



## **SUPPORT [S.J.Res. 128](#) to Preserve a Consumer's Ability to Exercise their Constitutional & Statutory Rights When Harmed**

In 2024, the Consumer Financial Protection Bureau (CFPB) cracked down on companies that try to limit a consumer's right to sue them for violations of the law by including unlawful or unenforceable limitations in the fine print of their contracts. But in a rule submitted to Congress, the Trump CFPB rescinded that guidance and made it easier for companies to hamstring consumers' rights to challenge them in court.

Senator Cortez Masto's joint resolution of disapproval would undo the Trump CFPB decision and restore the earlier rule: "Unlawful and Unenforceable Contract Terms and Conditions."

*Endorsers: National Consumer Law Center (on behalf of its low-income clients), Consumer Federation of America, Center for Responsible Lending, Protect Borrowers, Americans for Financial Reform, National Community Reinvestment Coalition*

### **Key Points**

- **Some companies use fine print provisions to try to limit a consumer's legal recourse for harm they suffer, even when those provisions are unlawful or unenforceable.** Forced arbitration is one of the most common fine print provisions in financial services contracts, and companies use it to construct a powerful barrier that discourages people from exercising their rights when they have been harmed. These provisions are often illegal and unenforceable, but consumers may not know that—creating a huge power imbalance.
- **The Biden CFPB issued guidance to crack down on companies that mislead consumers by including these unlawful or unenforceable provisions in their contracts.** In 2024, the Biden CFPB [issued a circular](#) warning companies that issuing contracts with unlawful or unenforceable terms under federal or state law may be engaging in deceptive acts under the Consumer Financial Protection Act (CFPA). Many existing federal consumer protection laws already render certain contract terms unenforceable. For example, the Truth in Lending Act (TILA) states that lenders [may not include forced arbitration clauses](#) in the fine print of a mortgage and cannot stop a consumer from going to court if they are harmed. Similarly, the Military Lending Act (MLA) generally prohibits lenders from requiring servicemembers or their families from waiving their rights through a forced arbitration clause.
- **The Trump Administration withdrew this guidance, and this JRD seeks to restore it.** Although underlying statutes like TILA, the MLA, and the CFPA continue to render various contract terms unlawful or unenforceable, the Trump Administration's rescission of guidance clarifying that including these terms in contracts may violate the law signals to bad actors that they have more leeway to continue doing so without fear of facing any real consequences from the current CFPB. This threatens consumers' abilities to exercise their legal rights. It is critical for Congress to restore the earlier guidance.