

# US Senate votes to protect financial giants from consumer lawsuits

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**26 October 2017**

The US Senate voted Tuesday night to repeal a rule issued by the Consumer Financial Protection Bureau that barred financial institutions from using arbitration clauses to stop consumers from filing class action lawsuits if they have been swindled or otherwise harmed by the banks.

The 51-50 vote came with Vice President Mike Pence breaking a tie. Two Republicans, Lindsey Graham of South Carolina and John N. Kennedy of Louisiana, joined all 48 Democrats to oppose the bill. The 50 Republicans who backed the legislation included all three of the senators who have made vociferous criticisms of President Donald Trump in the past week: John McCain and Jeff Flake of Arizona, and Bob Corker of Tennessee.

The vote was taken under provisions of the Congressional Review Act, which allows a majority of both houses of Congress to overturn a regulation issued by an executive branch agency within 60 legislative days of its adoption.

The CFPB, which is headed by Obama appointee Richard Cordray, issued the rule July 20, and the House of Representatives voted five days later, by 231-190, to overturn it. Senate action was delayed repeatedly as the Republican leadership scrambled to prevent more than two defections, thus allowing Pence to cast the tiebreaking vote. The repeal now goes to President Trump for his promised signature.

The legislation is a green light for financial swindlers. In the wake of the 2008 Wall Street Crash, and the flood of consumer lawsuits it provoked over various forms of misrepresentation and fraud by banks and other financial institutions, the corporations used clauses inserted in the fine print of contracts for credit cards, auto, payday and student loans, and other financial products, to force consumers into arbitration

rather than going to court.

The Supreme Court upheld the use of arbitration clauses to protect companies from class action suits, even in cases of egregious misconduct, in its decisions in *AT&T Mobility v. Concepcion* (2011) and *American Express Co. v. Italian Colors Restaurant* (2013). Both decisions saw a narrow five-member conservative majority of Justices Scalia, Alito, Thomas, Roberts and Kennedy backing the financial institutions.

The CFPB, set up in 2010 under terms of the Dodd-Frank bill, conducted a protracted study of the use of arbitration clauses, finding that very few consumers who felt they had been cheated would make use of arbitration, since the process yielded few penalties on the financial flimflam artists.

Of thousands of cases, only 78 arbitration claims resulted in a derisory \$400,000 in total relief to consumers, compared to billions in restitution won through more than 400 class action lawsuits or settlements agreed on by the banks in response to the threat of such suits. Attorney fees averaged 18 percent of the money recovered in lawsuits.

“Every group that represents consumers was strongly against the bill,” Paul Bland, a representative of the consumer group Public Justice, told the press. “This was the Wells Fargo immunity act. It’s essentially a bailout for those companies.”

The Trump White House issued a press release hailing the Senate action in terms that can only be called Orwellian, declaring, “Congress is standing up for everyday consumers,” when the direct opposite is the case: Congress is standing up for those who profit from the fleecing of everyday consumers.

Two federal agencies under the control of Trump administration appointees, the Treasury Department and the Office of Comptroller of the Currency, issued

reports earlier this week denouncing the action by the CFPB, which is run by Obama administration holdover Cordray, who serves a fixed term until July 2018 and cannot be removed by Trump except for gross misconduct.

“Tonight’s vote is a giant setback for every consumer in this country,” Cordray, said in a statement. “As a result, companies like Wells Fargo and Equifax remain free to break the law without fear of legal blowback from their customers.”

While criticizing the action, Cordray is expected to quit his post at the CFPB soon to seek the Democratic nomination for governor of Ohio in 2018. This will allow Trump to name his successor, which means the effective end to even the current extremely limited enforcement of consumer protection rules.

The congressional action is worth billions, perhaps even tens of billions, to giant Wall Street financial institutions like Wells Fargo, which created tens of thousands of dummy accounts for customers and billed them for it, and Equifax, which exposed the personal and credit information of an estimated 150 million Americans.



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