Providing for Congressional Disapproval of a Rule Submitted by Bureau of Consumer Financial Protection—Motion to Proceed

Mr. CRAPO. Mr. President, I move to proceed to H.J. Res. 111.

The PRESIDING OFFICER. The clerk will report the motion.

The legislative clerk read as follows:

Motion to proceed to H.J. Res. 111, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by Bureau of Consumer Financial Protection relating to “Arbitration Agreements.”

The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.

Providing for Congressional Disapproval of a Rule Submitted by Bureau of Consumer Financial Protection

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Mr. CRAPO. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Idaho.

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The PRESIDING OFFICER. The question is on agreeing to the motion. The motion was agreed to.
No wonder people don’t trust Wall Street. No wonder people are mad at Wells Fargo and Equifax and these companies that scam the public and these banks that—I live in Cleveland, OH, in ZIP Code 44105. My ZIP Code had more foreclosures in 2007 than any other ZIP Code in the Americas, and I see what these banks did to my neighborhood, and I see what they do to Wells Fargo accountholders, and I see what they are doing to the 145 million whom Equifax has scammed.

Studies show that Wall Street and other big companies win 93 percent of the time in arbitration. Ninety-three percent of the time in arbitration the companies win. No wonder they are fighting like hell. No wonder they have lobbied this place like we have never seen. No wonder every Wall Street firm is down here begging their Senators to stand strong with Wall Street and pass this CRA, pass this resolution to undo the rule stopping forced arbitration.

In 2013, Wells Fargo’s multideciamillionaire CEO came and testified in front of the Banking Committee early this month on an entirely new scandal. This is another Wells Fargo scandal, a scandal the last CEO tried to keep in the dark. There was a new scandal he knew about and didn’t tell us about. He said that Wells Fargo plans to keep using forced arbitration. It is amazing that bank that has hurt so many Americans would continue to fight against consumers’ right to a day in court.

This vote is all about a consumer’s right to a day in court, pure and simple. These forced arbitration clauses are powerful. They are everywhere. They are in student loans. They are in credit card agreements. They are in nursing home agreements, even in employment contracts.

Gretchen Carlson, the well-known FOX News anchor, was prevented from telling her story of harassment by a forced arbitration clause in her employment contract. She has been urging Senators today to vote against the repeal of the consumer bureau’s rule. In her words, forced arbitration “has silenced millions of women who otherwise may have come forward.”

With all the other things about forced arbitration, think about what she said. She says forced arbitration “has silenced millions of women who otherwise may have come forward.”

Forced arbitration is about the big- est companies in the country, the big- gest Wall Street firms and silencing customers, silencing victims. It is about giving more power to corpora- tions. If you ask Americans if they think corporations have too much power, resoundingly, they say yes. This gives more power to those corporations that already have too much power in the lives of working Americans.

Let me tell you a story about an Ohioan. I will use only his first name, George. George is from Mentor, OH, a community east of Cleveland in Lake County. George’s wife suffered physical and mental abuse in a nursing home. Guess what. The nursing home had an arbitration clause. It denied him and his family their day in court. This nursing home could physically and mentally abuse his wife, who was help- less in this nursing home. She couldn’t really fight back. He really tried to do much herself to stop it. They couldn’t go to court because they had signed a forced arbitration clause. George didn’t know what a forced arbitration clause was, I assume, until that happened.

Forced arbitration clauses were so powerful and so effective that when George went to a lawyer, his lawyer said: You don’t stand a chance fighting against it because they are going to put you into forced arbitration. They are not going to give you a free day in court.

Veterans and servicemen have a lot of experience with this issue. A big Wall Street bank called Santander was illegally repossessioning cars from serv- icemen all over the country sev- eral years ago. When servicemen spoke up about their rights—special protections they earned by serving our country—Santander used forced arbi- tration to keep them from doing so.

We talk a good game about veterans here. We are always saying how we are on the side of veterans. I have served in the Veterans’ Affairs Committee longer than any Ohio Senator ever. I pay a lot of attention to these issues, and I hear all of my colleagues mouth wonderful words about how we love veterans and ought to take care of veterans. The American Legion held its national con- vention in August and adopted a resolu- tion supporting the consumer bureau’s rule and opposing today’s at- tempt to repeal it. The assistant direc- tor of the American Legion’s veterans employment and education division said: “Our membership has stated un- equivocally that we want a future where our military veterans’ fi- nancial protections are chipped away to increase the margins of the financial sector.”

These arbitration rules go after families of people in nursing homes. They go after customers who they get to sign up for things they didn’t know they were signing up for. They go after people whose credit has been hacked and whose credit rating has been driven down, and they go after our air- men, sailors, and Coast Guard mem- bers. How will Members of this body look those servicemen in the eye and explain that they chose to stand with Wall Street over our military member?

Forced arbitration hurts the 3.5 million people who had bank accounts fraudulently opened by Wells Fargo. Forced arbitration hurts the 145 million Ameri- cans who had their personal data put at risk by Equifax. It hurts everyone who has been hurt by these companies. It hurts students who have been cheated by for-profit colleges. It hurts family members in nursing homes.
homes. It hurts America’s veterans. Forcible arbitration hurts millions of Americans with student loan debt and credit cards. Damn near everybody in the country is potentially vulnerable to forced arbitration.

What do forced arbitration help? We know that it is Wall Street banks and huge corporations that never pay the price for cheating working people. Those CEOs who make $20 million and, then, generously give up their bonuses, will not give up forced arbitration because that will help their bottom line. That will help their stock bounce back. That will help their dividend. That will help their compensation.

I urge my friends on the other side to ask themselves: Whose side are we on—the people we serve who get hurt by forced arbitration or Wall Street CEOs who cash in? I ask my colleagues: Choose to side with the people we serve. Vote against repeal of the consumer. Give some power back to regular Americans.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. Mr. President, we are having a very interesting and, obviously, intense debate tonight about arbitration clauses in financial contracts. Those who oppose the resolution that is on the floor tonight would have you think that the battle is over whether or not to stop what they call forced arbitration clauses in contracts.

The real issue is whether we will try to force the resolution of disputes in financial resolution into class action lawsuits. This is a question about whether we should force dispute resolution mechanisms into class actions. In fact, let me read the actual language of the rule that we are debating. It doesn’t say anything about forced arbitration clauses. In fact, the rule doesn’t stop arbitration clauses in contracts. It stops protections in arbitration clauses against class action litigation. Let’s read what the actual rule says: The CFPB rule prohibits a company from relying in any way on a predispute arbitration agreement with respect to any aspect of a class action that concerns any consumer financial product or service.

In other words, the entire purpose of this rule is to promote class action litigation and to stop arbitration resolution when there is a dispute. Specifically, the rule requires any predispute arbitration agreement to include this specific language. In other words, people and companies are required to put this language into their agreements. This tells you what the dispute is about.

The language mandated by this rule is this: We agree that neither we nor anyone else will rely on this agreement to stop you from being part of a class action case or prevent a class action in court or you may be a member of a class action filed by someone else.

It is about as clear as it could be. The issue here is this: Do we force the resolution of disagreements or disputes in financial transactions into class action litigation?

This is a rule to benefit the plaintiff’s bar.

The rule also requires that companies that go through arbitration must submit records of arbitration cases to the CFPB within 60 days of those records.

Some have raised the argument that arbitration agreements gag consumers, including, as was suggested, saying that, were it not for arbitration agreements, the Wells Fargo fake accounts scandal would have been discovered earlier. The only thing confidential in arbitration is what is brought as specific evidence in that arbitration proceeding. The clauses in the law permit people to discuss the claims they are bringing and the company and the individual, if they choose to discuss them.

Nothing stopped anyone from talking publically about what was going on at Wells Fargo. Arbitration keeps evidence confidential for the protection of consumers, but it does not keep them from speaking out about it.

Further, if judges believe that clauses do that, they often find them unconstitutional, as they stop consumers from speaking out. In fact, if you think about it, what generated the public understanding of the Wells Fargo circumstance, if I recall correctly, was a Los Angeles Times news article. It was the CFPB itself that failed, apparently, to read the news and understand what was going on at Wells Fargo. That was the reason that we saw it take so long for any action to take place—not an arbitration agreement.

In addition, those who are attacking arbitration agreements seem to make the case that arbitration agreements stop consumers from having options. The CFPB’s own study said: The clear majority of arbitration clauses within our review specifically recognize and allow access to small claims court as an alternative to arbitration.

Let’s just be clear. Arbitration clauses don’t gag consumers. They don’t stop them from speaking out about what they see going wrong. They don’t force them out of the courts if they want to go into a small claims court. The only thing they do is being objected to here is that they try to force them to not agree to go into a class action lawsuit. It is literally that question that is the biggest issue that we are dealing with here.

Mr. MERKLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. CRAPO. Haven’t finished yet. Mr. MERKLEY. I am sorry. Mr. CRAPO. I am looking for more pages.

Mr. MERKLEY. While he is looking, will the Senator perhaps yield for a question?

Mr. CRAPO. I will yield for a question.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. The thing that confused me about the Senator’s commentary is that the Senator referred to people, through this regulation, being forced into court. He said, if they do this, they would still have a choice of arbitration or court, as opposed to being locked into arbitration.

Are you familiar that under this rule people would still have the option of arbitration, if they thought that was good?

Mr. CRAPO. I am familiar that they would still have the option of arbitration.

That is why, when those who criticize our effort to reject this rule say we are trying to stop forced arbitration, the rule itself still allows arbitration agreements. What it stops is allowing the company to reach an agreement with the consumer to avoid class action litigation.

Mr. MERKLEY. I could possibly clarify that. My understanding is that, currently, when you have an arbitration clause, you have one option, and that is to go into arbitration.

Mr. CRAPO. That is not true.

Mr. MERKLEY. In this rule you have the ability to go to court or the ability to go to arbitration.

Mr. CRAPO. Let me reclaim my time, and the Senator can respond on his own time.

Let me clarify. As I indicated, even the CFPB, in its own study, said that most of the contracts—not all companies use the same contract—already allow two actions: No. 1, to go to small claims court or, No. 2, to go to arbitration.

What the agreements don’t allow is class action litigation. The specific and only restriction of the rule we are debating tonight is about whether class action litigation should be incentivized by taking out the ability of companies to insist that that be not an alternative.

There is one restriction that we are debating here, and that is whether it is appropriate to allow companies to negotiate away class action litigation.

On July 10, the CFPB finalized its rule, as I have said, specifically prohibiting the use of predispute arbitration agreements that prevent consumers from participating in class action lawsuits.

The Dodd-Frank Act—the statute under which the CFPB was created—also set forth when the CFPB was authorized to prohibit, impose conditions upon, or limit the use of such agreements; namely, if the CFPB finds—and this is what they are required by law to find—that any such action was, No. 1, in the public interest and for the protection of consumers and, No. 2, consistent with the CFPB study’s findings.

It is clear that the CFPB failed the legal requirements on both counts. In 2015 the CFPB released its final study and report on predispute arbitration to Congress. To say that the study was flawed is an understatement. It was panned for its questionable analysis,
data, and conclusions by the public, by academics, by consumers, by businesses, by Federal regulators, and by Members of Congress who noted that it could make consumers worse off by removing access to an important dispute resolution tool. I will spend a few minutes delineating some of the valid criticisms, since the study was the basis and the legal requirement for the final rule. First, only compared class action settlements with arbitration awards. By only looking at arbitration awards and not consumer recovery in arbitration settlements that occur before awards, the CFPB ignored substantial evidence of complaint agreements benefiting consumers.

The analogy that comes to mind is thinking about how much money you have in the bank by looking at your checking account, while ignoring what is in your savings account. Given this methodological flaw, it is difficult to make apples-to-apples comparisons about class action versus arbitration, but the Wall Street Journal’s editorial board made a helpful observation: “Of the 98 percent of the CFPB’s work, none went to trial.” Let me read that again: “None went to trial.” Most were dismissed by a judge or withdrawn by the plaintiffs or settled out of court.

The putative class victims received benefits in fewer than 20 percent of the cases, and the average cash recovery was—wait for it—$32. Lawyers took an average 24 percent cut of the cash payments, about $424 million in cases settled.

Meanwhile, consumers were awarded relief in 32 of the 158 arbitration disputes the bureau examined.

These are arbitration results now— and rewards averaged $5,389—or about 57 percent of every dollar claimed. Consumers who used arbitration received relief on average in two months. Ouch. While class-action members had to wait two years.

Clearly, the CFPB cherry-picked the information it liked and omitted what it did not like. The CFPB and its advocates of the rule also argue that the rule will foster a consumer’s day to court. But, again, the CFPB’s study explicitly states that no class actions filed during the time period that the CFPB studied from 2010 to 2012 even went to trial.

The study added that most arbitration agreements in consumer financial contracts contain a “small claims court carve-out,” which provides the parties with a contractual right to pursue a claim in small claims court.

The CFPB claims that the rule will deter companies from bad behavior in the face of an increase in class action lawsuits. Yet there is no evidence to that effect.

A report released by the Treasury Department this week notes that “after years of study, the Bureau has identified no evidence indicating that firms that do not use arbitration clauses treat their customers better or have higher levels of compliance with the law.”

The truth is, rather than deterring companies from bad behavior, this rule will encourage frivolous lawsuits that companies feel compelled to settle, shifting hundreds of millions of dollars from businesses to plaintiff attorneys.

Many Members of Congress have weighed in on both the CFPB’s arbitration study and how the final rule was developed. In a letter of the House and Senate wrote to Director Cordray asking that he reopen the arbitration study due to concerns about the Bureau’s process. In 2016, 140 Members of the House and Senate wrote to Director Cordray asking about the concerns about the CFPB’s proposed rule and asking the Bureau to reexamine their approach to arbitration. Unfortunately, the final rule was still issued without addressing any of the concerns identified.

Federal financial regulators have raised a number of concerns with the assumptions used in the development of the rule and the lack of consideration for alternative approaches. Recently, the Treasury Department issued an analysis that concluded that the CFPB did not sufficiently substantiate with any quantitative assessment its assumption that the current level of compliance in consumer financial markets is “generally sub-optimal,” which means that the CFPB has not adequately demonstrated the rule will solve the assumed problem it set out to fix.

Treasury also noted the CFPB could have considered less costly alternative, more effectively informing consumers, clearer disclosure, or more targeted regulation. However, it failed to do so, opting instead for an all-or-nothing approach, which, again, is specifically designed to generate a phenomenal increase in class action litigation.

The Acting Comptroller of the Currency has also raised serious concerns with the rule and asked for the opportunity to review the CFPB’s data and analysis to determine the potential impact of the rule. According to a recent letter by the Acting Comptroller of the Currency:

- Eliminating the use of this tool could result in less effective consumer protection and remedies, while simply enriching class-action lawyers.

- At the same time, the proposal may potentially decrease the products and services offered to their consumers, while increasing their costs.

- The CFPB attempted to estimate the increase in costs, albeit incompletely, that are associated with this final rule and that could be passed onto consumers. The CFPB estimates in its final rule that the companies will incur $2.6 billion of additional fees and settlements over the next 5 years, $330 million of which will go directly to plaintiff attorneys. As astounding as these numbers are, the estimate includes only Federal court cases and fails to consider the large number of cases that are settled.

- Treasury’s analysis also notes that the CFPB appears to underestimate the share of class actions dismissed by the courts, thus failing to adequately consider the costs of meritless cases. According to Treasury, assuming that just 10 percent of class action cases are meritless, “the Rule would have to reduce harm to consumers by $500 million per year to demonstrate any net benefit to society. The Rule does not come close to making that showing.”

The OCC recently shed more light on how the CFPB’s final rule could impact the cost of consumer credit. While the CFPB said that it could not identify any evidence to that effect, it did conclude that “this does not mean that no pass-through [to consumers] occurred: it only means that the analysis did not provide evidence of it” and that “most providers will pass through at least portions of some of the costs.”

Using the same data, the OCC conducted its own analysis and found “a strong probability of a significant increase in the cost of credit cards as a result of eliminating arbitration clauses.”

In fact, the OCC found an 88-percent chance that the total cost increase will impact and, indeed, a 56-percent chance that costs will increase by at least 3 percent.

As Acting Comptroller Noreika noted, that means that a consumer, living week to week, could see credit card rates jump from an average of 12.5 percent to nearly 16 percent. He correctly added that “to the extent the CFPB’s arbitration rule is being undermined, it is undermined by the CFPB’s own data and the working paper on which the CFPB relied.”

Community banks and credit unions across this Nation are raising concerns with the rule. The Independent Community Bankers Association opposes the arbitration rule because:

- Community banks are relationship lenders, many of which have served their communities for multiple generations. A reputation for fair dealing is essential for their success, and abusive consumer practices have absolutely no place in their business model. Community banks invest heavily in resolving customer complaints amicably and on a timely basis.

- In addition, the Credit Union National Administration, or CUNA, opposes the arbitration rule because “[a]mong the many consumer protections associated with the mission of credit unions is the high-quality service they provide to their members, which has prompted a successful system for quickly and amicably resolving disputes in the limited instances where they arise.”

- While the CFPB claims that many community banks and credit unions do not even have these clauses, I have heard from many small financial institutions that this rule would have a significant impact on their operations.

On July 25, by a vote of 291-150, the House voted to overturn this rule. The administration weighed in on House’s efforts, saying: “This legislation would protect consumer choices
by eliminating a costly and burdensome regulation and reining in the bureaucracy and invidiable regulatory actions of the CFPB.”

It is alarming that the CFPB moved forward with a final rule in this manner, especially in light of the numerous concerns expressed. The CFPB could have made recommendations to improve the arbitration process or arbitration clauses if it identified concerns.

Aside from the substantive concerns about this specific rule, it brings the CFPB’s own structure and accountability into focus. The CFPB is unlike any other Federal agency. Since its creation, we have argued that far too much power is invested in the CFPB Director without any effective checks or balances.

Last year, the DC Circuit Court of Appeals ruled that the CFPB, as it is currently structured, is unconstitutional. The ruling stated that Congress erred in creating a far-reaching agency that is led by a single Director. In particular, the ruling noted that “the CFPB’s concentration of enormous executive power in a single, unaccountable, unchecked Director not only departed from historical practice, but also poses a far greater risk to arbitrary decision-making and abuse of power.”

The Director is further insulated by being able to automatically withdraw funds from the Federal Reserve, rather than being required to justify the CFPB’s annual funding needs to Congress.

The court’s decision mirrored arguments from Members of Congress that the Director has wide-ranging power with little oversight and is a gross departure from the settled historical practice of having multimember commissions at agencies to keep them in check. In fact, the Senate repeatedly urged the prior administration to impose checks on the CFPB.

In 2011, 44 Senators wrote to the administration expressing concern about the lack of accountability in the structure of the CFPB. In 2013, 43 Senators wrote to the administration once again. In each instance, we advocated for the establishment of proper checks and balances for the agency, which, had they been imposed, almost certainly would have avoided this crisis rule that we see coming out.

Some of the specific checks and balances for which we advocated included replacing the single Director with a bipartisan commission to run the CFPB, subjecting the CFPB to congressional appropriations, and establishing safety-and-soundness checks for prudential regulators. Nevertheless, despite our efforts, this agency remains just as powerful and unaccountable today, and this rule is just the most recent demonstration of its continued lack of accountability.

Now the Senate has the opportunity to take another step toward holding this agency accountable. The CFPB failed to demonstrate that consumers will fare better in light of its arbitration rule. In fact, they may be worse off.

I urge my colleagues to help ensure that consumers maintain access to quick, inexpensive, and efficient mechanisms of dispute resolution by overturning this rule.

Thank you.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, I couldn’t disagree more with my colleague from Idaho. He gave a very studious presentation that missed all the key facts. He made a big point out of the fact that we would lose a dispute resolution tool, but, in fact, access to small claims and access to arbitration remain in place, so it is simply wrong.

He noted that small claims is a great option, but, of course, what we are talking about are provisions in which phone companies and broadband companies put charges on your bill that are unjustified, but they are small amounts. They are little amounts. It is $5 here, slammed there; it is $10 there, jammed on your bill there. You discover it, and you go after it, and they say: Well, you can come to arbitration. Of course, arbitration means they choose the decision maker; they pay the decision maker, and that decision maker comes to them for future business. So it is complete game.

If anyone wanted to see an example of the swamp at work here in DC, we have it on the floor tonight. This is Big Business taking justice and ripping it out of the hands of consumers across our Nation.

It costs fees to go to small claims; you can’t go to small claims for $10 or $20 or $15. You can’t go to small claims for $50. You can’t go to small claims for $50.

You can’t go to court for $10. The only fair thing is to have the full range of options, and that is taken away by arbitration.

I would bet none of my colleagues here, not a one—and if any colleague would like to stand up and say they disagree, I would like to hear it—not a one would agree to have a serious dispute settled in which the opponent chooses the judge, pays the judge, and that judge gets business from them all the time. That is rigged and that is wrong, and that is why I encourage my colleagues to vote against this resolution tonight.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. WARREN. Mr. President, Wells Fargo creates 3.5 million fake accounts, charging customers fees and ruining credit scores. Equifax lets hackers steal personal information on 145 million Americans, putting nearly 60 percent of American adults at risk of identity theft. And somehow we are hearing that consumers can’t afford to go to court if that financial firm cheats you. That is because tens of millions of consumer financial contracts include a forced arbitration clause that says that if this financial company cheated you, you can’t join with other consumers in court; you have to go to arbitration by yourself. Tens of millions of consumers, including around 80 million
credit card customers, can’t go to court if their banks cheat them.

Think about what this means in the real world. You wake up in the morning and find a mysterious $30 fee on your account statement. You call the bank, and they say, “You didn’t agree to this. The bank tells you to pound sand. What are your options? Well, if there is no forced arbitration clause in your contract, you have a choice: You can go to court, or, if your bank offers it, you can pursue arbitration.

Here is what you want to think about. Chances are pretty good that if the bank cheated you with a $30 unauthorized fee, there are other customers in the same boat. That means, if you want, you can join a class action lawsuit against the bank for free. A class action gives you a chance to get some money back, and it doesn’t cost you anything. A class action also means the bank might have to cough up some real money and think twice before hitting you and other customers with hidden fees the next time around.

Now think about what happens if there is a forced arbitration clause. You can’t join with other customers in court. Your only option is to file a solo arbitration claim, which will cost you $200 or more just to get started. Who is going to pay $200 up front to try to get back a $30 fee? No one. That is exactly what the banks are counting on. They can get away with nickel and diming you forever.

But say the bank steals a bigger amount and you just can’t stand it anymore, so you decide to be one of the roughly 400 consumers a year who go before an arbitrator. If you don’t like the result, there is no appeal. Even worse, the banks are allowed to swipe your wallet in secret. The records of these proceedings are not public, so the regulators and the American people don’t get to know what their banks are up to. That’s what sound like justice in America?

Earlier this year, the Consumer Financial Protection Bureau put a stop to that. They issued a new rule that prohibits financial companies from forcing you to give up your right to join other customers in court and hold your bank accountable. House Republicans already voted to reverse that rule. The Senate will soon decide whether to follow suit and take away American families’ freedom to choose to go to court if they are cheated by their bank.

Make no mistake—anyone who votes to reverse this rule is saying loud and clear that they stand with banks instead of their constituents, because bank lobbyists are the only people asking Congress to reverse this rule. Every other organization—all the ones that represent actual human beings, not banks—every one of them wants this rule to be saved. Let me tell you about some of them:

The Military Coalition, which represents more than 5.5 million veterans and servicemembers, supports the CFPB rule because “our nation’s veterans should not be deprived of the Constitutional rights and freedoms that they put their lives on the line to protect, including the right to have their claims heard in a trial.” The coalition says that “[f]orced arbitration is an un-American serv- icemembers’ claims against a corpora- tion are funneled into a rigged, secretive system in which all the rules, including the choice of arbitrator, are picked by the corporation,” and they warn that the consequences these [forced arbitration] clauses pose for our all-voluntary mili- tary fighting force’s morale and our national security are vital reasons “to preserve the rule. That is from the Military Coalition.

The AARP, which represents nearly 40 million seniors, says that the CFPB rule should be preserved because it “is a critical step in restoring consumers’ access to legal remedies that have been undermined by the widespread use of forced arbitration for many years.” Older consumers are often at increased risk of financial scams, so the “AARP supports the availability of a full range of enforcement tools, including the right of consumers to prevent harm to the financial security of older people posed by unfair and illegal practices.” That is the AARP, which represents seniors across the country.

The Main Street Alliance, which repre- sents small businesses, says that the CFPB rule will help small businesses fight against big financial firms that try to drive up their fees. Since almost “20% of [small] business owners rely on credit cards as a source of investment capital—many of which contain arbitration clauses—forced ar- bitration makes it nearly impossible for small businesses and consumers alike to protest hidden fees, illegal debt collection, and other deceptive practices.” That is from the Main Street Alliance.

So there it is. Veterans, servicemem- bers, seniors, small businesses, and consumers are all lining up to support the CFPB rule. But that is not all. Let Freedom Ring, an organization that proudly touts itself as “supporting the conservative agenda,” likes the CFPB rule, too, saying it is “in keeping with our Framers’ concerns that without appropriate protections, civil proceedings can be used as a means to oppression” that is “in keeping with the conservative agenda.”

That is the thing you have to understand. The effort to reverse the CFPB rule isn’t about promoting a conserva- tive agenda, and it sure as heck is not about promoting a conserva- tive agenda or a small business agenda. It is about advancing the banks’ agenda, period.

The banks and their lobbyists actu- ally have the gall to claim that they want to kill the rule because it is bad for America. That claim is just plain laughable. According to a rigorous, 3-year-long CFPB study, con- sumers recovered an average of $540 million annually from class action set- tlements, while receiving less than $1 million annually in the arbitration cases the agency reviewed. It is not even close. Even if there are instances in which arbitration is a better option for consumers than a class action law- suit, the CFPB rule simply doesn’t stop consumers from choosing arbitration. The rule simply says that consumers—consumers—should also have the freedom to go to court if that is what they prefer.

I will tell you one thing: When it comes to what is right for consumers, I listen to servicemembers, veterans, seniors, consumers, and small busi- nesses. I don’t listen to bank lobbyists. When a bunch of bank lobbyists tell you they know what is best for consumers, hang on to your wallet.

Millions of Americans of all political parties think the game in Washington is rigged against them, and this vote is exhibit A. Companies like Equifax and Wells Fargo have hidden con- sumers and then turn around and try to escape accountability, using forced arbitration clauses. The Republican Congress hasn’t done a thing to help the people hurt by Wells Fargo. The Main Street Alliance is doing one thing to help the people hurt by Equifax. Instead, tonight they are actually taking away one of the few legal tools to hold companies like Wells Fargo and Equifax accountable.

What is shameful is that there is nothing less than the right of millions of Americans to be heard in a court of law.

Contracts mandating forced arbitration can be found in virtually every contract someone signs these days. Every time you agree to an update to the iPhone terms of service, purchase a Fitbit, or open a credit card, you are signing away your right to join together with others to sue in a court of law if something goes wrong.

In 2012, President Obama and Demo- crats in Congress created the CFPB to protect the American people from pred- atory business practices by consumer finance companies. And while the
CFPB can’t do anything about the iTunes terms or service, it can protect you, through the rule we are debating today, from companies that sell products and services related to consumer credit, automobile leasing, debt management, credit scores, payment protection, and debt collection—industries that serve some of our most vulnerable communities.

The resolution we are debating today would eliminate these protections and expose millions to the tyranny of forced arbitration. This is particularly relevant in light of two major news stories this year in which the negligence, fraud, and malfeasance of major financial institutions harmed consumers across the country. This rule, for example, would protect the 805 Hawaii residents who had fake bank accounts opened in their names by Wells Fargo. These people suffered real and material harm, but the fine print in their agreements explicitly prevents them from joining together in a class action lawsuit. This rule would prevent banks like Wells Fargo from doing this now and in the future.

In the wake of the massive Equifax data breach, the company initially forced consumers who registered for credit monitoring to forgo their right to join a class action and instead force them into private arbitration. These are high-profile examples of the problem but aren’t the only ones. Hundreds of Hawaii residents have filed complaints with the CFPB about problems with credit reporting agencies and credit report errors that can increase the cost of a loan or result in the denial of credit.

Under a recent class action settlement, Hawaii customers falsely matched with someone on the terrorist watch list can receive over $7,000 from TransUnion. Is it really any wonder why TransUnion and other credit bureaus are being fought so hard to block class action lawsuits with forced arbitration?

This rule would also protect consumers from predatory payday lenders that are extorting over $3 million in fees a year from Hawaii consumers alone. Over 96 percent of storefront payday lenders use forced arbitration clauses in their contracts.

Hawaii is home to more than tens of thousands of Active-Duty servicemembers, veterans, and their families. This rule protects them too. In 2016, the Office of the Comptroller of the Currency fined Wells Fargo millions of dollars after they illegally foreclosed on homes or repossessed cars in violation of the Servicemembers Civil Relief Act. Without the CFPB rules, similarly affected servicemembers would be restricted from banding together to sue. It is why the American Legion, in announcing their support for the CFPB’s rule and opposition to this resolution, said it would be “extremely unfair to servicemembers, veterans, and other consumers from joining together to enforce statutory and constitutional protections in court.” It isn’t difficult to understand why. Big banks and megacorporations want to force their customers to adjudicate disputes through arbitration.

According to the CFPB, companies win claim resolution 91 percent of the time. The deck is stacked against the consumer in these forced arbitration situations, and after these judgments, consumers were forced to pay an average of over $7,500 to companies to even get the money back. Talk about a major imbalance of power.

Director Cordray and the entire CFPB spent years developing this essential consumer protection regulation, but I am not at all surprised that the President and his allies in Congress desperately want to eliminate this consumer protection rule. I urge my colleagues to vote no on this resolution.

I yield the floor.

Mr. DURBIN. Mr. President, this vote really gives the U.S. Senate a choice. On one side, we have the biggest banks in America, who are using rules and regulations, which are arguing that you as a consumer, as someone who uses their banks, should be basically signing an arbitration clause that denies you the freedom to go to court. On the other hand, the Consumer Financial Protection Bureau has argued these financial institutions are misusing this power, denying people access to courts, and it should come to an end. That is the choice.

I think I know who is going to win. I am not sure if the party on the other side of the aisle would have called this issue if they didn’t already have it lined up for the financial institutions. I know many on the other side, maybe even the American Revolution. She went in because she was the treasurer of a local chapter of the Daughters of the American Revolution. She went to the Wells Fargo branch one day in 2011 to look up the balance on her savings. A few weeks later, she received a rejection letter for a Wells Fargo credit card that she had never applied for.

It turns out the bank teller at Wells Fargo had taken the information she had given and submitted a credit card application on her behalf without her knowing it. The application was rejected and hurt Ms. Kilgore’s credit score. She was not even applying for a credit card. Ms. Kilgore is fighting for her right to hold Wells Fargo accountable in court and to join with millions like her who have been victims of Wells Fargo’s misconduct.

The Republicans tonight are saying they feel sorry for Wells Fargo. They really do. To think that this company manufactured and created 3½ million phony credit card and bank accounts at the expense of customers like Tracy Kilgore doesn’t seem to move them at all. Instead, they want to stand by the Wells Fargo, which put in that credit card application an arbitration clause which said; Tracy Kilgore, you can’t go to court. You can’t have your day in court. You have given it up. You signed it away to Wells Fargo.

Would Tracy go to court anyway? Let’s say she had to file a new credit application online at cost savings, and she is likely to file a lawsuit against Wells Fargo? Probably not. Multiply that times 3½ million people who were defrauded by this bank, and you understand how a class action suit can finally hold Wells Fargo accountable for literally cheating this woman and millions just like her.

The Republicans are arguing tonight that we ought to feel sorry for Wells Fargo. I don’t. I don’t feel sorry for the banks. I feel sorry for the customers. Ms. Kilgore, who, because of the arbitration clause, lost her opportunity to go to court and ask for simple justice from a judge or jury.

How about Equifax? If you think 3½ million people defrauded by Wells Fargo is a pretty awful situation, here is one dramatically worse. One hundred forty-five million—let me see. Right off the top of my head, that is about half of the people in the United States, which is almost half of our State population—had their personal data exposed in a massive Equifax data breach. In other words, if you had filed in the distant past, and there was a credit report on you, Equifax had all the information about you and your family, your banks, your Social Security numbers, and all the rest of it. Equifax ended up with a massive breach. Someone hacked into their computer and stole your personal identity information, to the tune of 145 million Americans.

Equifax really felt bad about this. Here is what they said. Equifax, in response to this data breach, initially offered a free credit monitoring service for any customer who signed up, out of the 145 million. In other words, we will monitor you to see if somebody stole your identity, they are misusing it, and hurting your credit status, but they added something: as long as the customer signed a forced arbitration
clause in fine print that prohibited them from joining a class action. Equifax wants to help you, even though they initially hurt you, as long as you will guarantee that you will never hold them accountable in court. How about that for a deal?

That is what the Republicans are defending tonight, exactly what I just described. They feel sorry for Equifax. They feel sorry for Wells Fargo. They want to make sure these banks and these companies really have a friend in the U.S. Senate.

We don’t know if Equifax, which now claims it will no longer impose this forced arbitration on victims, will stand by that if the case is ever challenged in court. We ought to ask ourselves why major groups across the United States standing up for just ordinary Americans find this Republican strategy on the floor tonight so repugnantly.

Listen to the groups that oppose this effort: the American Legion, the Consumer Federation of America, the NAACP, the United Automobile Workers, and many other consumer groups. They may not be somebody in Washington speak up for the average American who is being defrauded by these banks, defrauded by these credit agencies? Why won’t somebody in the Senate stand up for the agency that finally said enough and finally said that these financial institutions have had their way long enough?

Many of these financial institutions are hiding behind your local hometown banks. You know the ones I am talking about. I have them in my hometown of Springfield, IL. They are saying that this is all about your local community banks and your credit unions. We don’t want to hurt them.

Here are the facts. Ninety percent of your community banks and credit unions do not have these arbitration clauses in their agreements. Do you know who does? The big banks. Sixty percent of the big Wall Street banks have them and they are the ones who are really behind this fight, the Wells Fargo and the other ones who want to maintain this ability to stop consumers from going to court to protect themselves when they have been defrauded by banks and credit and financial institutions.

This is a classic illustration of power in Washington. Is there any power in the hands of consumers and ordinary Americans that we find out in the very evening tonight. I am afraid it wouldn’t be called on the other side of the aisle unless they figured the banks were going to win, again. It is unfortunate. We ought to live in a society where consumers have a fighting chance, and the system is not rigged against them. An arbitration clause is a way to rig a contract so a consumer is going to lose twice: lose when the bank takes advantage of them and lose when they try to go to court and they are stopped by the arbitration clause.

Consumers in this country have a battle on every single day to make a living and to get by. This is an effort to take away one of your freedoms to go to court with a group of people who have been aggrieved just like you, have your day in court, win or lose. The Republicans want to take that away and so do the banks. I hope they don’t prevail.

I yield the floor.

Mr. LEAHY. Mr. President, something truly outrageous is happening today on the floor of the Senate. The resolution we will consider today signals to the American people, in no uncertain terms, that they do not deserve the right to seek justice when big banks or other financial service providers rip them off, leave their personal information exposed to hackers, or engage in discrimination. The resolution of disapproval before us today will strip Americans of their rights in court and will ensure that corporate wrongdoing can remain shrouded in secrecy—all to protect powerful companies like Wells Fargo and Equifax. Access to our court system is a fundamental principle in American society. It ensures that all those who wrong others, no matter how powerful, are equal in the eyes of the law and can be held accountable. That may no longer be the case. Access to our courts is under assault by companies that slip forced arbitration clauses into the fine print of agreements for basic services like checking accounts and credit cards. For some of these companies, like Equifax, consumers are not even their customers. They sell consumers’ financial information to other companies. They have little incentive to protect consumers or even treat them fairly. That is how Equifax can actually make significant profits after it carelessly allowed the personal information of half of the adult population in the United States to be compromised. This is wrong.

The Consumer Financial Protection Bureau, CFPB, rightly put some commonsense limitations on the abuse of forced arbitration clauses. The rule provides that financial services companies cannot force consumers to sign away their right to join a class-action lawsuit. The rule also requires more transparency when arbitration is used to ensure that wrongdoing cannot be hidden by powerful companies to keep consumers in the dark. Protecting consumers in this way should not be controversial.

With the blunt instrument of a resolution of disapproval, the majority is seeking to strike the CFPB’s rule and prevent it from ever implementing a similar rule in the future. This action, through a simple majority vote, would slam the courthouse door shut on every American who is ever ripped off by a company like Wells Fargo or has their sensitive personal information carelessly left unprotected by a company like Equifax. If we go fighting this rule, striking this rule, consumers will only be left with the same empty, meaningless apologies we always hear from these companies when they are finally caught red-handed.

I hope the American people are following this vote today. If they want to know whether their Senator stands with them or stands with corporate giants, they will certainly find out. Who will the Senate be on when the rolcall is taken on this key vote? The American people, and their rights as citizens and as consumers? Or the powerful corporate interests who are pushing to repeal this protective rule? We shall soon see.

This should not be a partisan issue. We all represent the American people. It is time we act like it. The Vermonters I represent are watching. They know what is at stake by repealing this rule. I urge every Senator who shared my outrage at Wells Fargo and Equifax to take a stand and reject this shameful resolution.

Mr. DURBIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. CRAPO. Mr. President, while we have a little bit of open time in between speakers, I thought I might respond to some of the things that have been said.

Those who are opposing this resolution tonight continue to put it as though this were a case of trying to stop consumers from having an adequate way to access dispute resolution and make it look like it is the big guys against the little guys. First of all, this rule we are talking about only applies to financial institutions. It doesn’t apply in all the other kinds of cases that have been the concern all these minutes tonight. If you want to look at the financial institutions that are the most concerned about this rule, it is the little guys. It is the credit unions. It is the local community banks that are pleading with us to stop this abusive rule. I just think that part of the record needs to be set straight.

Again, I am going to lay out what this debate is really about. This debate is about trying to help facilitate and enable banks and credit card companies and others in cramming down some solution on consumers. It is about trying to facilitate pushing dispute resolution into class-action litigation. This is a very clear move to drive our dispute resolution in this country into class litigation.

I am going to give a little bit of history, but before I do that, I want to again read to the folks who are listening in on this debate what this rule exactly does. You would think from all of the debate that it stops consumers from going to court or that it forces consumers to use an abusive arbitration process. It is very clear. This rule
prohibits a company from relying in any way on a predispute arbitration agreement with respect to any aspect of a class action that concerns any consumer financial product or service.

The rule goes further. Remember that the more we have found about this are the credit unions and the small banks. Every agreement they enter into has to contain this language. This tells you what the fight is about. We agree that neither we nor anyone else will rely on this agreement to stop you from being part of a class action case in court.

That is the rule we are talking about. You may file a class action in court or you may be a member of a class action filed by someone else. Are we fighting against a mandate—basically, a rule that is going to drive decisions and dispute resolutions into class action litigation? Yes, we are. We are fighting to protect the current system, which is one that has worked for over 100 years. I am going to get into that system. In fact, I will get into it right now. Let's compare class action litigation with arbitration as one of the alternatives.

In fact, before I make that comparison, let me point out that the CFPB's own study shows that the clear majority of arbitration clauses they studied allow access to small claims court as an alternative to arbitration. There is no effort to say, if you want, you can go to small claims court. In the United States, the limit in small claims is different in each State. It ranges from $3,000 to $15,000, but I would say the most common level is about $10,000 of a claim. So a consumer who has any kind of a claim up to about $10,000 can go to a small claims court.

Let's compare arbitration with class action litigation. How much does the consumer recover? In a class action, the average is $32 per person. In arbitration, the average is $3,389 per person.

How long does it take to get the recovery? In a class action, it is 23 months, on average. In arbitration, it is 5 months, on average.

How many of them actually go to trial? Now, this is interesting because you think of a class action as your day in court. Remember that those who argued that this was the best for consumers they were not going to get their day in court. The number of class action lawsuits that went to court were zero. Class action litigation is a mechanism to drive settlements. As for the number of arbitration suits that went to court, 90 percent reached a decision on the merits. That was not an actual court case, but it was a resolution by a decision maker. With regard to settlements, 12 percent classwide are made. In arbitration, 57 achieve settlements.

Here is one of the sticking ones. How much is paid in attorneys' fees? In a class action, according to this study, which is the CFPB's study, $424 million goes to attorneys' fees. There were no attorneys' fees under the arbitration. There were some arbitration fees, and I will get to that in a minute, but they were nowhere close. By the way, this number, the $421 million that went into attorneys' fees, is the reason we are fighting. Having that number is why this rule seeks to drive this decision-making model into this zone.

As for estimated additional class action costs for covered companies, it is $2.6 billion for class actions and none for arbitration.

Some have said this is just an example of the Republicans trying to help Wells Fargo out. First of all, I am the chairman of the Banking, Housing, and Urban Affairs Committee. We have held hearings on the Wells Fargo situation and continue to look at it very closely. Senators from both parties take it very seriously and are working to find a resolution, but when it comes to the question of whether Wells Fargo used arbitration to avoid liability, these are the facts.

Wells Fargo, which was found to have opened millions of unauthorized accounts in the names of its consumers, agreed to settle this for $142 million—twice as much as projected consumer loss. They made that agreement because arbitrating them in individual disputes would have cost much more. The argument that Wells Fargo is the example of what we are working to try to fix is not true.

As I said, let's talk a little bit about arbitration. On the floor tonight, arbitration has been characterized as this terrible, devilish idea that has been designed by Big Business in America to try to push the little guy out of a fair chance at recovery in a dispute. The Acting Comptroller of the Currency, who heads the independent Bureau of the Treasury, which is in charge of supervising and regulating national banks, has raised serious concerns.

In his recent letter, he indicates that arbitration can be an effective alternative dispute resolution mechanism that can provide better outcomes for consumers and financial service providers without the high costs associated with litigation.

That is key. In fact, if you look at history, nearly a century ago, Congress made private agreements to resolve disputes through arbitration valid, irrefutable. It was a Federal law, which is called the Federal Arbitration Act. This was a decision by this Congress nearly 100 years ago that said we have to find a way that is fair to resolve disputes that is not so expensive as the current dispute resolution models we have, namely, litigation. This longstanding Federal policy in favor of private dispute resolution serves the twin purposes of economic efficiency and freedom of contract.

Some have said this just lets banks get away with cheating their customers, but the opposite is true. Eliminating the use of this tool could result in less effective consumer protection and fewer remedies while simply enriching class action lawyers. At the same time, the proposal may potentially decrease the products and services offered to consumers while increasing their costs.

The Wall Street Journal's editorial board similarly noted that arbitration has allowed consumers to easily resolve disputes by phone or online without their having an attorney.

I have said, we have every consumer who does not like this solution has the alternative to go to small claims court. The question here is whether we will facilitate pushing consumers out of the choice of arbitration. If the law is changed, which is what this rule seeks to do, then the disincentive for financial institutions to rely on arbitration will be seriously injured. The worry we have—and the intent of this rule—is that it will drive dispute resolution into class action litigation. That is what this whole dispute here tonight is about.

One of my colleagues tried to characterize arbitration as this system in which this company hires these decisions makers, these arbitrators, and that the judges are going to be biased because the judges are bought by the companies that use them for the arbitration. That is not an accurate description of what arbitration is.

There is actually a Federal law, which I have already referenced, which sets up the parameters in which arbitration operates, and there is an American Arbitration Association that administers it. When it comes to go into arbitration, what happens is that the whole system that takes over is administered not by the company but by the AAA, and under the American Arbitration Association's procedures, it appoints an arbitrator. The implication made earlier was that the arbitrator always rules for the company because that is the company that hires him.

Here is the truth. In the appointments of 1,847 disputes that the CFPB studied, arbitrators were appointed in 975 that involved 477 different arbitrators. In 704 of those disputes, the AAA appointed arbitrators who had also been in other financial disputes. Some of these arbitrators get picked a couple of times, but they are not picked by the company, and they are not beholden to the company. That is one of the reasons we set up the Federal arbitration system the way we did.

My point is, the effort to try to characterize this as some devious system that has been created to try to stop consumers from having access to fairness is simply false. We have a very institutional crisis looking for over 100 years in this country. It has been litigated and litigated because those who want litigation to be the norm hate it. They do not want arbitration to work, but the reality is, it has worked wonderfully, and it has survived the litigation assaults.

Now those who want to drive decision making more into the courts and more
into class action litigation have been able to get a willing, listening ear in the Director of the CFPB, who, as I have said earlier, has no accountability to Congress, who does not even look to Congress for his budget, and is obviously on the side of the litigation bar, which has been engaged in converting the decision-making system into a litigation mode.

That is the debate we are having. That is the argument tonight. Anyone who tries to say this is an effort by your union, your local community bank, or your large credit card company to try to stop consumers from having adequate access to dispute resolution is mischaracterizing what the debate tonight is about.

I encourage all of my colleagues to reject this inappropriate and, frankly, expensive and dangerous rule.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REID. Mr. President, I would like to say a few words about the battle between the jury system and a system in which regular Americans are forced into arbitration, which has a terrible record.

I can remember years ago, when I was attorney general, the attorneys general shut down one of the arbitration systems because it was so corrupted and was throwing decisions to big corporate interests, and you cannot really understand that unless you understand the importance of the role of the jury in our country.

For centuries, the jury has served as a last sanctuary within our constitutional structure for people who seek justice and fair treatment under the law. It was designed for a specific purpose. When Big Interests control our executive officials, as the Founding Fathers knew they could, when lobbyists have the legislatures tied in knots, as our Founding Fathers knew they could, and when the media outlets stifle public opinion against individuals, as our Founding Fathers saw that they could, the hard, square corners of the jury box stand firm against that tide of influence and money.

There is a lot of history here. It was the earliest American settlers who brought the jury to our country as precious cargo from England.

The Virginia Colony established the jury in 1624, roughly a year before the Dutch settled the island of Manhattan. Early Americans created juries in 1628 in the Massachusetts Bay Colony, in 1677 in the Colony of West New Jersey, and in 1682 in Pennsylvania. Indeed, in our Declaration of Independence, our colonists put forward a list of grievances; the importance of King George III for—and I quote them in the Declaration of Independence—“depriving us in many cases, of the benefits of Trial by Jury.”

When the original Constitution was silent on the jury, Americans sounded the alarm, and the Seventh Amendment was sent to the States in the Bill of Rights.

Alexander Hamilton, a famous Revolutionary-era Founder, stated in Federalist No. 83: “The friends and adversaries in the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury; or, if there is any difference between them, it consists in this: the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government.”

Going on to the mid-19th century, when Alexis de Tocqueville wrote his famous “Democratic in America,” he observed that the jury should be understood in America as a “political institution” and “one form of the sovereignty of the people.” What did he mean? How does the jury protect the sovereignty of the people? Well, in two ways, as Sir William Blackstone explained.

Sir William Blackstone was probably the most cited source in those early days of the founding of our Republic and in the early days of the development of our laws. Sir William Blackstone explained that trial by jury “preserves in the hands of the people that share which they ought to have in the administration of public justice, and prevents the encroachments of the more powerful and wealthy citizens.”

Those are two separate thoughts. First, the civil jury devolves a share of government power—power which they ought to have in the administration of public justice, and prevents the encroachments of the more powerful and wealthy citizens.

Even former Chief Justice William Rehnquist observed about this era that “the Founders of our Nation considered the trial of civil cases in our courts an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign.”

That is at heart what this fight is about. Remember Blackstone’s words: The jury “prevents the encroachments of the more powerful and wealthy” citizens. That means the jury is intended to be a thorn in the side of the powerful and wealthy. It is intended to make the powerful and wealthy stand equal—anonymously equal to them—before the law with everyone else. The jury is intended to be the little branch of government that the wealthy and powerful can’t get to, can’t fix, can’t control. That is why jury panels are new every time. If you had a permanent panel of the same jurors over and over, the powerful and wealthy would tend to influence the institution. The jury stands against all that tide of influence. That is what we have here. That is why jury panels are new every time. If you had a permanent panel of the same jurors over and over, the powerful and wealthy would tend to influence the institution. The jury stands against all that tide of influence. That is what we have here. That is why jury panels are new every time.

Well, rigging the game doesn’t go over well in the jury box. Special interests make special efforts to get rid of access to a jury and want to get rid of access to a jury and want to get rid of access to a jury. They are doing it to shut off access to the civil jury. They want everybody forced into rigged games.
We ought to be fighting to preserve and enhance the civil jury as an element of the uniquely American system of self-government. Our forefathers fought and bled and died to create and preserve this system of government in which the people have a vital role. From Alexander Hamilton to Alexis de Tocqueville, to William Blackstone, to William Rehnquist—you can go on and on in our history with people who have pointed out the vital role of our jury. Squeezing it is the task of the wealthy and mighty corporations that seek to squelch it and force everybody into corporate-friendly, mandatory arbitration.

We should think on this question in the long view—not who gets the immediate benefit of not having to face trained lawyers, not having to face people in an open forum, not having to be before a free and independent jury. We should think of the message of our Founding Fathers, who put the need for a jury into the Declaration of Independence, who demanded it as part of our Bill of Rights, and who saw it as an essential element of our liberty.

With that, I yield. I see my distinguished colleague from Maryland.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. VAN HOLLEN. Thank you, Mr. President.

I want to start by thanking my friend and colleague from Rhode Island for pointing out why we have a jury system, a system of our peers who can listen to all sides of an argument in a fair way and render justice.

What this resolution does is prohibits many consumers around the country from having the choice of going before a jury as part of a group of people who have been wronged.

For months, the American people had been hearing stories of how big banks, big financial institutions, have engaged in various schemes that harmed consumers and cheated consumers out of millions and millions of dollars. The most notorious recently, of course, was the case of Wells Fargo, which opened up a lot of fake accounts—meaning they opened accounts without consumers asking them to open accounts—and then charged consumers for those accounts. It is a fact that Wells Fargo in many cases tried to use forced arbitration to prevent those people who had been wronged from getting access to justice, from being compensated for their harm.

We also heard about the Equifax case. Equifax is a credit reporting agency. They collect gobs of information on all of us—over 170 million Americans—without our permission. We don’t say: Equifax, go out and dig up as much information about us as you can and put it on your computer system. The consumers do it. They went and did it. We know that they were subjected to a massive hack and that very confidential, highly personal information on over 100 million Americans has now been compromised.

One of the things Equifax did after that was they said to consumers: You know what, we know that your information may have been compromised and we want to help protect you, but if you want our protection, you have to sign away your rights to be part of a class action lawsuit against us.

That was their original plan and their original instinct. Well, there was a big public outcry about that, and they backed off. But the former CEO of Equifax, in a Banking Committee hearing just a few weeks ago, said they backed off in response to the public outcry, but if they had done business as usual, they would have prevented those consumers from getting compensation for wrongs through the court system.

Even after we hear about Equifax and that scandal and the Wells Fargo banking scandal, the floor of the Senate not to help even the playing field for consumers but to take away a right that consumers now have to help even the playing field against these big banks and financial institutions. It is entirely backwards.

I want to read from the statement that was issued by the Consumer Financial Protection Bureau, the CFPB, on July 10 of this year when they issued their new rule. Here was the statement by the CFPB’s rule to ban companies from using arbitration clauses to deny groups of people their day in court. “Simple as that. It went on to say that financial companies can no longer block consumers from joining together to sue over wrongdoing. It pointed out that companies use mandatory arbitration clauses to deny groups of people their day in court. They went on to say that many consumer financial products, like credit cards and bank accounts, have arbitration clauses that prevent consumers from joining together to sue their bank or financial company for wrongdoing. That is right. We all know that in the fine print of a lot of credit card applications, in the fine print that consumers get from a lot of big financial institutions, and in the fine print of auto loans, they have buried these provisions that compel those consumers to give up their rights.

This is not a question—I have heard conversations on the floor today—about whether arbitration in and of itself is a good or a bad way to resolve disputes. If I have been wronged or you have been wronged and you agree voluntarily to enter into an arbitration dispute mechanism, fine. Do it voluntarily. That is what this is about. It is not what it is about at all.

This is about forced arbitration. We listened to the CEO of Wells Fargo. We listened to the former CEO of Equifax. They all say they value their consumers. They want to make sure they do right by their consumers, but it turns out they don’t trust their consumers at all because they want to take away from those same consumers the right to seek justice through the court system if that is what those consumers choose to do. That is exactly why the Consumer Financial Protection Bureau took the action it did to allow consumers to preserve the right that they could not be compelled into arbitration. If they chose it after they had been wronged, that is their decision, but this is about mandatory arbitration and forcing consumers to give up their rights.

We have heard a lot about the Washington swamp. This resolution to overturn this consumer protection provision is the Washington swamp at its muckiest and at its smelliest.

Now, I have a letter I received today from the American Legion, people who have represented men and women who have served our country. Here is what it says. This is from the legislative director at the American Legion:

Dear friends and colleagues, I write to reiterate the American Legion’s strong support for the Consumer Financial Protection Bureau arbitration rule in light of reports that the Senate could vote on the matter as early as this evening.

The alarm bells went up at the American Legion and other places.

You may recall that I emailed you about this on October 2. That email is below, but today I want to share a couple of additional points.

Point No. 1 is in bold.

A vote to overturn the Consumer Financial Protection Bureau action rule is a vote against our military and veterans.

That is from the American Legion.

I want to read some of the other veterans organizations that are against this action that the Senate is headed toward tonight: Blue Star Families, Military Order of the Purple Heart, the National Guard Association of the United States, National Military Family Association, Reserve Officers Association, and the list goes on and on. These have joined by consumer protection groups.

Here is what the American Legion said in their October letter to every Member of the Senate. It says that the Consumer Financial Protection Bureau’s rule on arbitration agreements addresses the widespread harm of forced arbitration by restoring the ability of servicemembers, veterans, and other consumers to join together and seek relief in class action lawsuits when financial institutions break the law.

The American Legion summed it up just perfectly here. They pointed out that the Consumer Financial Protection Bureau put forward a rule that said that veterans who have been wronged or cheated can join together to seek justice in the court system and that other consumer groups can as well. I have heard a lot of talk today about people saying: You know what, we actually passed this law a little too long ago. They are saying: You know, the servicemembers and that would allow service members to band together to seek justice.
Well, I have two points. One is the American Legion and all of these veterans groups, they don’t think that was good enough, and they are appalled at what the Senate is thinking about doing tonight.

The first question is this. Yes, we should protect our veterans, but why shouldn’t we also be protecting all of the other consumers around the United States of America? Why shouldn’t they be able to seek justice? Why should they have to go to arbitration when they would rather choose to go through the court system?

We have heard fellow Members talk about why the deck is stacked against individuals. Just think about it. You get cheated by your bank. Maybe it is 100 bucks, or maybe it is 500 bucks. You get on the phone, and you know you are put on there forever. You are put on hold. You get put on hold, and you finally get through. You get somebody. Maybe they pass you to somebody else or maybe you get dropped in the process.

But at the end of the day, in order for you to get your money back when they have been wronged, under this provision, the old provision, you would have to go to arbitration and you would have to put a lot of money into the process and the big banks know that. So what they fear is that all of us, as consumers who have been cheated, we have a chance to get together. It is a class action. It is when everyone who has been wronged can get together and actually have a little bit of power and leverage against a big bank, whether it is Wells Fargo or Equifax or whoever it may be. That is the whole idea of a class action. People get to band together, and that is what the American Legion is asking the Senate to do—to let veterans band together but also just to let American consumers band together to seek justice.

I just want to share with the Senate a story that is out of my Maryland constituents and what happened to one of my Maryland constituents because I think a lot of people can relate. This is a pretty extraordinary story, but they can relate to how one individual feels like when they are fighting against a big organization. This was a story that was reported on NPR, and the Maryland constituents’ name is Michael Feifer.

Here is what happened. One morning in February, Michael Feifer was heading out of Maryland and was driving by a small company that builds guitars. He walked to the spot where he parked his car. His car wasn’t there, and so he called the police. He called the police. He said: I was livid. I thought someone stole my car.

Well, somebody had made off with Feifer’s car, but it wasn’t a car thief. It was Wells Fargo Bank. The police informed him of this when he called them up, and Michael Feifer said: That is when he found out my car was repossessed.

Now, he had no idea why Wells Fargo wanted to repossess his car. He says his payments were automatically taken out of his checking account—his car payments. So he called Wells Fargo, and he found out that the bank had put another insurance policy on his car. Lenders sometimes do this when a borrower doesn’t have insurance. Wells Fargo imposed this insurance on nearly half a million people who already had bought insurance. They were already insured.

Wells Fargo decided to put another insurance plan on them and—guess what—started charging them for it.

So that is why right after Feifer’s car got repossessed, Wells Fargo told him that he had been marked delinquent for not paying his insurance. Now, this again was insurance he didn’t want and he didn’t need. Well, they said: Too bad, you owe us $1,500.

Well, Michael Feifer then showed up at the bank with his bank statements and showed all the payments he had made for the vehicle. He showed proof of insurance showing that he never had a lapse in his insurance, and they said the people at the bank said: Well, you should come up with something: it is not your fault. He said: They were just as confused as I was.

Well, then, he said the branch employees tried to be helpful. They called up the Wells Fargo department that dealt with the details of car repossessions to find out what was going on, and they kept putting them on hold. So this is the Wells Fargo department putting their own Wells Fargo’s branch folks on hold. He was there 2½ hours, and then it turns out they told him to call back a couple of days later.

Well, he called back a couple of days later, and they said there was no prior record of his calls to the bank. He said they were very rude to him. Then, they told him to bring in with the bank, they said: We have repossessed your car. If you don’t pay us 600 bucks, we are going to sell it off. So he paid them 600 bucks. Then he found out that he wasn’t alone and that Wells Fargo had also engaged in this scheme to sell people car insurance as part of their car loans when they already had insurance.

So this is a very simple issue. The issue is whether or not consumers who have been wronged by big banks or other financial institutions can choose to band together with others to seek justice. What the Consumer Financial Protection Bureau did was to say that consumers have that right. They have the right to choose how to go about getting justice.

What this Senate resolution does is to take that right away from consumers and says: If you want to seek justice, you can only go through forced arbitration, where we know the deck is stacked against the lonely consumer and stacked against the banks and the big financial institutions.

Let’s not do that. Let’s vote down this resolution. Let’s protect the consumer protections that are in place today.

The PRESIDING OFFICER. The Senator from New Mexico. Mr. Udall. Thank you, Mr. President, for the recognition this evening.

Mr. President, I rise to support the Consumer Financial Protection Board’s arbitration rule that has been spoken about this evening very eloquently by my colleagues here on the Democratic side.

The new rule protects consumers from predatory financial practices. These consumers are our everyday constituents. They are servicemembers and veterans, moms and dads, the elderly, students, and working people. It protects these folks by limiting binding arbitration clauses.

Now, what is a binding arbitration clause? These clauses take away consumers’ rights to seek relief in court when they are wronged. This rule puts them in the pockets of the very consumers who have been taken advantage of.

The Consumer Financial Protection Board estimates that the rule will mean $342 million per year in compensation to consumers. Repealing the rule would take that money, which should go to consumers, and give it to some of the wealthiest corporations in this Nation.

When millions of consumers are scammed, what is the most logical remedy? When millions of consumers are scammed, what is the logical remedy—millions of separate cases before arbiters selected by the corporation or a class action case before an impartial judge and jury?

The right to go to court before a jury of your peers is enshrined in the Constitution. The Seventh Amendment states:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

Now, let’s talk about the Seventh Amendment and what one of our Founders said. James Madison wrote:

Trial by jury in civil cases is as essential to secure the liberty of the people as any one of the pre-existent rights of nature.

This rule guarantees access to our impartial courts. It is always good to have that spirit of the Constitution and the Founders on your side.

I stand with the supporters of this rule. Who are they? Who are they? Who are they? Who are they? For example, there is the American Legion. Just today, its legislative director wrote in no uncertain terms:

A vote to overturn the CFPB arbitration rule is a vote against the military and veterans.

The Military Coalition, representing 5.5 million servicemembers, also supports this rule. In July, they wrote: “Forced arbitration is an un-American system wherein servicemembers’ claims against a corporation are funnelled into a rigged, secretive system in which all the rules, including the choice of the arbitrator, are picked by the corporation.”
These are incredibly strong statements of opposition from military and veterans groups. Also in July, over 300 consumer, civil rights, labor, and small business groups wrote: “The rule ... is a significant step forward in the ongoing fight to curb predatory practices in consumer finance, products, and services—and to make these markets fairer and safer.”

Signers of this letter include the AFL-CIO, the American Federation of Teachers, Consumer Union, the NAACP, LULAC, and dozens of other organizations.

Conservatives also support this rule. One of the early tea party activists, Mr. Judson Phillips, wrote an op-ed in the Washington Times. He said: “This time, the CFPB is right and the Republicans should stand on the side of American citizens and protect the Constitution and the Seventh Amendment.”

Where are our Republican friends? They are not here on the floor talking about this rule.

Finally, the American people broadly support this rule. A recent poll showed 67 percent supported the rule; only 13 percent opposed it. Who opposes this rule? Why is it behind this resolution to repeal? Corporations that want to avoid penalties in court when they abuse their customers and big financial industry trade associations and lobbyists.

It would allow credit card, student loan, and payday lending firms—which would see big benefits if this resolution passes—to keep forcing consumers to sign contracts that take away their right to go to court.

Wells Fargo, one of the largest banks in America, spent years creating millions of fake accounts, just to bill their own customers more fees. They eventually admitted a complete and total fraud of epic proportions. Equifax, one of the three national credit bureaus in America, allowed over half of all American consumers’ personal information to be hacked. These companies should not be able to use binding arbitration to avoid the legal consequences of their actions. Today’s debate is a perfect example of how policymaking in Washington is broken.

A Federal agency did what is required. It undertook an exhaustive study and created a rule to protect consumers from abusive contracts. Now the affected industry is spending millions on lobbying and public relations to repeal the consumer protection rule—to protect their bottom line at all costs.

This vote will decide the fate of $342 million per year. Should it go to consumers who were wronged? Of course, it should. Or should it stay with the corporations that committed those wrongs? Of course, it should not.

Congress is not popular these days. Americans overwhelmingly believe special interests and lobbyists have too much power compared to the regular people. Today, we can take a step to repair our reputation. We should side with our constituents on this important vote and reject this resolution. I urge a “no” vote.

I yield back.
Navient paid 78,000 servicemembers $60 million after overcharging them on their student loans. In each of these instances, servicemembers, sometimes with the help of government, filed a lawsuit to get relief and hold these financial actors accountable. When companies force our servicemembers—or any consumer—to sign away their right to go to court, it is license. If they believe that our servicemembers—or any consumer—to arbitrate, military families lose the right to hold wrongdoers accountable.

That is what happened to Archie Hudson, a veteran, father of two, and husband from Waynesboro, MS. A few years ago, Archie requested a loan from Wells Fargo to replace his home’s windows. Instead, he received a Wells Fargo credit card along with sky-high interest rates and a forced arbitration clause hidden in the fine print. He didn’t realize it at the time, like the millions of others that Wells Fargo scammed, but it ultimately helped to ruin his credit. When Archie tried to get help in court, he was, instead, forced into an arbitration proceeding that favors lenders over consumers. He is not alone. The vast majority of people who have been forced into arbitration could tell you that the system is rigged.

When the CFPB first looked into this issue, they found that when consumers file an arbitration claim against a company that takes advantage of them, they have to pay an average of $161 in filing fees, and they almost always lose.

Companies, on the other hand, won a whopping 91 percent of the time that they go into arbitration against consumers. On average, they paid less than 1 percent of the fees they charged. That is just license for banks to force consumers to pay more in fees and lose their day in court as a result.

It is not just just women who have been abused in the workplace. It is not just people who sign up for credit cards. It is veterans in this country who are the losers if this vote passes tonight.

I would first like to read the number of Democrats who have been on the floor in opposition to this motion in support of the rule. I started, then Senator HIRONO, Senator DURBIN, Senator WHITEHOUSE, Senator VAN HOLLEN, Senator UDALL, Senator DUCKWORTH, soon after, Senator FRANKEN, and Senator BLUMENTHAL.

On the other side there has been one Senator. Senator CRAPO is a good friend of mine. He is chairman of the committee. I am the ranking member. He is doing his duty and defending his position well. But no other Republican Senator, no supporter of this resolution—nobody wants to come down here and speak. Why? Because they don’t want to be seen as defenders of Wall Street. They don’t want to be seen as defenders of the most powerful people in this country. So they stay back in their offices quietly.

They will come down here meekly on the floor, and they will vote yes, and they will go home and hope nobody knows about it. But they are not willing—and again, Senator CRAPo, whom I admire and respect greatly, knows those aren’t just words. I mean it. He is doing his duty as chairman of the Banking Committee. None of the rest of them want to join him. I think that tells you a lot.

I yield the floor.

Mr. FRANKEN. Mr. President, I rise to discuss the Consumer Financial Protection Bureau’s recently finalized rule to limit the use of predispute, forced arbitration clauses in contracts for financial services and products. I strongly oppose the Congressional Review Act resolution to dismantle this vital consumer protection.

Forced arbitration clauses force individuals to sign away their right to go to court as a condition of buying a product or a service, and they allow financial services and products to escape accountability. These clauses relieve companies of any obligation to protect the public interest. They are antithetical to the public interest, yet the banks that break the law.

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The PRESIDING OFFICER. The Senator from Minnesota.
arbitration agreements and the secretive nature of the arbitration proceeding itself, financial institutions use force arbitration agreements to shield themselves from accountability to the courts and to the public eye.

Let me talk about the Wells Fargo scandal. Just last year, the public was shocked to learn that over the course of 5 years, Wells Fargo employees had been incentivized to open millions of sham accounts in the names of Wells Fargo customers numbering over 3.5 million in my State of Minnesota. Then the bank charged the customers for those accounts without their permission. One reason this fraudulent practice was able to continue for so many years is because Wells Fargo’s customer account agreement included and continues to include, yes, a forced arbitration clause.

When customers discovered and attempted to sue Wells Fargo for the sham accounts, the company forced them on a tortuous path, having successfully argued that any dispute arising from the sham account was covered by the arbitration clause in the agreement for the real account.

Let me say that again. Wells Fargo succeeded in showing that any dispute arising from the sham account was covered by the arbitration clause in the agreement for the real account. That is what we are voting on here.

If these claims—some of which date back to 2013—had been able to proceed to court rather than in private, forced arbitration, other Wells Fargo customers would have been alerted to the wrongdoing and may have been able to save themselves and thousands of others from being ripped off and prevented damage to their credit. That really matters to people. A bad credit score can mean the difference between getting a mortgage and not getting a mortgage, getting a car loan or not, or even finding a job.

Fortunately, a few months ago, the CFPB issued a rule to ban financial institutions from preventing their customers from banding together to seek justice in a public court of law. This is good news for consumers who have been scammed by payday lenders, debt relief companies, or big banks like Wells Fargo; it is good news for small businesses, community banks, and credit unions that have been forced to compete with powerful corporations that are pocketing billions in stolen money from consumers.

Let’s be very clear about what the rule doesn’t do because I think there has been some misinformation put out there. The rule is not about banning arbitration altogether, and the rule does not prevent a consumer from pursuing arbitration if he or she wants to, assuming the corporation also wants to go to arbitration. Instead, the rule simply takes the “forced” out of “forced arbitration” and gives the consumers a real choice again to pursue a claim of wrongdoing in arbitration or band together with similarly harmed consumers to seek justice in a public court of law.

Now the big banks and financial institutions—including Equifax, the massive credit bureau that put 143 million Americans’ private information at risk—are trying to kill the rule, and they are far too close to getting their way.

As long as I have been in the Senate, I have been fighting to end forced arbitration. I have always said my efforts are about reopening the courtroom doors because they should never have been closed in the first place.

I urge my colleagues on both sides of the aisle to see the CFPB’s rule for exactly what it is, a commonsense way to restore transparency and accountability in our Nation’s financial system and to level the field between Wall Street and Main Street. It will allow the CFPB to move forward in implementing this critical consumer protection.

I ask you to please join me in showing strong support for the CFPB’s rule, knowing that if the rule, knowing what this is about, and then opposing the special interests that are attempting to take this rule away.

Thank you.

Mr. President, I am honored to follow my colleague from Minnesota, who has made many of the same arguments very eloquently that my colleagues have made as we approach a vote literally in the dead of night. There is a reason for the timing of this vote.

My Republican colleagues would much rather have it done past the deadline for the newspapers, out of the public eye, because most Americans would be repulsed by the idea that they are losing fundamental rights, and what could be more fundamental than the right to go to court. That is the right that will be lost to countless Americans if this vote in favor of S. J. Res. 47 succeeds tonight. It would literally repeal the Consumer Financial Protection Bureau’s arbitration rule using the Congressional Review Act.

Most Americans will discover this regretable step when they go to their lawyer’s office, and they state their grievance, their harm, their cause of action, and their lawyer looks at a contract or some other piece of paper, which has in fine print a forced arbitration clause. That forced arbitration clause, in effect, blocks the courthouse door. It denies them their day in court. It compels them to go before a group of people—often, the majority selected by the big company they want to sue. At best, the result is to give them less to remedy the wrong against them than they suffered in harm.

Often, the lawyer will say: You know, this effort is going to cost you more than you will gain. In good conscious, I must tell you that you will not recover as much as you have to pay me, and that is because those consumers cannot join together in arbitration, they can’t file a suit. Often, it is because the cost of going to court individually, even if they win, will be more than they would gain in arbitration. It is done in secret, when their case is arbitrated, so others cannot see how they became a piece of meat in a product or a service they are about to purchase and suffer the same harm or wrong.

A vote in favor of this resolution is a vote in favor of predatory lending. It is a vote in favor of wage theft. It is a vote in favor of sexual harassment. It is a vote in favor of medical malpractice. It is a vote in favor of denying millions of Americans a fundamental right to a day in court.

Without the promise of justice from the courts, few consumers can even think about undertaking the cost of an attorney or take on the tremendous effort of bringing those individual actions against service providers.

This falls particularly on our veterans. I commend and thank Holly Petraeus for her profoundly significant work to alert our veterans and all of us to those harms. These abusive practices harm our veterans more than others because they trust the abusive pitches that come at them as they are about to leave Active Duty or sometimes while they are on Active Duty or shortly after they leave. They have no control over where they are deployed or even where they are based, but the con artists and big corporations can come after them. They know where they are. They are targets of opportunity.

In one stunning example—just to give you a document—just a few months ago, in the New York Times not long ago, a sergeant in the Army National Guard who was serving in Iraq said that men came to his house and improperly repossessed his car, threatening his wife with jail time if she didn’t give them the keys. Appallingly, this sergeant received no restitution. His case was discarded because his contract with the auto lender included a forced arbitration clause. That is the practical harm resulting from these cases.

Wells Fargo has been mentioned as an example of how contracts, in effect, are forced on people without their knowledge for accounts, contracts for insurance that were put on their loans without their knowledge.

Equifax, in the height of arrogance—the remedy offered to consumers had a forced arbitration clause as part of their acceptance of a remedy for the harm done by Equifax itself. You can’t make this stuff up. You cannot create the fiction that this is a reality for abuse and harm to consumers.

Repealing this rule strips consumers of one of their only avenues of relief
from careless negligence or a slow response to harm. In the case of Equifax, unfortunately, it probably will not be the last.

The CFPB rule draws a line in the sand. It puts consumers on a level playing field. It ensures that in law school often identified as a contract of adhesion, where one side has such power over the other that they can dictate the terms, inherently unfairly, to the consumer. It demands that consumers be treated fairly.

Repealing this rule would allow companies like Equifax and Wells Fargo to have their run of the contracts in America, repeat the harms that have caused such widespread consumer harm, and let them off the hook. I urge my colleagues to reject this dangerous rollback of rights. It may be welcomed by some corporations, but in their hearts, as well as their minds, the vast majority of companies want to do the right thing. The outliers are the ones supporting this rule.

It would not eliminate arbitration where both sides feel it is in their mutual interests; it would simply eliminate the rip-off clauses that harm our veterans—people who fight for our fundamental rights. One of those fundamental rights—access to justice—is barred by this resolution.

I hope my colleagues will reject it, enable consumers to hold financial institutions accountable, and continue the work of the CFPB in making sure that consumers really receive a fair shake when they enter into a contract. I yield the floor to my colleague from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I was just going to ask whether my colleague would yield for a question.

My distinguished colleague from Connecticut is an extraordinarily experienced and able lawyer. He was U.S. attorney before he began his distinguished career here, and he knows well that, as attorneys general, we often insisted on injunctive relief because we wanted to protect people going forward. That is a remedy that arbitration panels simply cannot award, and it is enormously consequential.

Mr. BLUMENTHAL. I appreciate my colleague’s question. That is absolutely right. Arbitration panels do not have the power to issue injunctive relief; it is not that simple. They do not have the power to grant injunctive relief even in the worst of circumstances. That is one of the reasons forced arbitration clauses exist: There is no danger of a court of law preventing these types of harms.

To take the topic of the day, sexual harassment, many of those employment clauses had the forced arbitration requirement that led to settlement demands and secrecy. For years and years, that harm was repeated to women who suffered because they were unaware of the harm about to befall them.

It is a human tragedy, not just a financial one, to these consumers because of those fine-print arbitration clauses that consumers very often never even consider because at the time they sign the contract, they are not thinking about what can go wrong; they are buying a car or a product that seems just fine, or they are entering into a new job, or, as in the case of a veteran, they are signing up for a for-profit college, and they scarcely expect they will be, in effect, victims of these forced arbitration clauses.

So the answer to my colleague’s question, as he knows because he himself is such an expert in consumer protection, is a resounding yes. This rule is necessary to protect consumers against those kinds of harms, which, when added nationally, can be tremendously costly to our Nation as a whole.

Mr. WHITEHOUSE. If I may ask if the Senator will yield for another question.

Mr. BLUMENTHAL. I would be happy to yield.

Mr. WHITEHOUSE. As I understand from the Senator’s response to my last question, if you force the victims of low-dollar but multi-victim fraud and unfair practices to persist and take it, you are way less likely to get consumers asserting their rights, and ultimately you may have low-dollar, multi-consumer frauds that remain very remunerative for the crooked outfit conducting the massive fraud.

I get the Senator’s point that the incentives are such that it is very hard for an individual consumer to be willing to pursue that claim. If there is no way to aggregate themselves together into a class action, then there is really no way to pursue that claim.

But my second question goes to a further point, which is that the power of a corporation, in matters like this, is not just to award damages but to provide other relief: to direct the company to quit the fraud, to give orders to people to clean up their act, to promise never to do it again, and so forth. I am not aware of any arbitration panel that has been given that authority or has ever used their limited power as arbiters or arbitrators to try to influence the behavior of the corporation.

Is there not also a significant difference between an individual consumer being forced to go to an often stacked arbitration panel to pursue a claim that is so small, it is not worth their money, and the simple power to provide the real remedy the public seeks, as the Senator so wisely said, to protect the next consumer? It is not just about the people who got their pockets picked, who paid their unreasonable fee, who got defrauded; it is about stopping it so the future consumer is protected. I am not familiar with arbitration panels having that power.

Mr. BLUMENTHAL. And not infrequent in class action cases?

Mr. WHITEHOUSE. That is exactly right. It is not infrequent in class action cases. He began his distinguished career here, and he knows well that, as attorneys general, we often insisted on injunctive relief because we wanted to protect people going forward. That is a remedy that arbitration panels simply cannot award, and it is enormously consequential.

Mr. BLUMENTHAL. And not infrequent in class action cases?
from consumers to corporations that engage in high-volume but low-dollar fraud?

Mr. BLUMENTHAL. Exactly right. I think that is the essence of what the effect will be today of this vote if it is to roll back an agency that, in effect, enhance the overweening power of companies and corporations that force consumers to engage in arbitration that they do not know will be the result and cannot change because it is a fixed term, even though it is in the fine print. Indeed, even the courts are approving.

I thank my colleague for those extraordinarily insightful questions.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader.

Mr. SCHUMER. Mr. President, I want to first thank my colleagues, particularly SHERROD BROWN, our ranking member of the committee, Senators WHITEHOUSE, BLUMENTHAL, FRANKEN, and so many others who have spoken so eloquently on this issue. I don’t think it is a coincidence that many Members on our side have spoken and very few on the other side. Once again, it is one of those instances where the powerful will roll back this rule and, in effect, enhance the overweening power of companies and corporations that force consumers to engage in high-volume but low-dollar arbitration that they do not know will be the result and cannot change because it is a fixed term, even though it is in the fine print. Indeed, even the courts are approving.

We saw it with Equifax the idea that they didn’t have to protect people’s information and were almost nonchalant about it. We saw it with Wells Fargo, where people came up with a scheme. We see it with the banks. We saw with Equifax the idea that they didn’t have the lawyers, the lawyers, the time, and the ability to try to protect what is happening. They don’t understand the long contracts where they sign away their rights to go to court. They need a bank account. They need a car loan. They need something, and, yes, their only recourse in this case may be a class action suit, particularly if it is $20 or $30. You are not going to go to court individually, but if it is thousands of people, a trial lawyer will make some money, yes, to protect those people. How terrible that people might have the ability to come together and hire a lawyer.

What is happening in the last 9 months is that—we have a lot of people who are affected. Many of the campaigns, including President Trump’s campaign, understood that. But when President Trump campaigned, he campaigned as a populist against the powerful institutions, against the Washington lobbyists, and said: Let’s do something for average people. But once he got into office, he got into office, he got unionized. Let’s go after the trial lawyers. I don’t always agree with their tactics. I voted against them on occasion. But let’s go after them. They are one of the few recourses that average people have. That is hardly as reprehensible as an Equifax or a Wells Fargo in doing what they do. But people on the other side somehow have this mythology because of the hard right and its machine and their think tanks and their media messaging—FOX News—that somehow the powerful are getting a bad break in America and the average person has too much power.

What is wrong?

I will say this. It is going to lead to people being even more disillusioned, more angry, more sour, and we will move further away from what the American dream, ideal, and optimism are.

Our colleagues on the other side, my dear friends—I like them, I really do—wittingly or unwittingly are part of this movement, and it is a shame. It is a shame.

Community banks aren’t beleaguered by these cases. They don’t usually do this stuff. When I talked to community bankers who lobbied me on this, they basically said to me: No, we are with the whole banking association. The big banks want this.

This is not little banks. These are the Wells Fargos and the Equifixes. We shouldn’t do it. We shouldn’t do it.

I worry about this country. I love this country. It has been so good to me, my family, and my people. I still believe to this day that it is what the Founding Fathers called it when they left Constitution Hall—God’s noble experiment.

We are one nation under God, noble. We are a noble country. No one has had the ideals we have had for hundreds of years. We are an experiment. We keep evolving, changing, and adapting, as we should. But when I see what has gone on in the last 9 months—a combination of the President’s appeal to lower instincts of people, to divisive instincts, and the hard right machine, which has too much power on the other side of the aisle—I worry. I worry. I worry about the country. I worry about our standards of decency and honor.

Everyone heard Senator Flake speak today. It moved all of us. It is a shame he is leaving this body because he has been a voice and a beacon. I didn’t agree with him on most issues, as is pretty obvious by our voting records, but he stood for the right things. I say to my colleagues, somehow we are doing too many wrong things around here. We are trying to take away people’s healthcare. We say we want better healthcare at lower costs. That is what the President says, but we put a bill on the floor that does the opposite. We know it. We are doing it on taxes. We say we want to help the middle class, and the tax bill dominantly helps the wealthy.

Our colleagues on the other side of the aisle are afraid to say they are helping the wealthiest because they think that is the way to create jobs because they know the Americans don’t believe it—nor should they.

Most recently, the great Kansas experiment, the Koch brothers’ own laboratory, totally flopped.

They say unions have too much power, and yet incomes in the middle class have declined. There are abuses. There are abuses everywhere, but middle-class incomes decline, fewer people have bargaining power, more people are paid, good man, in the $15-an-hour category. They are almost nonchalant about it. We saw it with Equifax the idea that they didn’t have the ability to go to court. They now got the ability to go to court. They still know it is wrong. They still know it is wrong.

To sum it up, a “yes” vote is handing a “get out of jail free” card to the equivalent of Wells Fargo and Equifax. It is that simple. A “yes” vote is saying you believe that Americans who get taken advantage of don’t have the right to seek recourse. A “yes” vote tells rapacious financial institutions that they can cheat consumers without any serious consequences or accountability, because we all know that average folks don’t have the ability to go to court on their own to sue. We know that. Everyone knows that.

If there are abuses, let’s fix them, but don’t totally denude people who don’t have much power from the little power they might have through going to court. I hope that maybe there is some body, because the vote is close. It took a long time to bring this resolution to the floor because there were some people who wanted to stand up, but they
got ground down by this hard right machine that always wants its way.

They are doing great. Corporate America is making more money than
ever before. Financial institutions are
healthier than ever before, but it is not
good for what we want more. The
"more" is fine if it didn't come at the
expense of average folks when some-
body is abusive.

The CRA is a meat-cleaver approach.
Thosw cases with this should
try to address them with a scalpel, not
a bluntedge. I urge my colleagues one
final time, those on the other side of
the aisle, to vote no on this disapproval
resolution on behalf of our constitu-
ents, who deserve to have more rights
when standing up to the powerful when
they are right, not less.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The
clerk will call the roll.

The senior assistant legislative clerk
proceeded to call the roll.

Mr. CORKYN. Mr. President, I ask
unanimous consent that the order for
the quorum call be rescinded.

The PRESIDING OFFICER. Without
objection, it is so ordered.

Mr. CORKYN. Mr. President, I know,
for people watching this debate, it is
easy to be confused. You hear the
Democratic leader claiming that this is
about the people who have no power,
fighting against the most powerful in-
stitutions this country has to offer in
their, somehow, trying to disadvantage
them when, in fact, the opposite is true.

In situations like this, it is fre-
quently a good thing to follow the
money. The reason the Consumer Fi-
nancial Protection Bureau wants to
ban arbitration as a means of alter-
native dispute resolution is that the
trial lawyers, who benefit from the
huge attorneys' fees awards, do not
like the idea that they are, basically,
being cut out of that dispute resolu-
tion system; whereas, we know from
the studies that have been done that
consumers actually benefit from
arbitration compared to ordinary li-
tigation. Not everybody can afford to
be O.J. Simpson and hire the very best
lawyers in America and try a case for
millions of dollars. It just, simply, does not work
that way for most people. So this is a
very efficient, cost-effective, fair way
to resolve those disputes in a way that
consumers benefit.

I do not think, and honestly, our collea-
gues across the aisle, except for
their desire to demonize banks and
large financial institutions, but it is
not just large banks and financial in-
stitutions; it is community banks. We
are talking about contractual arbitra-
tion provisions, which allow consumers
to benefit from a means to resolve dis-
putes with their local community
banks, and they do not often involve
huge amounts of money. Typically,
when we get interested in a claim that
does not involve much money, which is
why most often, when one does get litigated, it is in the con-
text of a class action, in which they ag-
gregate all of these claims for thou-
sands of people. Then, as we know,
typically, it ends in some sort of settle-
ment from which the consumers get
coupons—frequently, no money—and
class lawyers reap millions of dol-
ars.

Our colleagues across the aisle act as
if they have the better part of this ar-

gument when, actually, they are argu-
ing on behalf of one of the narrowest,
wealthiest special interests in America
today, and that is the trial lawyers.
They act as if they are the friend of the
consumer when they are actually argu-
ing to the detriment of the consumer,
because the consumer benefits from
this less expensive, more efficient,
more timely resolution of disputes
with financial institutions, which is
through contractual arbitration.

There is the fact that the Consumer
Financial Protection Bureau, which is
sort of an anomaly in our system, is
accountable to no one and not suscep-
tible to oversight by Congress because
of the way it was created. It is not even
funded by appropriations of Congress
as other government agencies are. It is
really a rogue agency in so many
ways—not accountable to the Amer-
ican people not accountable to over-
sight of Congress, not dependent upon
Congress for the appropriations to, ba-
ically, do its work. So, when it over-
reaches like this and essentially out-
laws this efficient, cost-effective, im-
partial way of resolving civil disputes,
this is, perhaps, the greatest dem-
stration of the abuse that was
rought by the creation of the Con-
sumer Financial Protection Bureau in
the first place.

When consumers benefit and trial
lawyers do not, I don't know how you
must justify the arguments on the other
side, except to say that they are the
party of the trial bar and that they
really don't care about the consumers
because they realize that consumers
will end up with pennies on the dollar
and that they would actually be better
off in using the arbitration provisions
in these contracts that are subject to
the Federal Arbitration Act. Actually,
the Federal law says that when

As for the fact that consumers could
get recourse through arbitration
in their using the Federal Arbitration
Act—from an impartial panel that will
decide what the facts are and grant
awards without having to go to the
expense and time associated with ordi-
nary litigation—they, simply, do not

I would say, notwithstanding the
dystopian view of our friends across
the aisle that, somehow, this is a great
conspiracy against the forgotten man
and woman in our country, the oppo-
site is actually true. What they are
trying to do is advocate for the rich
and the powerful—the trial lawyers in America—and against the best interests of the consumer, who benefits from this contractual arbitration provision.

I hope that our colleagues will not be persuaded by the arguments on the other side, because there is just, simply, no factual basis for them. I hope that in a little while here, when we vote on this congressional resolution of disapproval, we will have a solid vote in the disapproving of this ban on the use of alternative dispute resolution to resolve disputes, because a “no” vote, basically, is a vote on behalf of the rich and the powerful—the trial lawyers in America—who get enriched by the status quo in the absence of an alternative dispute resolution system.

The PRESIDING OFFICER. The Senator from Massachusetts.

Ms. WARREN. Thank you, Mr. President. Tonight we are on the verge of passing a Republican resolution to make it easier for financial institutions to cheat people. Earlier this year, the Consumer Financial Protection Board issued a rule that prohibits financial companies from forcing you to sign an arbitration clause that makes you take all disputes to a private court. So if this proposal passes, that rule will just disappear.

Now, there are no real human beings who think it should be easier for financial institutions to steal money from you and cheat them. Bank lobbyists are the only people asking Congress to reverse this rule, but let’s face it, the Wall Street Journal is pretty powerful around here. The question the American people should be asking right now is, Are they powerful enough to win tonight?

The reason this vote is happening so late at night is because we were right on the verge of blocking it. The American people have watched as Wells Fargo cheated its customers and then used arbitration clauses to try to escape liability. They watched as Equifax neglected to allow hackers to steal personal financial information of more than half of all American adults and then used arbitration clauses to try to escape accountability. Politicians have been watching it too. While many of their eyes might be blinded by dollar signs, it may not be enough.

There is bipartisan opposition in the Senate to turning financial institutions into un-American systems wherein servicers can hold banks like Wells Fargo accountable when they cheat their customers.

Now, everyone assumes MIKE PENCE will side with the big banks, and I have just one simple question: Why?

President Trump, MIKE PENCE works for you. His job is to cast his vote the way you tell him to cast it. We spent way you tell him to cast it. We spent

more than a year listening to you, first as a candidate and then as a President, and you have gone on and on about how strong you are, how tough you are, and about how you are going to stand up to Wall Street.

Well, versus the wet kis to Wall Street. Bank lobbyists are crawling all over this place begging Congress to vote and make it easier for them to cheat their customers. President Trump, are you really going to let MIKE PENCE cast a tie-breaking vote to hand big banks their biggest win in Congress since they crashed the economy 9 years ago?

You know, I followed a news story about how tough you are, Mr. President—standing up to Mitch McConnell now? Is that the deal? Are you going to roll over and hurt millions of people in this country because Mitch McConnell tells you to?

I keep hearing that you and Steve Bannon are going to remake the Republican Party into a party that stands up to Wall Street. Steve Bannon works for this monstrosity, why doesn’t he say he is going to help you drain the swamp, right?

Well, where is the all-powerful Steve Bannon now? Where is he to tell MIKE PENCE and Donald Trump that they don’t want to remakethe Swamp, right?

Every organization—all the ones that represent actual human beings, not banks—want this rule to be saved, none more than the organizations that represent our veterans and our service members. Do you know why that is, Mr. President? It is because they are sick and tired of being cheated by banks. They are sick and tired of politicians who say “thank you for your service” and then turn around and vote to make our military members future for themselves and their families.

The Military Coalition, which represents more than 5.5 million veterans and servicemembers, supports the CFPB rule because “our Nation’s veterans should not be deprived of the constitutional rights and freedoms that they put their lives on the line to protect, including the right to have their claims heard in a trial.” The Coalition states that arbitration is an un-American system wherein servicers’ claims against a corporation are funnelled into a rigged, secretive system in which all the rules, including the choice of arbitrator, are picked by the corporation. They go on to warn that “the catastrophic consequences of these [forced arbitration] clauses pose for our all-voluntary military fighting force’s morale and our national security are vital reasons” to preserve this rule.

We have seen all the tweets, Mr. President. We have seen you go on and on about how disrespectful it is of our veterans and their families that some football players don’t want to stand for the national anthem. Well, all three of my brothers served in the military, Mr. President. Do you know what is disrespectful of our veterans and their families? Passing laws that hurt our veterans and their families. Casting the tie-breaking vote for laws that are opposed by the American Legion, by the Military Coalition, by the Vietnam Veterans of America, by AMVETS, by the Association of the United States Navy, by the Military Order of the Purple Heart, by the American Legion, by the Military Child Education Coalition, by the Military Veterans Coalition of Indiana, by the National Association of Black Veterans, by the National Guard Association of the United States, by the National Military Family Association, by the Noncommissioned Officers Association, by the Reserve Officers Association, by the Retired Enlisted Association, by the Veterans for Common Sense, by the Veterans Education Success by Veterans, by the American Veterans Center, by VETJOBS and by Vets First.

President Trump, this is up to you. Don’t do this. Don’t let MIKE PENCE cast the deciding vote to hand a huge victory to Wall Street. If you do, you should be prepared for the consequences. Veterans know when a politician is all talk. They know the difference between a cheap pat on the back and a real punch to the gut. They won’t forget what happens here today.

And for Steve Bannon—if this really happens today and MIKE PENCE casts the deciding vote to make it easier for financial institutions to cheat people, do you want to remake the Republican Party in your image? Do you want to watch primary challenges against Republicans who roll over to Wall Street? Do you want to go after the DC-Wall Street swamp, the politicians with billionaires at the helm, the Mitch McConnell, and all the globalists who think cash matters more than people? If MIKE PENCE votes for this monstrosity, why don’t you primary Donald Trump, and when you are finished with him, why don’t you go after MIKE PENCE?

Steve Bannon, put your fat wad of billionaire Mercer money where your mouth is or stop pretending that you are anything other than what you are.

With the remainder of my time, I would like to read letters and op-eds from veterans begging Congress not to repeal this rule.

The first is from Col. Lee F. Lange, U.S. Marine, Retired, with 30 years of service, now serving as Arizona chapter president of the Military Officers Association of America. He titles his letter, “I Served to Protect Our Rights; Don’t Let Equifax Take Them Away.”

Here is a career Marine, who protect the rights of Americans as guaranteed by the Constitution and its amendments. Among them is the 7th Amendment right to trial by jury in civil cases, a right dismised by companies like Equifax and now under siege in Congress.
Forced arbitration “ripoff clauses” buried in the fine-print of bank accounts, auto loans and other contracts strip servicemembers and veterans of their day in court when big banks and financial institutions violate the law. Instead, people must face companies alone and cannot join together in a rigged, secretive process where the banks and investors claim to be sovereign rulers, not accountable to the law.

Men and women in uniform are surely among the 195.5 million people impacted by the massive data breach of sensitive personal information held by the credit reporting agency Equifax—and among those whose access to the courts was stripped in Equifax’s fine print. They had to go through military service members from Sergeant Charles Beard to Army soldier Prentice Martin-Bowen who also had their rights limited by forced arbitration.

Wells Fargo continues to use forced arbitration to deny victims of the fake account scandal access to the justice system. Arizona and Southern California were the epicenter of the Wells Fargo scandal and Wells Fargo is Arizona’s largest bank. Some of the state’s more than 500,000 veterans were certainly caught up in its effects. Wells Fargo has been caught but it is likely not the only financial institution guilty of illegal practices.

The Office of the Secretary of Defense, the Consumer Financial Protection Bureau (CFPB) and its Office of Servicemember Affairs have worked to protect those who serve by issuing a rule restoring our 7th Amendment rights and limiting the use of forced arbitration. The CFPB rule enhances military consumer protections in the MLA, restoring the right of servicemembers and veterans to seek civil justice, including class action suits, for illegal acts.

For that reason, the Military Coalition, a national consortium of uniformed services and veterans organizations representing 5.5 million members, the families of service members and their families and survivors, urged Congress to let the CFPB rule go into effect. The American Legion, the Knights of Columbus, the National Association of American Veterans, the American Legion and the American Veterans of Foreign Wars have all supported the act.

The Consumer Financial Protection Bureau (CFPB), and its Office of Servicemember Affairs, the American Veterans of Foreign Wars, the American Legion, and the National Association of American Veterans, all support the act. They conclude:

"The Wells Fargo scandals—yes, there’s more than one—offer a prime example of how financial institutions use forced arbitration to rip off consumers. The banks, with 48 branches in Alaska, opened nearly 6,000 of its infamous fake accounts here on the Last Frontier.

"A California judge ordered the financial giant to repay more than $200 million for manipulating accounts to generate overdraft fees—another activity repeated here.

"Recently, nearly a quarter million Wells Fargo car loan customers were dinged for nonpayment of insurance policies illegally taken out for them and almost 25,000 had vehicles repossessed.

"Most infuriating, Wells Fargo has been fined millions for foreclosing on servicemembers’ or repossessing their cars in violation of the Servicemembers Civil Relief Act.

"In every case, Wells has used arbitration to strip servicemembers of their day in court as part of class actions and uphold the Servicemembers Civil Relief Act to protect the legal rights of the men and women fighting for this country.

"We must consider whether to preserve this critical protection for everyday consumers, and especially for our servicemembers, our Alaska Republican Senators, Lisa Murkowski and Dan Sullivan, need to remember that equal access to justice is not a Republican or a Democratic idea. It is an American right, as old as our Republic itself, and it’s worth fighting for over these laws.

"Wells Fargo continues to use forced arbitration to strip servicemembers of their day in court as part of class actions and uphold the Servicemembers Civil Relief Act to protect the legal rights of the men and women fighting for this country.

"The Senate, armed with lessons learned from the Equifax and Wells Fargo scandals, can still reverse course. Our Senators must put the interests of servicemembers, veterans, and American consumers ahead of Wall Street lobbyists and reject efforts to take away our day in court.

"That was from Col. Lee Lange, U.S. Marine Corps, Retired, chapter president, the Military Officers Association of America and president of the Southwest Veterans Chamber of Commerce.

There is another one that I would like to read, and this is from the chairman of the Alaska Veterans Foundation. It is titled “Forced arbitration and a right worth fighting for,” by Ric Davidge.

As a veteran, I am proud that we have helped protect the rights so carefully guarded for us by our Founders. Another guarantor of those liberties is the right to our day in court—one especially vital to today’s servicemembers who often have taken advantage of by financial institutions.

Today, the right to our day in court is endangered. Consideration of a rule by the United States Senate on the issue of powerful banks and forced arbitration.

James Madison, one of the principal drafters of the Bill of Rights, wrote that “trial by jury in civil cases is as essential to secure the liberty of the people as any one of the pre-existent rights of nature.” The Founders saw this right to be heard before a jury of our peers as so vital that they enshrined it in the Seventh Amendment.

This right lies today in Winston Churchill’s words, “a safeguard from arbitrary version of the law,” but also a means to ensure equal access to justice for the powerful and the powerless alike, and for citizens to signal and set acceptable standards of conduct in our society.

Why bring this all up now? Because the U.S. Senate is in the process of attempting to roll back a rule recently finalized by the Consumer Financial Protection Bureau (CFPB) to limit forced arbitration clauses buried deep in consumer agreements. These forced arbitration agreements are found in the fine print of financial agreements signed by tens of millions of everyday Americans with banks, covering everything from credit cards and checking accounts to prepaid cards and payday loans. And they require consumers to take disputes over bank wrongdoing not to courts overseen by judges, but to arbitrators chosen by the financial institutions—under their own rules.

Arbitration hearings are held in private with no public record, no meaningful rules, not even a requirement that arbitrators enforce state and federal laws. And of course, no jury.

Perhaps most significant of all, Big Banks have leveraged arbitration to block class action suits when the ability of consumers to band together helps balance the extraordinary legal and financial resources at banks’ disposal.

Most infuriating, Wells Fargo has been fined millions for foreclosing on servicemembers or repossessing their cars in violation of the Servicemembers Civil Relief Act.

In every case, Wells has used arbitration to shield itself from accountability. Since 2009, nearly 250,000 servicemembers have filed arbitrations against Wells Fargo—but not one in Alaska. The reason: arbitration is often too expensive for a single consumer with a small claim.

That’s why the CFPB rule is so important—and why the Big Banks’ Washington lobbyists are working overtime to have it overturned. The regulation will ensure all Alaskans retain the right to their day in court and uphold the Servicemembers Civil Relief Act to protect the legal rights of the men and women fighting for this country.

Our nation’s veterans should not be deprived of the Constitutional rights and freedoms that they put their lives on the line to protect, including the right to have their claims heard in a jury when their rights are violated. The catastrophic consequences these clauses pose for our all-voluntary military fighting force’s morale and
our national security are vital reasons for this rule to take effect immediately.

We also have a resolution passed by the Ninety-Ninth National Convention of the American Legion asking Congress not to roll back the arbitration rule put forward by the CFPB, and we have letters from more than 30 veterans associations begging this Congress to please not get rid of the forced arbitration clause that has been put forward by the Consumer Financial Protection Bureau.

Mr. President, I ask unanimous consent to have these letters and resolution printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE MILITARY COALITION,

Hon. PAUL RYAN,
Speaker of the House,
Washington, DC.

Hon. NANCY PELOSI,
House Minority Leader,
Washington, DC.

Hon. MITCH MCCONNELL,
Senate Majority Leader,
Washington, DC.

Hon. CHUCK SCHUMER,
Senate Minority Leader,
Washington, DC.

Dear Rep. RYAN, Rep. PELOSI, Sen. MCCONNELL, and Sen. SCHUMER:

The Military Coalition (MCC), a consortium of uniformed services and veterans organizations representing more than 5.5 million current and former servicemembers and their families across the nation, is in strong support of the Consumer Financial Protection Bureau’s (CFPB) final rule on Arbitration Agreements (Docket No. CFPB-2016-0020; RIN 3170-AA51). The final rule addresses the widespread harm of forced arbitration by preserving the ability of service members and other consumers to band together to seek relief through the civil justice system when financial institutions have broken the law. We applaud the CFPB for moving forward on this rule that recognizes the detriment of forced arbitration and class action waivers on our brave men and women in uniform.

Forced arbitration is an un-American system wherein service members’ claims against a corporation are funneled into a rigged, secretive system in which all the rules, including the choice of the arbitrator, are picked by the corporation. Found in almost every financial services contract, forced arbitration clauses systematically bar servicemembers and other consumers to band together to seek relief through the civil justice system when financial institutions have broken the law. We applaud the CFPB for moving forward on this rule that recognizes the detriment of forced arbitration and class action waivers on our brave men and women in uniform.

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WHEREAS, The American Legion is a national organization of veterans who have dedicated themselves to the service of the community, state, and nation;

WHEREAS, The U.S. Consumer Financial Protection Bureau’s (CFPB) rule on Arbitration Agreements (Docket No. CFPB-2016-0020; RIN 3170-AA51) addresses the widespread harm of forced arbitration by preserving the ability of service members, veterans and other consumers to join together and seek relief in class action lawsuits when financial institutions break the law; and

WHEREAS, Congress enacted the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. 501 et seq., to strengthen and expedite national defense by granting servicemembers certain protections in civil actions against default judgments, foreclosures and repossessions, enforceable in a court of law; and

WHEREAS, In some cases, financial institutions violate SCRA or other statutory or constitutional protections in their interactions with servicemembers; and

WHEREAS, Many financial institutions include pre-dispute mandatory arbitration clauses in contracts of adhesion that bar servicemembers and other consumers from bringing a legal action in court or banding together to seek relief under federal or state law; and

WHEREAS, Class action waivers are particularly harmful to servicemembers, who may not be able to challenge a financial institution’s illegal or unfair practices individually due to limited resources, deployment or frequent relocations;

WHEREAS, The Department of Defense concluded in 2006 that “Servicemembers should maintain full legal recourse against unscrupulous financial institutions,” and in 2014 stated that “Servicemembers should not include mandatory arbitration clauses or onerous notice provisions, and should not require the servicemember to consent to arbitration in a lawsuit, such as the right to participate in a class action...” and

WHEREAS, This is extremely unfair to bar servicemembers, veterans and other consumers from joining together to enforce statutory and constitutional protections in cases where they put their lives on the line to protect, including the right to have their claims heard in a trial by a jury when their rights are violated. The catastrophic consequences these clauses pose for our all-voluntary military fighting force’s morale and our national security are vital reasons for this rule to take effect immediately.

Sincerely,

THE MILITARY COALITION,
Clinic of the University of San Diego, Veterans Legal Institute, Veterans Student Loan Relief Fund, VetJobs, VetFirst, a program of United Spinal Association, Vietnam Veterans of America.

THE VALUE OF THE CFPB TO NATIONAL SECURITY

MILITARY FAMILY FINANCIAL READINESS

At the direction of Congress, the Department of Defense (DOD) produced a report outlining its concerns with harmful financial practices. The report noted that “predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all volunteer fighting force.”

According to the Department of Defense analysis of involuntary separations that were due to legal or standard-of-conduct issues—an average of 19,883 per year—the Department estimates that approximately half are attributable to a loss of security clearance, and, of these, 80 percent are due to financial distress. The Department estimates that each involuntary separation costs taxpayers over $57,000. Addressing financial misconduct by bad actors that target military families can both contribute to overall military readiness and reduce the costs to taxpayers of involuntary separations.

Senior enlisted leadership vigorously praised the work of the Consumer Financial Protection Bureau (CFPB) to protect military families in a February 14, 2017, hearing by the Senate Armed Services Committee, Military Personnel Subcommittee. For example, Sergeant Major of the Army Daniel A. Dailey stated, “I see value in that organization and I know they have done great things for our servicemembers.”

It is vital that we continue to maintain our commitment to protecting military families.

In an op-ed published in New York Times, Mrs. Petraeus describes how certain industry actors build their business models on revenue from servicemembers, veterans, and their families. While we welcome and celebrate businesses that serve our community in an honorable, trustworthy manner, some bad actors see us as nothing more than “dollar signs in uniform.”

In the last decade, we have seen financial companies engage in foreclosure activity, auto lending, and payday lending that violated consumers’ rights protecting consumers and servicemembers. There is a clear need for the CFPB to provide both prevention and protection against harmful financial practices.

THE CFPB’S STRONG RECORD

The CFPB engages in a number of activities that benefit military families including monitoring of complaints, enforcement, outreach and education, and consumer protection initiatives.

Consumer Complaints. Military families have submitted 70,000 complaints; the agency closely analyzes these complaints to better understand the challenges that servicemembers face and how to address them. These complaints often lead to significant relief for families who have been harmed by wrongful practices.

Education and Outreach. The CFPB has brought new leadership and emphasis on service member issues by actively reaching out to listen to and engage with servicemembers and has developed a variety of resources.

Military Installation visits: Nineteen visits in 2015 where the OSA held Town halls and roundtables and town-hall-style listening sessions at 145 military installations/units.

Debt Collection: Over 46% of complaints received from servicemembers in 2015 concerned debt collection. And according to a 2015 report, servicemembers were nearly twice as likely to submit debt collection complaints as the general population who also submitted complaints. The CFPB has outlined proposals to increase consumer protection from debt collectors to address the industry’s most abusive practices.

Forced Arbitration: The CFPB’s proposed rule to ban the use of forced arbitration by preserving the ability of servicemembers and other consumers to join together in court when financial institutions break consumer laws.

On-Demand Virtual Forums: The forums provide servicemembers and military financial educators with virtual training on topics ranging from debt collection to the CFPB’s complaint process.

Direct-to-Consumer Education Materials: The material is available on common issues facing the clients of the military legal assistance community, including protecting your credit while you are away from home, knowing when a debt collector calls, and minimizing student loan payments.

Between October 1, 2011 and December 31, 2016, OSA delivered consumer educational information and materials to more than 26,000 servicemembers through live events. This included interacting with active-duty servicemembers and National Guard personnel through leadership roundtables and town-hall-style listening sessions at 145 military installations/units.

Supervision: The CFPB has placed a high priority on holding financial companies that may be harming military families accountable.

Before the CFPB was created, no federal agency routinely examined or supervised non-bank businesses offering consumer financial products. The Federal Trade Commission had supervisory authority under the Federal Trade Commission Act against unfair and deceptive practices and to enforce federal credit laws with non-bank financial companies. However, these companies were supervised by the Federal Reserve, which has been criticized for not taking the necessary enforcement actions.

The CFPB’s new supervisory authority coupled with its authority to enforce the Military Lending Act and its focus on listening to servicemembers has allowed for enforcement actions that would not have happened without the CFPB.

For example, the CFPB cited Cash America for violating the Military Lending Act after routine examination exposed compliance problems. The agency took action against USA Discounters, military creditors abusing military allotment systems. Other enforcement actions that also impacted servicemembers include:

- Rome Finance, in conjunction with 13 state attorneys general, CFPB provided $92 million in debt relief for 17,000 U.S. servicemembers and other consumers.
- Suits against closed proprietary colleges ITT and Corinthian Colleges, Inc. for predatory lending with debt relief for 400,000 former students of $480 million ultimately secured.
- To protect servicemembers against the Stanford Savings and Loan fraud.

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CONCLUSION

As noted by the Military Officers Association of America, in testimony to the U.S. Senate Committee on Banking, Housing, and Urban Affairs, it “vitaly important to the military community and readiness that the work of the Office of Service-member Affairs continues.”

Ms. WARREN. It really comes down to this: We have heard from veterans groups, from individual veterans, Active-Duty military, and from banks, that putting banks and big banks stand up with the big banks; stand up with the veterans.

I urge the President of the United States: Show us what you are made of. Stand up to Wall Street; don’t just roll over for Wall Street. Be there for the people who count on you. Be there for our veterans and Active-Duty military.

Mr. President, I yield the floor.

Mr. CRAPO, Mr. President, just for everybody’s information, I am going to speak for just 2 or 3 minutes and then yield back our time, and then Senator Brown will do the same, and then we will proceed to a vote.

I just want to make clear what we are talking about here. You have heard a lot of talk tonight about how this is tãoing to stop the class action arbitration. You have heard that word a lot. Let’s make it really clear what the debate is about.

Using the CFPB’s own study—I am quoting the CFPB now—“the clear majority of the errors clauses within our review specifically recognize—and allow—access to small claims courts as an alternative to arbitration.” So this notion that we are here fighting tonight about whether people who have small claims don’t have any outlet except arbitration is simply false. That is a false orchestration of what the argument is.

What is the argument? Well, why don’t we look at the rule and see what it does? The CFPB says and is quoting specifically from the CFPB rule. It prohibits a company from relying in any way—it doesn’t say forced arbitration—from relying “in any way on the pre-dispute arbitration agreement with respect to any aspect of a class action.”

It goes on, and the rule actually states specific language that people take away the right to collective action, are particularly abusive, as they prevent courts from ordering widespread relief when thousands of millions of servicemembers are harmed by these bad practices due to limited resources or frequent relocations or deployment. The Military Coalition, representing 5.5 million servicemembers and their families, recently wrote a letter to the CFPB in support of this proposal.
have to put in their contracts. What is that language? This rule requires people to "agree that neither we nor anyone else will rely on this agreement to stop you from being part of a class action case in court.

So the answer here, Mr. President, is not forced arbitration. Even existing arbitration clauses allow alternatives. The issue here is the CFPB’s effort to force dispute resolution into class action litigation.

Some people talked here tonight about how we are trying to stop access to the courtroom. Well, first of all, I think that argument is belied again by the CFPB’s own study that explicitly states that no class actions filed during the time period that the CFPB studied even went to trial. So this argument falls on its own face.

Meanwhile, let’s look again at what the difference between arbitration and forced class actions does. In arbitration, a decision on the merits was reached in 92 percent of the disputes filed, where, as I indicated, zero of the class action cases even went to trial. In addition, according to the CFPB’s own study, most arbitration agreements and consumer financial contracts contain a small claims court carve-out.

Given the methodological flaws in the CFPB’s study, it is difficult to make apples-to-apples comparisons about class action versus arbitration, but the Wall Street Journal’s editorial board made this observation:

Of the 562 class actions the CFPB studied, none went to trial. Most were dismissed by a judge, withdrawn by the plaintiffs or settled out of court.

I will conclude with just the numbers that we have already talked about many times tonight.

What is the comparison between arbitration and class action litigation? That is the issue tonight. What is the comparison? The average recovery for the class action that was chosen in class action case is $32. The average recovery in an arbitration is $5,389. It takes 2 years for the class action to take place; 5 months for the arbitration. In 12 percent of the class action matters did they even reach settlements. In 60 percent, they reached in arbitration. Attorneys’ fees: $424 million in class action cases; virtually no attorneys’ fees in arbitration cases.

The point here is exactly this: The debate today is not about who, but many would have you believe, over whether we are forcing arbitration. Even the arbitration clause in the current system creates options for consumers to go into small claims courts. The vote here tonight is whether to force dispute resolution into class action litigation, and that is what we need to decide with tonight’s vote.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. BROWN. Mr. President, the Vice President of the United States is here. Looks like Equifax and Wall Street and Wells Fargo will win again. The Vice President only shows up in this body when the rich and the powerful need him. It is pretty clear tonight that Wall Street needs him. This vote will make the rich richer. It will make the powerful more powerful.

Forced arbitration hurts the 3.5 million people who were defrauded by Wells Fargo. Forced arbitration hurts the 145 million Americans who were wronged by Equifax, 5 million in Ohio alone. It hurts employees who have been hurt by their employers. It hurts students who have been defrauded by for-profit colleges. It hurts family members in nursing homes. It hurts the millions of Americans with student loan debt and credit cards.

I will close with this. I want every voting Member of the Senate to look into the eyes of the American Legion veterans who say a vote to overturn the CFPB arbitration rule is a vote against our military and against our veterans. Vote no.

I yield back the time on our side.

Mr. CRAPO. Mr. President, I also yield back our time.

The PRESIDING OFFICER. All time is yielded back.

The joint resolution was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall the joint resolution pass?

Mr. BURR. I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. BOOZMAN). Is there a sufficient second? There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 50, nays 50, as follows:

[Rollcall Vote No. 249 Leg.]

YEAS—50

Alexander  
Barrasso  
Blunt  
Boozman  
Burr  
Capito  
Cassidy  
Collins  
Corker  
Cornyn  
Cotton  
Cruz  
Daines  
Enzi  
Ernst  
 Hamm  
Hirono  
Heitkamp  
Heinrich  
Hirono  
Kroenke  
Kloebuchar  
  
 NAYS—50

Alexander  
Barrasso  
Blunt  
Boozman  
Burr  
Capito  
Cassidy  
Collins  
Corker  
Cornyn  
Cotton  
Cruz  
Daines  
Enzi  
Ernst  
Hammer  
Hirono  
Heitkamp  
Hirono  
Kroenke  
Kloebuchar  

G AO OPINION LETTER ON 2016 TONGASS PLAN AMENDMENT

Ms. MURKOWSKI. Mr. President, I ask unanimous consent that a letter from the U.S. Government Accountability Office, GAO, dated October 23, 2017, be printed in the RECORD.


I wrote to GAO on February 13, 2017, asking it to determine whether the 2016 Tongass plan amendment constitutes a rule subject to the CRA. In response, as communicated in its letter of October 23, GAO determined that the plan amendment is a rule and does not fall within any of the exceptions provided in the CRA. Accordingly, with this GAO opinion and its publication in the CONGRESSIONAL RECORD, the rule will be subject to a congressional joint resolution of disapproval.

The letter I am now submitting to be printed in the CONGRESSIONAL RECORD is the original document provided by GAO to my office. I will also provide a copy of the GAO letter to the Parliamentarian’s office.

For those who may be interested, the 2016 Tongass Plan Amendment can be found online at https://www.fs.usda.gov/detail/tongass/landmanagement/?cid=stelprdr3301706. GAO’s determination can be accessed at http://www.gao.gov/products/B-238859.