

Supreme Court's arbitration ruling is another blow to consumer rights

The Supreme Court has again ruled in favor of arbitration, rather than class-action lawsuits, as a preferred method for resolving issues between companies and their customers

(Alex Brandon / Associated Press)



[David Lazarus](#) Contact Reporter

The [U.S. Supreme Court](#) made clear this week that, regardless of what the Constitution says about a consumer's right to sue, businesses are absolutely entitled to block people from banding together and taking a dispute to court.

It was the [court's latest ruling](#) in favor of arbitration, rather than class-action lawsuits, as a preferred method for resolving issues between companies and their customers — which is exactly how the business world wants it.

Mandatory arbitration overwhelmingly favors business interests, consumer advocates say, and prevents people from closing ranks to challenge unfair fees and conditions.

"With forced arbitration, big business writes all the rules," said Christine Hines, legislative director for the National Assn. of Consumer Advocates. "It shields companies from being held accountable for bad practices."

In a 6-3 ruling, the Supreme Court said this week that a class-action lawsuit over early-termination fees filed in California against satellite provider DirecTV couldn't go forward.



[Supreme Court says binding arbitration clauses in consumer contracts trump California law](#)

The California Supreme Court ruled in 2005 that forcing people to arbitrate disputes was "unconscionable" and shouldn't be enforced. But the U.S. Supreme Court ruled in 2011 that national law trumps state law, so the Federal Arbitration Act of 1925 has the last word on the issue.

In this week's ruling, the court addressed a portion of DirecTV's customer contract that required arbitration for dispute settlement unless the "law of your state" made such a waiver unenforceable.

A California appeals court said last year that the meaning of DirecTV's provision was clear enough: Since the state already had decided that mandatory arbitration was unacceptable, the company had no business telling Californians that they couldn't sue.

Au contraire, the Supreme Court countered this week.

"The Federal Arbitration Act is a law of the United States," said Justice [Stephen G. Breyer](#), writing for the majority. "The court's 2011 decision was "an authoritative interpretation of that act," he said. "Consequently, the judges of every state must follow it."

In a dissent, Justice [Ruth Bader Ginsburg](#) said the court's decisions upholding mandatory arbitration "have predictably resulted in the deprivation of consumers' rights to seek redress for losses."

She said the rulings "have insulated powerful economic interests from liability for violations of consumer protection laws."

Here's the thing: There's nothing wrong with arbitration per se. In certain circumstances, consumers undoubtedly will find the process faster and easier than going to court.

The problem, consumer advocates say, is when mandatory arbitration is foisted on people on a take-it-or-leave-it basis. That is, accept arbitration as your sole remedy or you can't have this credit card or that cable package.

A 2007 report by Public Citizen found that over a four-year period, arbitrators ruled in favor of banks and credit card companies 94% of the time in disputes with California consumers. Arbitrators' fees typically are paid by the business involved in a disagreement.

A DirecTV spokesman said this week's ruling "affirms the strong federal policy favoring arbitration agreements that efficiently allow consumers and businesses to resolve disputes without further burdening our overloaded courts."

And I'm sure consumers would agree were it not for the fact that businesses file four times as many lawsuits as individuals, according to the advocacy group Public Citizen. They're the ones, in other words, overloading the courts.

Moreover, it's hard to imagine any company giving up its own right to sue another company in a business dispute. When it comes to mandatory arbitration, businesses clearly believe this should apply to customers but not to them.

"The Supreme Court has taken away Americans' only right to obtain justice: their day in court," said Harvey Rosenfield, founder of Consumer Watchdog in Santa Monica. "The more the U.S. Supreme Court allows big corporations to evade accountability, the less confidence Americans have in the judicial branch and the rule of law."

Scott Nelson, a lawyer with Public Citizen, said the high court has carefully sidestepped the Constitution's 7th Amendment, which states that "the right of trial by jury shall be preserved." The court instead has focused on the question of whether federal law comes before state law.

This is what attracted a strange-bedfellows majority of Chief Justice [John G. Roberts Jr.](#), [Antonin Scalia](#), [Anthony M. Kennedy](#), [Samuel A. Alito Jr.](#) — and Breyer and [Elena Kagan](#), members of the court's liberal wing. They united in defending the principle of federal preemption.

"The problem is that consumers aren't offered a fair deal," Nelson said. "They agree to arbitrate or they don't receive the service."

There are legislative reforms on the table. Sen. Al Franken (D-Minn.) has spearheaded efforts to eliminate forced arbitration from all consumer contracts and employment agreements.

His legislation has gained more co-sponsors in recent weeks, but with Republicans in control of Congress, no one expects an arbitration-reform bill to become law any time soon. Apparently the 7th Amendment isn't as sacrosanct among conservatives as the 2nd Amendment.

Regulatory changes are more likely. The [Consumer Financial Protection Bureau](#) is considering a ban on mandatory-arbitration provisions in contracts for credit cards and other financial services. The Centers for Medicare and Medicaid Services is looking at a similar prohibition for nursing-home contracts.

Perhaps it's time for the Federal Communications Commission to go down the same road with wireless, cable and other telecom contracts.

Hines at the National Assn. for Consumer Advocates is hopeful that as more consumers become aware of how they're being denied a Constitutional right, calls will grow for lawmakers to act.

"It's a very gradual process," she said. "But I think there are more members of Congress interested in making a change."

Just don't look to the Supreme Court for help. We know where it stands.