



1600 20 Street, NW • Washington, DC 20009 • 202/588-1000 • www.citizen.org

Dear Senator,

On behalf of Public Citizen's more than 400,000 members and supporters, we strongly urge your support for the "Restoring Statutory Rights Act." This legislation would amend the Federal Arbitration Act (FAA) to exempt from its coverage claims brought by individuals and small businesses seeking to enforce their constitutional and statutory rights and, accordingly, would permit these claims to proceed in a court of law instead of being forced into arbitration. This bill is a powerful step toward discontinuing the alarming spread of forced arbitration clauses in consumer and employment contracts. Congress must act to protect the ability of those harmed by illegal conduct to fully vindicate their rights in state and federal courts, rather than be compelled into the haphazard system of arbitration.

Forced arbitration has crept into virtually every sector of Americans' lives. These contractual provisions compel people to give up their ability to enforce their legal rights in court before a dispute has even arisen. Most people do not even realize that forced arbitration clauses are buried in the fine print of contracts for employment, consumer products, financial goods and services, and even student enrollment agreements at for-profit schools.

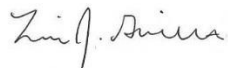
This is an extremely dangerous trend. Far from being a forum for fair resolution of disputes, forced arbitration provisions are heavily anti-consumer and anti-employee. Not only is the party with outsized bargaining power setting the terms of arbitration, they can decide on the arbitrator. Furthermore, in arbitration, there are no due process guarantees. There is no obligation to follow the law, no transparency or public review of decisions, and no right to appeal a bad decision. Arbitrators do not have to be trained in the law and rely on a business model where they are paid by the party that is also likely to bring them business. It is a derisive system of justice in which constitutional rights and statutory protections can be rendered meaningless.

The present situation seriously distorts the legislative intent behind the Federal Arbitration Act, which was enacted by Congress in 1925 as a measure intended to aid enforcement of private, voluntary arbitration agreements entered into by commercial enterprises of equal bargaining power. A series of contemporary U.S. Supreme Court decisions have greatly tilted the original meaning of the FAA to the current state of play, where the law has become a windfall for powerful interests that can effectively say "no thanks" to judicial scrutiny of illegal conduct. Americans are being forced out of court for claims as egregious as discrimination, wage theft, and consumer protection violations.

A course correction is urgently needed. The Restoring Statutory Rights Act would significantly achieve this in three ways. First, it would exempt from the FAA claims brought by individuals or

small businesses arising from violations of federal or state law, the U.S. Constitution, or a state constitution. Arbitration of these claims can proceed as long as it is voluntarily entered into by the parties to a dispute after it has arisen. Second, this bill would allow state and federal courts to apply their respective statutory and judicial doctrines of contract interpretation when evaluating the enforceability of arbitration provisions under the FAA. Third, it places the essential task of determining the FAA's applicability to specific arbitration provisions with a court, rather than with an arbitrator.

By legislating statutory rights and remedies, Congress made the determination that these protections were of such significance that they should be enforced in a court of law. Certainly, neither the drafters of our Constitution, nor Congress or state legislatures, predicted these rights could be so easily diluted by wrongdoers by simply opting out of the civil justice system via contract. Congress must act swiftly on this bill to protect everyone's rights under the laws of our government.



Lisa Gilbert
Director
Public Citizen's Congress Watch division



Sonia Gill
Counsel, Civil Justice and Consumer Protection
Public Citizen's Congress Watch division