

# On Anniversary of 7th Amendment, More than 400 Professors in All 50 States Urge Congress Not to Take Away Our Day in Court

FOR IMMEDIATE RELEASE: SEPTEMBER 25, 2017

## Letter Opposes Effort to Block Consumer Financial Protection Bureau Rule that Restores Access to the Courts Eliminated through Fine Print Forced Arbitration Clauses

WASHINGTON, D.C. — Today, on the anniversary of Congress's passage of the Seventh Amendment to the U.S. Constitution in 1789, a group of 423 leading law school, university, and college professors from **all 50 states** urged Senators to uphold the Constitution and preserve consumer's rights to their day in court, in a letter sent to the U.S. Senate opposing efforts to block the Consumer Financial Protection Bureau's new arbitration rule.

"Class action lawsuits are an important means of protecting consumers harmed by violations of federal or state law. Class actions enable a court to see that a company's violations are widespread and to order appropriate relief... Individual arbitrations are not a realistic substitute for class actions... The U.S. legal system depends on private enforcement of rights," the professors wrote.

"The right of access to the courts was so important to our Founders that they enshrined the right to a jury trial in both the Sixth and Seventh Amendments," explained **Professor Imre Szalai, the Judge John D. Wessel Distinguished Professor of Social Justice at Loyola University New Orleans College of Law.**

"Equifax's massive data breach and the company's effort to force people to give up their day in court are strong reminders of why Congress should not take away our 7th Amendment rights," said **Creola Johnson, the President's Club Professor of Law at the Ohio State University Moritz College of Law.**

"143 million Americans were impacted by the Equifax data breach, making it unrealistic for them to get relief if they are forced to bring claims alone, one-by-one, in individual arbitrations," said **David Cluchey, Professor of Law Emeritus at the University of Maine School of Law in Portland.**

Citing the CFPB's study of class actions and arbitration in consumer financial cases, the letter notes that "over five years, 160 million class members were awarded \$2.2 billion in relief - after deducting attorneys' fees." In contrast, in arbitration, "an average of only 16 consumers per year received relief from affirmative claims and another 23 received relief through counterclaims."

"As a scholar, I'm offended by the false claims by lobbyists that the average person wins \$5,389 in arbitration," said **Professor Jean Sternlight, Saltman Professor of Law and Director of the Saltman Center for Conflict Resolution, University of Nevada, Las Vegas Boyd School of Law.** "That number is based on only 16 people a year who pursued and won in arbitration. The vast majority of people won't even pursue a claim against a big corporation alone and will get nothing if they can't participate in a class action." And, added Sternlight, "in the very rare situation when consumers file arbitration claims against companies, they rarely win."

The letter concludes, “We believe it is vital that Congress not deprive injured consumers of the right to group together to have their day in court or block important research into the arbitration process.”

The CFPB’s arbitration rule prevents contracts for bank accounts, credit monitoring, payday loans, and other financial products from prohibiting people from suing or joining class actions and instead forcing them to pursue claims before a private arbitrator agreed upon by the company. But a resolution to block the rule has passed the U.S. House of Representatives and is now before the Senate.

The letter was sent to Senator Mike Crapo (R-ID), chair of the Senate Committee on Banking, Housing, and Urban Affairs, and Senator Sherrod Brown (D-OH), the committee’s ranking member, on September 25, 2017, the 228th anniversary of Congress’s passage of the Seventh Amendment, which states: “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.”

**Contacts:** Professor Jean Sternlight (jean.sternlight@gmail.com or 702.895.2358);

Professor Imre Szalai (iszalai@loyno.edu or 504.861.5589);

Professor David P. Cluchey (dcluchey@maine.edu or 207.780.4355);

Professor Creola Johnson (professor.cre.johnson@gmail.com or 614.292.9992);

National Consumer Law Center: Jan Kruse (jkruse@nclc.org or 617.542.8010)