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Hail To The Corporatocracy!

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By Alexander Schmidt

I planned to write on the constitutionality of forced arbitration clauses this week, but something related intervened, which helps explain why forced arbitration is dangerous to our democracy.

It's clear who Congress represents –

Last week, through Vice President Pence's tie-breaking 51-50 vote (with all 48 Democrats opposing), the U.S. Senate revoked a Consumer Financial Protection Bureau rule that would have prevented banks, credit card companies and other financial institutions from using forced arbitration clauses to stop their customers

from banding together to fight those institutions in class action lawsuits or class arbitrations. Such forced arbitration clauses, which compel citizens to litigate their disputes with banks alone in a private room, before individuals usually selected by the banks instead of judges or juries, will now remain commonplace.

and it's not consumers.

This is a boon for the banks and a debacle for every American citizen who uses financial services. Both the CFPB itself and its now dead anti-arbitration rule arose in the aftermath of the 2008 financial sector meltdown that almost led to a second Great Depression. In 2010, Congress passed the Dodd-Frank act to try to prevent the then largely deregulated financial industry from again letting its greed run amok to the point of destroying the entire economy. Thanks mostly to now-Massachusetts Senator Elizabeth Warren, Congress created the CFPB to protect everyday consumers from financial institutions' profiteering excesses.

The Dodd-Frank law directed the CFPB to research whether consumers' disputes with banks are best resolved by individual arbitration or by class actions, and authorized the CFPB to issue an anti-forced arbitration rule if it served consumers. The CFPB spent three years studying the issue, assembling reams of data. It ultimately issued an 800-page report finding that consumers were protected by class actions and harmed by forced arbitration.

The CFPB found that only 1,060 arbitrations were filed against financial service providers in 2010 and 2011 because most people forced to sue big institutions individually drop their claims rather than go to the trouble and expense of suing over a few thousand dollars or less. In the few arbitrations that did proceed, bank customers recovered a combined total of only $385,000, and they were ordered to pay banks $2.8 million.

During the same two years, 34 million consumers benefited from class actions against banks. They recovered $1.1 billion and were ordered to pay banks $0. Not to mention that the customers who banded together in class actions were often able to stop guilty banks from continuing to cheat their customers, while individuals who win arbitrations cannot stop banks from swindling other people.

Despite that evidence, and despite recent scandals like Wells Fargo's creation of millions of fake accounts to steal excess fees, Equifax's exposing 140 million people's social security numbers and other personal data to hackers bent on identity theft, and countless instances where financial institutions needing to "make their numbers" or greedy for profits stole a little bit from millions of customers through hidden fees, phony overdraft charges and other means, Republicans in Washington have now prevented Americans from using strength in numbers – class actions or class arbitrations – against banks to recover their losses and deter future wrongdoing.

How do they justify that? By accepting with a-wink-and-a-nod the banks' easily disproved arguments that the CFPB's

study was “flawed” and that individual arbitration is really “better for consumers” than class actions are. Listening to the banks saying what’s “best for consumers” for resolving their disputes against those banks is like listening to a fox saying it’s better for the chickens to roam free in the woods than stay sheltered in the coop. Or like believing an abuser knows what’s best for his victim.

Every consumer rights organization in the country abhors forced arbitration. Congress should listen to consumers about what’s best for consumers, not to their adversaries.

But doing the bidding of the corporate foxes and wolves instead of everyday Americans is what most Republican officials in Washington do every day, no matter how absurd the corporations’ arguments or how great the harm to consumers and workers.

The “populist” Trump, who conned voters into believing he had average Americans’ best interests at heart and pledged to “drain the swamp,” has of course sided with the banks, which along with other corporate special interests have lobbied heavily for years against any effort to ban them from using forced arbitration. A New York Times editorial chastising the Senate’s pro-forced arbitration vote provides a litany of Trump’s actions siding with the swamp over the people. https://www.nytimes.com/2017/10/25/opinion/republicans-silence-trump.html?ref=todayspaper. Trump and his Republican cohorts are transforming our democracy into a corporatocracy. “We the People” is becoming “We the Large Corporations.”

Can the Constitution save us from forced arbitration? Maybe. But if not, …

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