own rights in the courts," he wrote.[12]

The corporate influence of the U.S. Chamber and bankers in Congress was unmistakable. The Center for Public Integrity (the Center) reported that the sponsor of the resolution to overturn the arbitration rule, Rep. Keith Rothfus (R-Pa.), had received more than $971,000 from financial institutions since he was first elected to Congress in 2009.[13] A group of congressional members that the Center designated as the "banking caucus," had collected "hefty campaign contributions" from financial institutions. The group includes U.S. House Financial Services chairman from Texas, Rep. Jeb Hensarling ($4.22 million) and California's Rep. Ed Royce ($3.48 million).[14]

"To fight the CFPB, the financial industry has spent millions cultivating relationships with lawmakers such as Rep. Keith Rothfus, R-Pa., who sponsored the resolution to undo the CFPB arbitration rule." – *The Center for Public Integrity ("Who is killing the CFPB's arbitration rule?")*

Ultimately, the vast political power of the bank and big-business lobby overcame consumers' interests. Rep. Rothfus filed a resolution under the Congressional Review Act (CRA),[15] a once-rarely used law that the new Congress and administration employed regularly in 2017 to overturn regulatory protections issued in the previous administration.[16] The House and Senate passed the joint resolution disapproving of the arbitration rule on October 24, 2017[17], and President Donald Trump signed the resolution on November 1. The arbitration rule was one of 16 regulatory safeguards that the CRA eliminated. And unfortunately, the CRA prohibits an agency from reissuing a rule that is substantially the same unless specifically authorized by Congress.

Cash Biz can use the judicial process while preventing its customers from doing the same.

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[11] Renae Merle, *U.S. Chamber of Commerce suing to block rule allowing consumers to sue their banks*, THE WASHINGTON POST, Sept. 29, 2017, https://www.washingtonpost.com/news/business/wp/2017/09/29/u-s-chamber-of-commerce-suing-to-block-rule-allowing-consumers-to-sue-their-banks/?utm_term=.79eec0650290.
[12] Richard Cordray, *The truth about the arbitration rule is it protects American consumers*, Oct. 16, 2017, https://thehill.com/opinion/finance/355562-the-truth-about-the-arbitration-rule-is-it-protects-american-consumers
[13] Id.
[14] Id.
[15] H.J. Res. 111 (July 20, 2017).
[16] See, Rules at Risk, https://rulesatrisk.org.
[17] Final rule; CRA revocation, 82 Fed. Reg. 55500, Nov. 22, 2017, https://www.gpo.gov/fdsys/pkg/FR-2017-11-22/pdf/2017-25324.pdf

Without the rule, more consumers will be denied access to the courts like Cash Biz's borrowers. Payday lenders like Cash Biz Inc. are notorious in the marketplace for their aggressive hawking of high-interest loans with exorbitant fees and finance charges, and their hard-nosed tactics to collect payments. Payday loans, many of which cost a 400% annual interest rate, create a cycle of debt for consumers who often have to extend or roll over their loans for additional periods to keep up with the steep charges and fees.

Hiawatha Henry, Addie Harris, Montray Norris, Roosevelt Coleman, Jr., sued Cash Biz on behalf of themselves and about 400 other borrowers in Texas, alleging that the lender wrongfully used the court system to pursue criminal charges against them to collect or recover payday loans. The borrowers alleged malicious prosecution, fraud, and violations of the Deceptive Trade Practices Act and the Texas Finance Code. Specifically, they alleged that Cash Biz used the public, taxpayer-funded justice system to illegally collect private debts, forcing them to defend themselves in criminal court.[18]

> *Henry v. Cash Biz, LP* is about "how payday, auto title, and other small-dollar lenders… exploit the public legal system for private, commercial gains to the detriment and harm of all Texans." – *Texas Appleseed*

The consumers asserted that when a borrower did not make a new payment or had their check or debit transactions rejected, Cash Biz would file sworn complaints with prosecutors and courts against the borrower. Consumers alleged that Cash Biz would describe its aggressive collection of private debt as a "bad check" or "theft by check" to appeal to criminal prosecutors."[19] In many cases, arrest warrants were issued for borrowers, and courts applied jail time or jail credit.[20]

Federal and state laws are in place to protect against criminalization of debt and to prohibit wrongful threats of criminal charges to collect debt.[21] But according to a 2015 report, "many local DAs and justices of the peace serve as de facto debt collectors for the industry, and some people with small payday debts have ended up in jail."[22] Cash Biz and other predatory lenders used public resources, the criminal justice system, to recover private debts. A Texas Appleseed data analysis of lender complaints to prosecutors and courts found approximately 1,500 payday lender cases where a consumer was criminally charged or sent a notice to pay on behalf of a payday loan business.[23]

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[18] Petitioners' Brief on the Merits, *Henry v. Cash Biz*, No. 16-0854, March 20, 2017, at 4.
[19] Id.
[20] Amicus Brief of Texas Appleseed, *Henry v. Cash Biz*, 16-0854, at 4, 6.
[21]See, Texas Finance Code, Sec. 392-301.
[22] Forrest Wilder, *State Punishes Payday Lender for Criminalizing Debt*, TEXAS OBSERVER, April 22, 2015, https://www.texasobserver.org/state-punishes-illegal-payday-loan-lender/
[23] Texas Appleseed, at 6.

Cash Biz sought to block its borrowers' lawsuit against it by invoking the forced arbitration clause and class action ban in its loan contracts. The contract terms bar the borrowers from joining their claims together in court, and instead force them to take their complaints individually to a private arbitration firm chosen and hired by Cash Biz.

The borrowers responded to Cash Biz's efforts, asserting that by going to court to file criminal "bad check" complaints against borrowers, it had waived its right to force them into private arbitration.[24]

The trial court agreed with the borrowers, but Cash Biz appealed. The Texas Supreme Court sided with the payday lender.[25] In February, the Texas high court enforced the arbitration clause against the consumers, barring their class action. Effectively, the ruling meant that payday lenders in Texas could use the public court system for their own benefit while preventing their borrowers from doing the same.

Despite fake-account scandals, Wells Fargo used forced arbitration to beat its customers this year on overdraft fees.

A case this year against Wells Fargo also was decided in favor of forced arbitration and against consumers banding together in court, despite recent and unrelenting disclosures of the banks numerous financial scandals. In the last two years, Wells Fargo has had to contend with the exposure of the widespread damage caused by its predatory sales tactics.[26] The bank has faced and settled allegations for the systemic opening of fake checking and credit accounts;[27] tacking on unnecessary auto insurance products to loans; unlawful repossessions of servicemembers' cars; wrongful denials of mortgage modifications for homeowners, and other consumer abuses.[28]

Congress has summoned Wells Fargo's CEOs before it to answer for the pervasive fraud in its consumer sales practices. Under public pressure the bank settled a consumer class action on its fake accounts.[29] And this past spring, federal regulators slapped a long overdue $1 billion fine on Wells Fargo for misconduct regarding its mortgage and auto loans.[30]

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24 Petitioners' Brief on the Merits, *Henry v. Cash Biz*, No. 16-0854, March 20, 2017.

25 *Henry v. Cash Biz*, LP, 551 S.W.3d 111 (Tex. Feb 23, 2018), certiorari denied by *Henry v. Cash Biz, LP*, 2018 U.S. LEXIS 4478 (U.S., Oct. 1, 2018).

26 Letter to Mike Crapo, Chairman of Senate Committee on Banking, Housing and Urban Affairs from Ranking Member Sherrod Brown, et al., Oct. 4, 2018, https://www.banking.senate.gov/imo/media/doc/Wells%20Fargo%20Letter%2010.4.2018.pdf.

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28 Id. and see, also, *Wells Fargo: Corporate Rap Sheet*, https://www.corp-research.org/wells-fargo (last updated Aug. 2, 2018).

29 James Rufus Koren, *Wells Fargo to pay $110 million to settle lawsuits over unauthorized accounts*, LOS ANGELES TIMES, March 28, 2017, http://www.latimes.com/business/la-fi-wells-fargo-settlement-20170328-story.html.

30 Consumer Financial Protection Bureau, *Bureau of Consumer Financial Protection Announces Settlement With Wells Fargo For Auto-Loan Administration and Mortgage Practices*, *April, 20, 2018*, https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-announces-settlement-wells-fargo-auto-loan-administration-and-mortgage-practices/.

> "Wells Fargo demanded in its defense that the case [customer's allegation of unauthorized accounts] go to arbitration, noting that its arbitration clause was exceedingly broad: Anyone who became a Wells Fargo customer was agreeing to boilerplate in their customer agreements that covered any dispute with the bank whatsoever…" – *Michael Hiltzick, Los Angeles Times*

While it may appear that the bank is paying for its 'mistakes,' Wells Fargo has been almost always allowed to keep using its get-out-of-jail-free card. Wells Fargo has a long history of using broad yet airtight arbitration clauses in its customer contracts. Without the CFPB's arbitration rule, Wells Fargo can continue to quash consumer class actions against it. Whether Wells Fargo's defrauded customers in its many scandals receive justice will depend on courts' interpretations of forced arbitration clauses, instead of on the facts.

Too many consumers have been in the same position as those in a case decided this past May where a court ruled that Wells Fargo could compel individual arbitration. About a decade ago, bank customers sued Wells Fargo and other big banks in multidistrict litigation to resolve disputes over how the financial institutions applied overdraft fees against their customers' checking accounts. Consumers in these cases alleged that the banks would change the order of their debit transactions to maximize the number of overdrafts and resulting fee charges on their accounts.

Consumers filed class actions against Wells Fargo in 2008 and 2009, but the bank did not seek to enforce its arbitration clause until 2011, after it had actively participating in litigation for over a year.[31] The customers asserted that the bank waived its right to invoke the arbitration clause against them.

The Eleventh Circuit Court of Appeals found that Wells Fargo should be allowed to invoke its arbitration clause years into an ongoing lawsuit.[32] According to the court, Wells Fargo permissibly reconsidered "its arbitration strategy," after the Supreme Court's *Concepcion* decision, and changed course to enforce its arbitration clauses.[33] Instead of being able to enforce their rights and seek remedies for losses caused by potentially abusive overdraft practices as other customers in other cases have done,[34] Wells Fargo customers' claims in this case fell to a court's ruling on the bank's "arbitration rights."

It is expected that courts will reach different results even with similar facts. However, it is unjust for outcomes to hinge on an interpretation of an arbitration clause. Harmed consumers are being shut out of the courts and prevented from seeking their rightful compensation. Access to remedies through the court system should be the starting point for all.

Debt collectors, debt buyers, not parties to the contracts, have also blocked group claims.

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[31] *Gutierrez v. Wells Fargo Bank, NA*, 889 F.3d 1230 (11th Cir. May 10, 2018).
[32] *Id.*
[33] Id.
[34] CFPB Arbitration Study, Section 8, at 40.

Consumers also struggle to stay out of arbitration with debt collectors and debt buyers. Typically, debt collectors are not original signatories to the consumer contracts that require arbitration, yet in some cases they can enforce them anyway. Forced arbitration makes it difficult to seek remedies against unfair and abusive debt collection practices that violate state and federal laws.

For example, Donovan Clarke, a consumer in New York sought to represent himself and other consumers in a class action against Alltran Financial, LP, a debt collector. Clarke alleged that Alltran violated the Fair Debt Collection Practices Act when it sent him an alleged false and misleading debt collection notice. The court determined that Alltran could compel private arbitration even though it was not a signatory to the original bank contract. Because the arbitration clause included a delegation clause, the court held that the arbitrator should also decide on whether to enforce the contract's class action ban.[35]

In a case also decided this year, Maryland resident Carla Garrett, filed a complaint on behalf of herself and other Maryland consumers against Monterey Fin. Servs. LLC, a debt collector, for allegedly violating the FDCPA relating to its communications with consumers. Like Alltran, Monterey was not a signatory to the original contract. Again, the court compelled individual arbitration.[36]

The debt collector Monterey also successfully forced arbitration against Lazarao Cintron, a consumer in New Jersey, who, according to the court, fell behind on payments owed on a retail installment loan.[37] The lender assigned the loan debt to Monterey, and Cintron brought a complaint on behalf of himself and others against the debt collector alleging FDCPA violations. The original loan contract called for arbitration, prohibited class actions, and even delegated questions about the validity of the arbitration requirements to an arbitrator. The court directed Cintron's FDCPA claims against the collector into private arbitration.[38]

Allowing debt collectors and other corporate entities to prohibit class actions gives them free rein to sweep potential wrongdoing under the rug. Without the CFPB's arbitration rule, more and more claims will be kept hidden from public view while the perpetrators can continue to abuse and defraud consumers with impunity.

Recommendations – Stop Forced Arbitration and Repeal the CRA

Consumers face an uphill climb against financial institutions' arbitration strategies. A solution to restore their access to court is overdue. Yet despite the arbitration rule reversal last year, the CFPB's painstaking efforts to restore consumer rights were not undertaken in vain. The irrefutable evidence collected and the rule's meticulous provisions remain a part of the public record. The now-entrenched consumer finance problem can still be rectified. Congress should

[35] *Clarke v. Alltran Fin*., No. 17-CV-3330 (JFB) (AYS), 2018 U.S. Dist. LEXIS 29011 (E.D.N.Y. Feb. 22, 2018).
[36] *Garrett v. Monterey Fin. Servs*., LLC, No. JKB-18-325, 2018 U.S. Dist. LEXIS 124984 (D. Md. July 25, 2018).
[37] *Cintron v. Monterey Fin. Servs*., Civil Action No. 2:17-cv-11537, 2018 U.S. Dist. LEXIS 174159 (D.N.J. Oct. 10, 2018).
[38] Id.

profess its mistakes and resolve to fix the issue for the sake of millions of its constituents across the country. Lawmakers should consider the following proposals:

1) The **Arbitration Fairness Act,** sponsored by Sen. Richard Blumenthal (D-Conn.) and Rep. Hank Johnson (D-Ga.), would amend the FAA to prevent the use of forced arbitration clauses in consumer, employment, and antitrust disputes. Consumer disputes would cover the vast financial services sector. The AFA would not prohibit arbitration, but it would insist that individuals have a meaningful choice. Consumers would be able to choose arbitration or a public court system after a dispute arises.

Other legislation on forced arbitration would eliminate its use in important contexts. For example, Sen. Patrick Leahy (D-Vt.) and Rep. Johnson have sponsored the **Restoring Statutory Rights and Interests of the States Act**, which would ensure that forced arbitration clauses are not interpreted to preempt statutory causes of actions.

Sen. Richard Durbin (D-Il.) and Rep. Maxine Waters (D-Calif.) introduced a bill, the **Court Legal Access and Student Support (CLASS) Act**, which would prohibit an institution of higher education from receiving Title IV federal student aid funding if the school's enrollment contract requires forced arbitration or otherwise restricts students' ability to pursue claims against the school in court.

Finally, the **Justice for Victims of Fraud Act**, introduced by Sen. Sherrod Brown (D-Ohio) and Sen. Brad Sherman (D-Calif.), with a clear nod to Wells Fargo, would clarify that forced arbitration clauses do not apply to checking and credit card accounts fraudulently opened without a customer's consent.

The passage of any of these bills would serve as a step forward in protecting consumers and restoring their right to a day in court.

> "The truth is that Congress does not need the CRA to repeal a regulation. Congress can roll back rules through the normal legislative process. When popular protections that save lives and protect working families and consumers are on the line, there is no reason to give opponents a shortcut to repealing them. That is the essence of rigged system." – *Lisa Gilbert and Amit Narang*

2) Finally, Congress should repeal the Congressional Review Act with a bill similar to the SCRAP Act, formally named the **Sunset the CRA and Restore American Protection Act**. Congress' use of the CRA to disapprove of and erase regulatory protections with simple majority votes has

harmed the public interest.[39] Many of these rules resulted from federal agencies' careful deliberation of complex issues. Congress should not be able to dismiss them so easily.

Rather, Congress should use its own thoughtful legislative process to review and revise federal agency policies. The SCRAP Act, introduced by Sen. Cory Booker (D-N.J.) and Rep. David Cicilline (D-R.I.) would repeal the CRA and allow agencies to reinstate previous rules – like the arbitration rule – that the CRA was used to overturn.

[39] See, Lisa Gilbert and Amit Narang, *Scrap the Congressional Review Act*, THE REGULATORY REVIEW, June 7, 2017, https://www.theregreview.org/2017/06/07/gilbert-narang-scrap-congressional-review-act/