

**Statement of Senator Patrick Leahy (D-Vt.),  
Ranking Member, Senate Judiciary Committee,  
On Legislation to Restore Statutory Rights from Forced Arbitration  
February 4, 2016**

Today I want to speak about a problem that many Americans are unaware of, but that affects all of us in our daily lives. When Americans sign cell phone agreements, rent an apartment, or accept a contract for a job, most of us focus on the service we are about to receive or that we are about to provide. What Americans do not realize—until it is too late—is that too often we are also signing away crucial legal rights. Legal fine print tips the scales against us. It is forcing consumers into private arbitration, denying us of our Constitutional right to protect ourselves in court and to have others learn about the harm caused by corporations.

This problem has meaningful, real-world implications for Americans' ability to seek justice. When victims are forced into private arbitration, their cases proceed without public record. The cases cannot serve as precedent for future injustices, and the plaintiffs—hardworking consumers—cannot obtain a meaningful appeal. An arbitrator is selected by the corporate defendant, creating incentives that favor repeat corporate players. In many cases, forced arbitration stops victims' legal actions altogether: by requiring victims to waive their legal right to join with other victims in a class action, arbitration clauses often remove the crucial tool that plaintiffs need to afford pursuing their claims.

The injustice of forced arbitration affects consumers, workers, seniors, veterans, and families in every state across the country. The cases are heart-wrenching. In one recent case, a pregnant woman suffered a tragic miscarriage and was not able to work for seven days. When she returned to work, she was fired. When this woman attempted to hold her employer accountable in court for violating the Family and Medical Leave Act and her state's pregnancy discrimination laws, her case was forced into private arbitration. We do not know the outcome of the case, but that is precisely the problem. In private arbitration, there is no way to know if she obtained justice, no precedent to deter other employers from such behavior, and no public accountability for the corporation that may have violated both state and federal law.

In another recent case, an hourly employee at a hospital realized she was not being paid for all of the time she worked because her employer's payroll system was "rounding down" her time. When she attempted to bring a class action on behalf of all the hourly employees at the hospital, her lawsuit was dismissed and forced into individual arbitration. To seek justice, the hospital employees must now pay to bring their complaints case-by-case, even though the cost of bringing an individual arbitration almost certainly outweighs the lost wages any worker would receive.

Forced arbitration has also been a favorite tool for well-heeled corporations to make an end-run around our civil rights laws. When working women are paid less for doing the same job; when minorities are denied promotions despite their success; or when banks target poor minority neighborhoods with predatory loans, the closed and unaccountable forum of private arbitration lets them conceal their discriminatory actions.

This system of forced arbitration denies individuals access to justice. But it also guts vital protections we have fought for in our laws. Whether we are talking about family and medical leave, equal pay, or crucial civil rights protections, what strength do our laws have when the legal process Congress created to enforce them is stripped away without recourse? Through legal fine print, corporations are giving themselves a “get out of jail free” pass that guts citizens’ rights and shields bad actors from accountability.

When Congress passed the Federal Arbitration Act, it was intended to give sophisticated businesses an alternative venue to resolve their disputes. There is a valid role for arbitration when parties choose it willingly, after a dispute arises, as an alternative to court. But arbitration should not be forced upon consumers and workers through take-it-or-leave-it contracts they have no real choice but to accept. And it should not—it must not—prevent Americans from enforcing their rights under fundamental State and Federal laws.

Nor should Federal law interfere when States take action to address the injustice of forced arbitration. A full 47 of our 50 States have tried to protect their citizens in some way from forced arbitration, but these efforts have been thwarted by Federal law. In Vermont, lawmakers required that arbitration clauses be accompanied by a written acknowledgement signed by both parties, to ensure that consumers were aware of them. This reasonable, commonsense requirement was invalidated because it conflicted with Federal law.

Following a 2011 Supreme Court case, *AT&T v. Concepcion*, other efforts in Vermont and across the country to protect citizens from forced arbitration have also been invalidated. Vermonters who tried to sue their phone service provider for disturbing them with unwanted text messages, and Vermont drivers who tried to sue their car insurers over coverage, have all been forced into private arbitration despite conflicting measures in Vermont law. This restriction on States’ authority is wrong, especially when the enforceability of contracts is traditionally an area left to state law. This is not a partisan issue. Both Republican and Democratic Attorneys General have repeatedly spoken out against the Federal Arbitration Act’s intrusion on state sovereignty and a state’s compelling interest in protecting the health and welfare of its citizens.

Congress must act to stop these abuses. That is why today, I am introducing legislation to limit the injustice of forced arbitration and protect Americans’ right to seek justice in our courts. The Restoring Statutory Rights Act will ensure that critical State and Federal laws can actually be effective, by ensuring that citizens cannot be stripped of their ability to enforce their rights using our independent justice system. It will also ensure that when States take action to address forced arbitration, they are not preempted by an over-broad reading of our Federal arbitration laws.

This effort is supported by the Leadership Conference for Civil and Human Rights, the National Employment Lawyers’ Association, Americans For Financial Reform, Alliance for Justice, Earthjustice and consumer groups such as Consumers Union, Public Citizen, the National Consumer Law Center, and Consumers for Auto Reliability and Safety. These groups and many others have worked tirelessly to highlight the injustice of forced arbitration and the unparalleled scope and number of people it affects.

All Senators should care about the implications of forced arbitration for statutes that this body writes, debates, and enacts into law. Senators should also care about their home States' ability to protect consumers from unconscionable contracts when their State chooses to act. I urge members to support this bill.

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