EXTENSIONS OF REMARKS

PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF THE RULE SUBMITTED BY BUREAU OF CONSUMER FINANCIAL PROTECTION RELATING TO ARBITRATION AGREEMENTS

SPEECH OF

HON. KEITH ELLISON

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 25, 2017

Mr. ELLISON. Mr. Speaker, for far too long, people's legal rights have been limited by the use of forced arbitration clauses in contracts for consumer financial products and services. Forced arbitration clauses, also called mandatory pre-dispute clauses, prevent cheated or defrauded American consumers from going to court to challenge wrongdoing by big banks, cell phone providers, auto leasing and auto financing firms, credit repair, payday lenders, debt collectors and credit card companies. Most arbitration clauses for financial products also prohibit consumers from participating in class actions. Forced arbitration clauses have been opposed by conservatives and progressives.

Forced arbitration is a secret process where consumers seek redress at private firms chosen by the financial institution. This rigged system is why banks and lenders receive more than a million dollars per year paid out to them by their customers in forced arbitration, compared to just $86,216 returned to consumers. While advocates for the financial sector are correct that (sixteen) consumers recover an average of $5,400 in arbitration every year, they leave out the fact that banks and lenders receive an average award of $13,195 when they win—and they win 93 percent of the time. Indeed, a recent report found that consumers paid more restitution to Wells Fargo in arbitration than the other way around between 2009 and 2016, the prime years of its fake account scandal.

After years of effort, the Consumer Financial Protection Bureau finalized a rule restoring American consumers' right to join together in court when harmed by systemic and widespread misconduct in the financial marketplace. The rule does not eliminate forced arbitration, but it would make individual secret arbitration more transparent by publishing arbitration complaints and outcomes. It also permits class action lawsuits.

Instead of celebrating a rule that prevents financial interests from evading responsibility, Republicans seek to stop this rule under the Congressional Review Act (CRA). Today, they presented H.J. Res. 111.

It is a vote to prevent consumers from receiving adequate compensation for fraud, deceptive and predatory practices.

A vote for H.J. Res. 111 is a vote to deny Americans their constitutional right to access the legal process.

H.J. Res. 111 would protect companies like Wells Fargo that used arbitration clauses and class action bans to create fraudulent accounts, overcharge customers with debit fees and mortgages and avoid responsibility for misconduct. H.J. Res 111 would remove federal protections for members of the military from evictions and-repossessions while they are on active duty. And, H.J. Res. 111 would deny consumers the ability to get fair compensation for harm.

For those reasons, and more, we urge you reject a resolution that shields companies from responsibility for risky and illegal conduct.

Today is another example to show the American people just how much Republicans want to rig the system for the powerful. A vote FOR this resolution is a vote to rig the rules to take money from the pockets of the American people and put it into the pockets of the financial sector.

H.J. Res. 111 puts the profits of banks, student loan, car loan and mobile wireless providers, credit card companies, payday lenders, debt collectors over the fair treatment of the American people.

How?

For far too long, people's legal rights have been limited by the use of forced arbitration clauses in contracts for consumer financial products and services. Forced arbitration clauses, also called mandatory pre-dispute arbitration clauses, prevent cheated or defrauded American consumers from going to court to challenge wrongdoing.

If your bank opens a fake account in your name, if your student loan lender refuses to adjust your loan due to your loss of income, if your bank re-orders your debit transactions to maximize overdraft fees, it was frequently impossible for you to join with others to sue the bank as part of a class action.

But two weeks ago, the Consumer Financial Protection Bureau responded to demands from consumers and changed the rules to protect consumers. The Consumer Bureau told banks and lenders they cannot keep their customers out of court. Class action lawsuits must be allowed. And, the Consumer Bureau ended the secrecy that surrounds the arbitration courts. Companies must report court filings, arbitration filings and rulings.

The vast majority of the American people, consumer groups like the Consumer Federation of America, the Military Coalition, and even conservative groups oppose forced arbitration.

A vote AGAINST H.J. Res. 111 is a vote to allow people to receive adequate compensation for fraud, deceptive and predatory practices.

A vote AGAINST H.J. Res. 111 is a vote to give Americans their constitutional right to access the legal process.

Please join me in voting against H.J. Res. 111.

I include in the RECORD various statement of opposition to the joint resolution.

[From National Consumer Law Center, July 2017]

SUMMARY OF CFPB RULE ON FORCED ARBITRATION

The Consumer Financial Protection Bureau (CFPB) has issued a rule addressing the use of forced arbitration clauses in the fine print of financial contracts. The rule has two components:

1) Restores consumers' day in court and accountability when companies engage in widespread violations of the law. Contracts that have forced arbitration clauses will not be permitted to ban consumers from banding together by joining or bringing class actions involving consumer financial services.

2) Brings transparency to the secretive arbitration process. Companies that use forced arbitration in individual cases must report court filings, arbitration claims and rulings and other information to the CFPB (with identifying information redacted) so that the CFPB can study the impact of forced arbitration in individual cases.

The rule applies to the core consumer financial markets involving lending money, storing money, and moving or exchanging money. With some exceptions, the rule would cover most:

Loans and credit, including credit cards, payday loans, student loans, and auto loans (auto finance companies, not auto dealers, except some buy-here/pay-here dealers). Mortgages are already prohibited from having forced arbitration clauses. Providing leads, referrals, purchasing, selling and servicing credit are covered.

Bank accounts, prepaid cards, money transfer services and apps and remittances.

Credit reporting, credit scores, credit monitoring.

Credit repair, debt management, debt settlement, and debt relief services, including those that purport to avoid foreclosure. This includes debt relief involving. medical debt, taxes, and other kinds of debt even if not credit related.

Check cashing, check collection, check guaranty services.

Auto leases, but not auto dealers who assign their leases.

Debt collection and payment processing related to these products or services.

Mobile wireless providers that allow third party charges through the wireless bill.

Key areas that are not covered include:

Auto dealers (other than somebuy-here/pay-here dealers), such as claims related to discrimination, add-ons, lemon laws, odometer fraud, or deception about a car's history.

For:profit colleges and trade schools, unless the school directly makes loans.

Credit cards, bank accounts and other products begun before the rule goes into effect.

Services offered directly by governments or tribes to members within their jurisdiction. The rule does apply to tribal payday lenders who offer products off-reservation.

Investment products and services by entities regulated by the SEC.

Individuals and others who offer a product or service to 25 or fewer consumers a year.

Nonfinancial products and services, like nursing homes, cable/mobile providers (except for third party charges on bills), employers, or store payment plans that don't charge.

The rule applies to new contracts entered into 211 days after a final rule is published (likely Spring of 2018) and older contracts that are purchased or acquired after that date.

JULY 25, 2017.

Re OPPOSE H.J. Res. 111, Congressional Review Act resolution to repeal CFPB arbitration rule and block future reform of forced arbitration.

HOUSE OF REPRESENTATIVES,
Washington, DC.

DEAR REPRESENTATIVE: Americans for Financial Reform and Public Citizen write to urge your opposition to H.J. Res. 111, the resolution to repeal the Consumer Financial Protection Bureau (CFPB)'s arbitration rule under the Congressional Review Act (CRA) and block a similar future rule to protect consumers. This extreme legislative measure would harm the public by insulating bad actors from accountability when they systematically defraud consumers, and give lawbreakers a competitive edge in the marketplace as a result.

Based on five years of careful study and consideration mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, this rule is the result of a Congressional directive instructing the agency to restrict or ban forced arbitration if it found the practice harmful to consumers. The rule centers on two commonsense measures: 1) it restores the right of consumers to join together in court by prohibiting class action bans, ensuring consumers can hold banks accountable for widespread harm, and 2) it brings transparency to individual arbitration by publishing claims and outcomes with sensitive information redacted, ensuring banks can no longer cover up illegal behavior.

According to a 2016 poll conducted by Pew Charitable Trusts, nearly 90% of consumers want their right to join together in class action lawsuits restored. Indeed, more than 100,000 individual consumers across the country wrote in to support the rule during its public comment period, as did the Military Coalition, representing 5.5 million servicemembers. Two weeks ago, 310 consumer, civil rights, faith, and labor organizations wrote to support the final rule.

All available data supports the conclusion that class action lawsuits hold bad actors accountable and enable harmed consumers to be made whole. Without the option to join together, just 25 consumers with claims of less than $1,000 pursue arbitration each year. In contrast, class actions returned $2.2 billion to 34 million Americans between 2008 and 2012, after deducting attorneys' fees and court costs. An independent study conducted by a former clerk for Justice Scalia reached similar conclusions, finding ''even the harshest critics of consumer class actions would have to concede that the picture it paints is a fairly successful one.''

While bank lobbyists suggest that consumers recover more money in arbitration than class actions, these claims are misleading at best and brazenly dishonest at worst. Even with class action bans currently a widespread presence in customer contracts, available data shows consumers still recover $440 million more in class actions than arbitration every year, with nearly 7 million consumers receiving cash relief annually. Class actions also often result in injunctive relief and systemic reforms that benefit consumers who are not members of the class.

Big banks and lenders prefer forced arbitration precisely because the vast majority of consumers cannot and do not pursue claims in that forum. Though bank lobbyists loudly proclaim that consumers recover an average of $5,400 in arbitration, they neglect to mention that this number is based on just sixteen consumers per year who receive any relief in arbitration, across all fifty states. Because arbitration is so time and resource-intensive for consumers compared to class action lawsuits, the consumers that choose to pursue arbitration tend to have high-dollar claims backed by strong evidence—and even these sixteen consumers recover an average of just nine cents for every dollar claimed.

It is no wonder that the financial industry prefers arbitration when consumers receive a total of just $86,216 per year. If Wells Fargo had to pay $5,400 each to even a small percentage of the thousands of customers defrauded in its fraudulent account scandal, surely it would switch sides in this debate. But forced arbitration not only allows banks and lenders to keep millions in illegal profits, it affirmatively lines their pockets with large awards paid out by consumers.

The same study that found sixteen consumers recover a total of $86,216 in arbitration per year also found that banks and lenders receive more than a million dollars per year paid out to them by their customers in forced arbitration. While sixteen consumers recover an average of $5,400 in arbitration every year, banks and lenders receive an average award of $13,195 when they win—and they win 93% of the time. Indeed, a recent report found that consumers paid more restitution to Wells Fargo in arbitration than the other way around between 2009 and 2016, the prime years of its fake account scandal.

In addition to the high payouts banks and lenders receive in arbitration, the Wells Fargo scandal demonstrates how financial companies use secret arbitration proceedings to keep misconduct out of the public eye. After the CFPB led a $185 million enforcement action against the bank for opening as many as 3.5 million fraudulent accounts and credit cards, reports revealed that customers had been trying to sue Wells Fargo over fake accounts since at least 2013. Yet the bank's lawyers used arbitration clauses buried in the fine print of the customers' other legitimate account contracts to force allegations of fraud out of public court—and the bank continued to profit from its illegal scheme for years.

Finally, real-life experience shows that restoring consumer class action rights will not increase costs or decrease availability of credit. Consumers saw no increase in price after Bank of America, JPMorgan Chase, Capital One, and HSBC dropped their forced arbitration clauses as a result of court-approved settlements. Similarly, mortgage rates did not increase after Congress banned forced arbitration in the mortgage market.

The CFPB arbitration rule will ensure that bad actors cannot turn fraud into a viable profit model to the detriment of law abiding institutions, including the many community banks and credit unions that largely do not include arbitration clauses in their customer contracts. This new rule simply allows consumers to enforce rights deemed crucial by state and federal protections and increases accountability and transparency, making the financial system stronger and safer for all of us. We urge you to reject H.J. Res. 111 and allow this data-driven, commonsense rule to take effect.

Sincerely,

AMERICANS FOR FINANCIAL REFORM
& PUBLIC CITIZEN.

[From U.S. News and World Report, July 21, 2017]

THE GOP'S FOOLISH DECISION

(By Dean Clancy)

Those who support overturning the arbitration rule are on the same side as corporate wrongdoers and sexual harassers.

Minimizing ''lawsuit abuse'' has long been a GOP priority. But overturning the anti-forced arbitration regulation issued this week by Consumer Financial Protection Bureau, as congressional Republican leaders are reportedly rushing to do, would be a political and policy mistake.

Forced arbitration clauses waive a customer's right to sue a company in case of a dispute. The fine-print provisions can be found nowadays in seemingly every contract we agree to, and every app we download.

Business lobbyists defend the clauses as voluntary agreements that minimize ''lawsuit abuse'' by ''greedy'' class-action trial attorneys. But in reality, the clauses are often imposed on consumers without informed consent, and are increasingly being used to shield corporate wrongdoing.

The new rule protects Americans from the negative effects of forced arbitration clauses in a host of financial contracts, such as credit cards, bank accounts and payday loans. The clauses are already banned in mortgages and real estate.

News reports suggest the House may vote as soon as next week on a formal ''resolution of disapproval'' of the CFPB regulation, which was authorized by Congress in 2010, formally proposed in 2016 and finalized this week.

A resolution of disapproval enables Congress to kill a federal regulation within 60 legislative session days following its formal publication, by means of a quick up-or-down, simple-majority vote, with no chance of amendment or filibuster. If the regulation is disapproved by the House, the Senate and the president, it is dead and may not be reissued. This procedure has been used successfully to overturn fourteen regulations to date, all but one of them in the past six months.

Last week when CFPB announced the new rule, prominent Beltway Republicans cried foul: Rep. Jeb Hensarling of Texas, chairman of the powerful House banking committee, denounced the reg as a ''big, wet kiss'' to the trial lawyers. Sen. Tom Cotton of Arkansas vowed to kill the regulation swiftly.

The U.S. Chamber of Commerce urged Congress to kill not only this regulation, but every CFPB rule, on grounds the agency is unconstitutional and and therefore all of its actions are invalid.

The GOP would be terribly foolish to go down this road, for three reasons. Forced arbitration is: (1) unconscionable; (2) unconstitutional and (3) a big political loser.

1. Unconscionable. Here are some examples of the kind of behavior CFPB's reg is trying to prevent.

Wells Fargo Bank admitted its employees systematically created millions of sham bank accounts in its customers' names, and then in many cases fraudulently billed those same customers for fees and services they never agreed to. Executives of the megabank knew this was happening but did nothing. Then, they decided to blame 5,300 ''rogue employees, who were summarily fired. Now, to ward off thousands of lawsuits, the company is hiding behind binding arbitration clauses in its victims' contracts.

Roger Ailes, the now-deceased executive of Fox News, was accused, before his death, by multiple female employees of sexual harassment. To keep the women's allegations out of court, and to forestall a long line of past accusers from taking the witness stand, he invoked clauses in his employees' hiring contracts requiring any disputes be handled through a private, highly secretive arbitration process.

Military readiness has been negatively affected by unscrupulous payday lenders who prey on military servicemembers and veterans. The victims become overly indebted thanks to exorbitant interest rates and hidden fees they don't understand, and then find themselves unable to obtain relief thanks to forced-arbitration clauses. Because of this,

the Military Coalition, which represents nearly 6 million uniformed service members, veterans and their families, has formally petitioned Congress to ban the clauses.

2. Unconstitutional. Question: If binding arbitration clauses are so bad, why are they so common? Because a series of Supreme Court rulings (the most recent one in May) have effectively overturned the traditional common-law understanding of arbitration. In past centuries, arbitration was understood as a voluntary option that is fair only when both parties are of roughly equal bargaining power or else have agreed to it freely after a dispute has arisen.

In lieu of that reasonable understanding, the Court has substituted a doctrinaire ''right of contract'' that allows a powerful party to effectively force a weaker party to waive his or her constitutional right to sue, before a dispute has arisen and often without informed consent. This transformation defies common sense and severely weakens Americans' Seventh Amendment right to a jury trial.

Today, arbitration has devolved into a private star-chamber that's stacked in favor of the accused corporation—which, unsurprisingly, usually wins.

Is the CFPB itself unconstitutional? Yes, in my opinion. But so is forced arbitration. And Congress has a duty to protect our right to a jury trial.

Instead of lashing out at the agency by overturning this regulation, Congress should do the right thing and amend the Federal Arbitration Act to make binding arbitration agreements truly voluntary for all Americans, as the Constitution requires. Having done so, it could then, at its leisure, reform (or, as I would prefer, abolish) the controversial agency.

3. A Political Loser. Those who vote to overturn the CFPB regulation will be placing themselves on the side of accused sexual harassers, corporate wrongdoers and unscrupulous payday lenders who exploit our troops.

If Republicans are politically sensible—or just have an ounce of self-respect—they'll take the high road and let this reasonable rule stand.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2018

SPEECH OF

HON. SUZANNE BONAMICI

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 26, 2017

The House in Committee of the Whole House on the state of the Union had under consideration the bill (H.R. 3219) making appropriations for the Department of Defense for the fiscal year ending September 30, 2018, and for other purposes:

Ms. BONAMICI. Mr. Chair, I rise today in strong opposition to H.R. 3219, the Make America Secure Appropriations Act. I am deeply disappointed that this bill includes an indefensible $1.6 billion for the President's so-called border wall. It also violates the bipartisan Budget Control Act (BCA) spending caps, strips a long-overdue provision to sunset the 2001 Authorization for Use of Military Force (AUMF), and bars any efforts to close Guantanamo Bay.

H.R. 3219 includes Fiscal Year 2018 funding for the Legislative Branch, the Veterans' Affairs Department, the Department of Defense, and Energy and Water programs at the Department of Energy and Department of the Interior. Although I have many concerns with the bill, I am pleased that it increased funding for the Army Corps of Engineers, including funding for the Harbor Maintenance Trust Fund, which will help dredge and maintain Oregon ports. I am also grateful that a bipartisan amendment that I championed with Rep. SCOTT PERRY to increase funding for the Water Technologies Office at the Office of Energy Efficiency and Renewable Energy (EERE) was adopted. This will allow Oregon State University to continue their cutting-edge research and development of sustainable hydropower, pumped storage, and marine energy. I am deeply concerned, however, that the bill reduces overall EERE funding and eliminates the Advanced Research Project Agency–Energy (ARPA–E) program. I also do not support the inclusion of harmful policy riders that prevent implementation of National Oceans Policy protections and authorize the withdrawal of the Waters of the United States rule.

I am supportive of provisions in the bill that uphold our commitment to our nation's veterans. The bill provides robust funding for Medical and Prosthetic Research, and prioritizes funding to hire needed doctors, nurses, and medical staff at VA medical centers. Additionally, the bill addresses the ongoing disability claims backlog by requiring regional offices to report on processing performance and remediation efforts.

Unfortunately, the bill also included $1.6 billion to fund parts of President Trump's border wall, a waste of money that will not secure the border and will have long lasting humanitarian, diplomatic, and environmental consequences. The bill also appropriates Defense spending at $621 billion, which is $72 billion above the BCA caps. Without a fix to the caps, this funding level would trigger a mandatory 13.2 percent cut in all defense accounts. This reckless cut is irresponsible. Finally, the bill was stripped of a provision to sunset the 2001 Authorization for Use of Military Force (AUMF), which has been used for more than 15 years to justify ongoing military actions overseas. It is long past time for Congress to reassert our authority and responsibility to debate matters of military force. The Majority's decision to remove this provision—which passed out of the Appropriations Committee with broad bipartisan support—shows a disregard for our duties and the legislative process. Additionally the bill bars any funds from being used to close the detention center at Guantanamo Bay, or to transfer detainees. For those reasons, I am strongly opposed to H.R. 3219 and urge my colleagues to vote no.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2018

SPEECH OF

HON. RON KIND

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 26, 2017

The House in Committee of the Whole House on the state of the Union had under consideration the bill (H.R. 3219) making appropriations for the Department of Defense for the fiscal year ending September 30, 2018, and for other purposes:

Mr. KIND. Mr. Chair, I will vote against H.R. 3219, the Make America Secure Appropriations Act, because it is not a responsible way to spend taxpayer money. The bill blows through the spending limits in the Budget Control Act. Responsible governing means making hard choices and spending taxpayer money wisely. This bill did not serve either of those goals.

I am particularly concerned about the $1.57 billion included in this bill to pay for the border wall between the United States and Mexico. For that much money, we could pay for over 94,000 students to get their four-year degrees at a UW-System school. Instead, we are spending that money on a project that will only balloon in price and cost even more to maintain. We need to make smart decisions about how to spend our limited resources. We should be investing in ourselves.

There are plenty of opportunities to pay for important defense priorities by eliminating waste in the Defense Department. In January of 2015, the non-partisan Defense Business Board released a report outlining opportunities for reform that would save $125 billion in defense spending. That report is now collecting dust. That is money we could be spending on important defense priorities like troop readiness, training, and equipment. This spending bill is another missed opportunity at reform.

Despite voting against the bill, I was happy to see $55 million provided to the VA to implement the Jason Simcakoski PROMISE Act. The funding will assist in increasing programs to help medical professionals and patients understand the risks associated with pain medication and examine alternative treatments. This will help address the opioid epidemic and give veterans and their families the tools they need and the accountability they deserve.

I understand how important it is to provide ample support for our military, which is why I recently voted in favor of the National Defense Authorization Act. Supporting the brave men and women who defend this nation is of paramount importance. We should not be inserting partisan riders into bills that should be bipartisan. I will continue to work with my colleagues to support our military and pursue fiscally responsible policies that invest in Americans.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2018

SPEECH OF

HON. EARL BLUMENAUER

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 27, 2017

The House in Committee of the Whole House on the state of the Union had under consideration the bill (ER. 3219) making appropriations for the Department of Defense for the fiscal year ending September 30, 2018, and for other purposes:

Mr. BLUMENAUER. Mr. Chair, I will vote against H.R. 3219, the Department of Defense Appropriations Act for Fiscal Year 2018, also ironically named the, ''Make America Secure Appropriations Act'' (Roll no. 435). I commend House appropriators for their work on this bill and realize that putting it together was no easy task. However, due to several poison pill provisions and deep budgetary issues, I could not support it.

Most concerning, the bill contains $1.6 billion in funding to begin construction of a wall