



## ISSUE UPDATE

**DATE:** October 28, 2017  
**TO:** Concerned Parties  
**FROM:** Hilary O. Shelton, Director, Washington Bureau

### **U.S. SENATE VOTES TO KILL NAACP-SUPPORTED RULE ALLOWING CONSUMERS TO SUE BANKS AND OTHER FINANCIAL SERVICERS FOR MISCONDUCT WITH VP PENCE CASTING THE DECIDING VOTE**

#### **THE ISSUE:**

“Forced arbitration” (also known as “mandatory arbitration” or the more innocuous “dispute resolution mechanism”) is a procedure used by many companies which, as a condition of using their products (everything from cell phone contracts to credit cards to nursing home services), require a consumer to first agree not to sue for any reason, not to participate in a class action lawsuit, and not to appeal a decision by an “arbiter,” regardless of any mitigating circumstances. “Forced arbitration” requires that if a customer has a grievance, he or she must use an “arbiter” of the company’s choosing to mitigate the problem thereby eliminating the option to seek legal redress. Most Americans have never noticed that they are agreeing to “forced arbitration” as it is usually buried in the fine print of terms of an agreement or contracts, utilizing confusing legal terminology. In short, by signing a contract and agreeing to the fine print, a consumer often agrees not to sue a company ever, regardless of how egregious the company’s actions may be.

Many companies require customers to sign forced arbitration clauses so they can avoid lawsuits including those alleging discrimination, harassment, abuse, or gross misconduct. In one classic example, several individuals threatened to sue a major bank because they had discovered that accounts had been opened in their name without their knowledge or approval. Because these customers had signed a contract with a forced arbitration clause prior to opening their initial account, however, they could not sue the company, or join with the other estimated 3.5 million Americans in a class action suit against the company.

The impact of forced arbitration is huge. Class action lawsuits, which are usually banned by forced arbitration provisions, are brought on behalf of everyone harmed, with the assistance of just one lawyer or law firm. Thus, even those who cannot afford an attorney can recoup their losses and damage. In an average year, 6.8 million consumers receive a settlement from class action cases, while only 16 do so from arbitrations. Furthermore, because — unlike arbitrations — class action lawsuits are public, they reveal wrongdoing that would otherwise remain hidden.

On July 10, 2017, the Consumer Financial Protection Bureau (CFPB) issued a rule, which was strongly supported by the NAACP, which said that companies involved in financial services could no longer use forced arbitration. This rule covered financial services companies such as banks (including those which offered checking accounts and other similar accounts), credit cards, and credit reporting services. The rule was scheduled to go into effect in March 2018.

Sadly, on July 25, 2017, the US House of Representatives passed, by a margin of 231 yeas to 190 nays, a bill to repeal the CFPB rule. The Senate approved identical legislation on October 24, 2017, by a vote of 51 yeas to 50 nays (Vice President Pence was on hand to cast the tie-breaking vote, thus securing passage of the bill), and President Trump has said he will quickly sign the bill into law, thus repealing the anti-forced arbitration rule.

**SEE HOW EACH SENATOR VOTED ON THE NEXT PAGE**

## H. J. Res. 111 / Senate vote #249

Legislation which nullifies a rule submitted by the Consumer Financial Protection Bureau (CFPB) regarding arbitration agreements.

*The legislation passed the US Senate by a vote of 51 yeas to 50 nays on October 24, 2017*

**The NAACP opposed the legislation.**

|                           |   |                             |   |                              |   |                             |   |
|---------------------------|---|-----------------------------|---|------------------------------|---|-----------------------------|---|
| <b><u>ALABAMA</u></b>     |   | <b><u>INDIANA</u></b>       |   | <b><u>NEVADA</u></b>         |   | <b><u>TENNESSEE</u></b>     |   |
| Shelby                    | ▽ | Young                       | ▽ | Cortez Mastro                | ▲ | Alexander                   | ▽ |
| Strange                   | ▽ | Donnelly                    | ▲ | Heller                       | ▽ | Corker                      | ▽ |
| <b><u>ALASKA</u></b>      |   | <b><u>IOWA</u></b>          |   | <b><u>NEW HAMPSHIRE</u></b>  |   | <b><u>TEXAS</u></b>         |   |
| Sullivan                  | ▽ | Grassley                    | ▽ | Hassan                       | ▲ | Cruz                        | ▽ |
| Murkowski, L.             | ▽ | Ernst                       | ▽ | Shaheen                      | ▲ | Cornyn                      | ▽ |
| <b><u>ARIZONA</u></b>     |   | <b><u>KANSAS</u></b>        |   | <b><u>NEW JERSEY</u></b>     |   | <b><u>UTAH</u></b>          |   |
| McCain                    | ▽ | Moran                       | ▽ | Booker                       | ▲ | Hatch                       | ▽ |
| Flake                     | ▽ | Roberts                     | ▽ | Menendez                     | ▲ | Lee                         | ▽ |
| <b><u>ARKANSAS</u></b>    |   | <b><u>KENTUCKY</u></b>      |   | <b><u>NEW MEXICO</u></b>     |   | <b><u>VERMONT</u></b>       |   |
| Boozman                   | ▽ | McConnell                   | ▽ | Udall, Tom                   | ▲ | Leahy                       | ▲ |
| Cotton                    | ▽ | Paul                        | ▽ | Heinrich                     | ▲ | Sanders (Independent)       | ▲ |
| <b><u>CALIFORNIA</u></b>  |   | <b><u>LOUISIANA</u></b>     |   | <b><u>NEW YORK</u></b>       |   | <b><u>VIRGINIA</u></b>      |   |
| Feinstein                 | ▲ | Cassidy                     | ▽ | Schumer                      | ▲ | Warner                      | ▲ |
| Harris                    | ▲ | Kennedy                     | ▲ | Gillibrand                   | ▲ | Kaine                       | ▲ |
| <b><u>COLORADO</u></b>    |   | <b><u>MAINE</u></b>         |   | <b><u>NORTH CAROLINA</u></b> |   | <b><u>WASHINGTON</u></b>    |   |
| Gardner                   | ▽ | King (independent)          | ▲ | Burr                         | ▽ | Murray                      | ▲ |
| Bennet                    | ▲ | Collins                     | ▽ | Tillis                       | ▽ | Cantwell                    | ▲ |
| <b><u>CONNECTICUT</u></b> |   | <b><u>MARYLAND</u></b>      |   | <b><u>NORTH DAKOTA</u></b>   |   | <b><u>WEST VIRGINIA</u></b> |   |
| Blumenthal                | ▲ | Cardin                      | ▲ | Heitkamp                     | ▲ | Manchin                     | ▲ |
| Murphy                    | ▲ | Van Hollen                  | ▲ | Hoeven                       | ▽ | Capito                      | ▽ |
| <b><u>DELAWARE</u></b>    |   | <b><u>MASSACHUSETTS</u></b> |   | <b><u>OHIO</u></b>           |   | <b><u>WISCONSIN</u></b>     |   |
| Coons                     | ▲ | Warren                      | ▲ | Portman                      | ▽ | Baldwin                     | ▲ |
| Carper                    | ▲ | Markey                      | ▲ | Brown                        | ▲ | Johnson                     | ▽ |
| <b><u>FLORIDA</u></b>     |   | <b><u>MICHIGAN</u></b>      |   | <b><u>OKLAHOMA</u></b>       |   | <b><u>WYOMING</u></b>       |   |
| Nelson                    | ▲ | Peters                      | ▲ | Inhofe                       | ▽ | Enzi                        | ▽ |
| Rubio                     | ▽ | Stabenow                    | ▲ | Lankford                     | ▽ | Barrasso                    | ▽ |
| <b><u>GEORGIA</u></b>     |   | <b><u>MINNESOTA</u></b>     |   | <b><u>OREGON</u></b>         |   | ** Pence                    | ▽ |
| Perdue                    | ▽ | Klobuchar                   | ▲ | Wyden                        | ▲ |                             |   |
| Isakson                   | ▽ | Franken                     | ▲ | Merkley                      | ▲ |                             |   |
| <b><u>HAWAII</u></b>      |   | <b><u>MISSISSIPPI</u></b>   |   | <b><u>PENNSYLVANIA</u></b>   |   |                             |   |
| Hirono                    | ▲ | Cochran                     | ▽ | Toomey                       | ▽ |                             |   |
| Schatz                    | ▲ | Wicker                      | ▽ | Casey                        | ▲ |                             |   |
| <b><u>IDAHO</u></b>       |   | <b><u>MISSOURI</u></b>      |   | <b><u>RHODE ISLAND</u></b>   |   |                             |   |
| Risch                     | ▽ | Blunt                       | ▽ | Reed, Jack                   | ▲ |                             |   |
| Crapo                     | ▽ | McCaskill                   | ▲ | Whitehouse                   | ▲ |                             |   |
| <b><u>ILLINOIS</u></b>    |   | <b><u>MONTANA</u></b>       |   | <b><u>SOUTH CAROLINA</u></b> |   |                             |   |
| Durbin                    | ▲ | Daines                      | ▽ | Graham                       | ▲ |                             |   |
| Duckworth                 | ▲ | Tester                      | ▲ | Scott                        | ▽ |                             |   |
|                           |   | <b><u>NEBRASKA</u></b>      |   | <b><u>SOUTH DAKOTA</u></b>   |   |                             |   |
|                           |   | Sasse                       | ▽ | Rounds                       | ▽ |                             |   |
|                           |   | Fischer                     | ▽ | Thune                        | ▽ |                             |   |

\*\* The Vice President, as President of the Senate, only votes when he or she is needed to break a tie.

### VOTE KEY

▲ = Voted in support of the NAACP position and in opposition to final passage of HJRes 111

▽ = Voted against the NAACP position and in support of final passage of HJRes 111

**MEMBERSHIP IS POWER! JOIN THE NAACP TODAY.**

For more information, call your local NAACP branch or visit [www.naacp.org](http://www.naacp.org)