

November 15, 2021

Senator Chuck Schumer
Majority Leader
United States Senate
Washington, DC 20510

Senator Jack Reed, Chairman
U.S. Senate Committee on Armed Services
Russell Senate Building
Washington, DC 20510

Senator Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

Senator James Inhofe, Ranking Member
U.S. Senate Committee on Armed Services
Russell Senate Building
Washington, DC 20510

Dear Leader Schumer, Leader McConnell, Chairman Reed and Ranking Member Inhofe:

The undersigned organizations strongly support the Blumenthal amendment to the National Defense Authorization Act for fiscal year 2022. This amendment would prohibit the use of forced arbitration in contracts covered by the Service Members Civil Relief Act (SCRA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA). Our nation's service members should not be deprived of their Constitutional and statutory rights and freedoms, which many risk their lives to protect.

Congress has sought to protect servicemembers with SCRA, keeping them from being victims of financial abuse, and USERRA, protecting their jobs when they are called to active duty. Both laws allow service members experiencing illegal misconduct to seek legal redress in court. However, a growing number of companies are inserting forced arbitration clauses into non-negotiable employment and financial contracts. Refusing to sign means forgoing the financial service or employment. As a result, service member's rights under both these laws— and Congress' intent — are being regularly undermined by forced arbitration clauses.

Forced arbitration clauses require claims to be heard in private, secret, company-controlled proceedings. They prevent a dispute from being resolved before an impartial judge or jury, and instead allows the company to select the arbitration firm — a firm that likely relies on that same company for repeat business and therefore is biased in the company's favor. Forced arbitration clauses typically dictate the arbitration rules, the location for the arbitration, and the payment terms, all written for the benefit of the corporation. There is virtually no right to appeal.

Also prevalent in forced arbitration clauses are provisions prohibiting servicemembers from banding together in class actions to address widespread, systemic harm. For a mobile population like the military, class action bans make it even more difficult for servicemembers to obtain a fair resolution of their claims. Military families are more transient, with limited time and ability to pursue a case. This is especially true for servicemembers on active duty. A member of the military whose rights have been violated can pursue a claim as part of a class action and serve their country at the same time. In contrast, forced arbitration clauses, particularly those with class action bans, can make it impossible for many harmed service members to take any legal action to seek remedies.

Studies have shown that those forced into arbitration are less likely to win, receive smaller awards, and are otherwise severely disadvantaged. According to the Economic Policy Institute, “Consumers obtain relief regarding their claims in only 9 percent of disputes. On the other hand, when companies make claims or counterclaims, arbitrators grant them relief 93 percent of the time—meaning they order the consumer to pay.”¹

The negative effects of forced arbitration on servicemembers and their families are so widespread that a 2006 Department of Defense report concluded the following: “Service members should maintain full legal recourse against unscrupulous lenders. Loan contracts to Service members should not include mandatory arbitration clauses or onerous notice provisions, and should not require the Service member to waive his or her right of recourse, such as the right to participate in a plaintiff class. Waiver isn’t a matter of ‘choice’ in take-it-or-leave-it contracts of adhesion.”²

We urge you to support the Blumenthal amendment to the National Defense Authorization Act for fiscal year 2022. For any questions or for more information, please contact Joanne Doroshow, Executive Director, Center for Justice & Democracy, joanned@centerjd.org. Thank you for your consideration.

Very sincerely,

Alliance for Justice
American Association for Justice
Americans for Financial Reform
California Employment Lawyers
Association
Center for Justice & Democracy
Center for Responsible Lending
Citizen Works
Consumer Action
Consumer Federation of America
Consumers for Auto Reliability and Safety
Earthjustice
Essential Information

Googlers for Ending Forced Arbitration
National Association of Consumer
Advocates
National Consumer Law Center (on behalf
of its low-income clients)
National Consumers League
National Employment Lawyers Association
People's Parity Project
Public Citizen
Public Good Law Center
Public Justice
Texas Watch
Woodstock Institute

¹ Heidi Shierholz, *Correcting the Record*, Economic Policy Institute (Aug. 1, 2017), <https://www.epi.org/files/pdf/132669.pdf>.

² Department of Defense, Report on Predatory Lending Practices Directed at Members of the Armed Forces and their Dependents (Aug. 9, 2006).