Opening Statement of Chairman Sherrod Brown
Hearing on "Examining Mandatory Arbitration in Financial Service Products"
March 8, 2022

The Banking, Housing, and Urban Affairs Committee will come to order.

Today's hearing is in hybrid format.

Last Thursday, President Biden signed the "Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act" – a bipartisan bill to stop corporations from denying their workers the choice to sue perpetrators of sexual assault and harassment in the workplace.

Until now, employers could force victims of sexual assault to resolve matters through so-called arbitration – on the employers' terms – rather than through our justice system. That was wrong. This is an important workplace reform that will make companies more accountable and make workers safer.

Mandatory arbitration or forced arbitration is a powerful tool that big corporations use to take away people's choices, and to make it easier for them to scam customers and workers, and get away with it.

Forced arbitration takes away consumers' rights and gives more power to corporations.

In many financial services contracts, corporations will hide an innocent-looking clause in the fine print, language stipulating that disputes between customers and companies must go through arbitration.

Almost all of us have signed contracts with these clauses in them. We sign them without even thinking about what it means. But if we do think about it, we often wouldn't have a choice – if we didn't sign, we're denied a loan or access to a bank account.

Without even realizing it, Americans are signing away their rights to hold companies accountable when they overcharge you or they defraud you, like opening up two accounts in your name without your knowledge.

And by signing these contracts—which are required to get access to a bank account or a credit card or other services—consumers often unknowingly sign away their rights to choose what is best for them – which might be a day in court or might be arbitration or mediation.

Studies have shown consumers do not understand what they're signing away in these agreements.

And that's not because we aren't smart enough – it's because corporations' high-priced lawyers write up one-sided contracts with pages and pages of confusing language to hide their forced arbitration clauses.

That's not a fair contract.

But it is a great set-up for big companies. Sign on the dotted line and hand over your rights to us, or you don't get that bank account or service you need.

Corporations even write these arbitration clauses so they can hand pick the arbitrator, who works behind closed doors.

Corporations know what they are doing – they choose the venue and the referee. That's what we call gaming the system.

No wonder they keep winning these closed-door arbitrations – when you write the rules, the system works great for you.

Look at what happened to an Ohioan from Lake County. He got trapped in a predatory business scheme by a company that claimed to help consumers like him manage their debt. Instead, they defrauded him.

In 2009, he signed a contract to enter into a debt relief program. The entire agreement was completed in 12 minutes, and included a forced arbitration clause.

For the next six months, the company charged him over $1,500 in fees – but most of it was going to the debt relief company, and not to his creditors. He was even sued by one creditor because the company failed to pay them.

He ended up paying more in fees than the amount permitted by law.

So he did what any of us would do – he sued. And he was not alone – the company had been scamming other people too, and they joined together to try to get their money back.

Despite having all of the facts on their side, a federal district court dismissed the suit and upheld the arbitration clause in the contract, letting the company hide behind it – and get off scot free.

All he wanted was to bring this issue to light and get some kind of compensation for himself and the other people who'd been scammed. But he was denied justice because the company buried this clause in the fine print of a contract that he had just 12 minutes to understand.

His story is all too common. State attorneys general have brought dozens of actions against similar companies, trying to hold them accountable for defrauding consumers.

Take another example – Valerie Perry, whose husband Robert is a coal miner in West Virginia. He was out of work for some time and relied on credit to get by.

Citibank decided to sue him in court for the credit card debt, but Mr. Perry realized that Citibank was violating West Virginia law for its abusive debt collection efforts.

Citibank was happy to pursue its case in court before a judge when it wanted to get paid.

But when Mr. Perry sued them back to hold the big bank accountable for breaking the law, Citibank forced the case into arbitration. It went on for 10 years – ten years – and went all the way to the West Virginia Supreme Court.

And I'm sure you can guess what happened. Citibank won. They pretty much always do.

Mrs. Perry called the arbitration, "a nightmare that was never ending."

According to an Economic Policy Institute report, when corporations take consumers to arbitration, the company wins 93 percent of the time.

But when consumers go to arbitration to try to get some kind of restitution from a company, they win just 9 percent of the time.

93 percent versus 9 percent.

And no one is surprised. Americans know that corporations play by their own set of rules.

And when corporations win these rigged, one-off individual consumer cases settled behind closed doors, they're able to hide patterns of bad behavior from the public.

If Wells Fargo hadn't snuck forced arbitration clauses into its contracts, maybe regulators and law enforcement officials could have discovered the bank's illegal account opening practices earlier, saving consumers thousands of dollars and massive headaches.

But if you know you'll never pay a price for scamming and defrauding people, there's not much incentive to stop.

Big companies should not decide on behalf of Americans how they should pursue justice.

Consumers – not corporations – should be able to decide whether they want to go through the public court system, through mediation, or through arbitration.

I'm not saying ban arbitration, I'm saying ban *forced* arbitration.

That's why I introduced the Arbitration Fairness for Consumers Act last week with 21 cosponsors in the Senate, many of whom serve on this Committee. It bans forced arbitration clauses in consumer contracts and gives consumers the right to decide how they want to pursue justice.

Our witnesses today are scholars, lawyers who have represented consumers, and policy advocates who have investigated the practice of forced arbitration and how it takes away consumer rights. I look forward to our conversation about returning the right to decide how to pursue justice to consumers.

Ranking Member Toomey.