matter what kind of activist he might serve up, that is going to visit upon the American people, for at least the next generation, decisions that usurp the authority of the United States House of Representatives and the United States Senate and commandeer the legislative authority away from Article I and commandeer some kind of authority to manufacture commands, as they did last June.

Then, we are not done yet. In case this argument isn't strong enough at this point, Mr. Speaker, here is another.

The very individual that made the appointment to the Supreme Court, that would be then-Senator Barack Obama, now President Obama, he filibustered the Alito appointment—the Alito nomination. Excuse me.

Here is what then-Senator Obama argued in 2006. Well, they say this now. This is his spokesman today: ''President Obama regrets filibustering the nomination of Supreme Court Justice Samuel Alito in 2006''—this is from his top spokesman who said, just a week or so ago, ''though he maintains that the Republican opposition to his effort to replace Justice Antonin Scalia is unprecedented.''

No, the President of the United States' opposition to Justice Alito was unprecedented, not the opposition created here by Chairman GRASSLEY or Majority Leader MCCONNELL and almost every Republican over there in the United States Senate; and I don't know any Republicans in the House who think they ought to move this appointment now.

So, here are some other positions along the way, Mr. Speaker, regarding Senator GRASSLEY's comments. Senator GRASSLEY made some strong positions on the floor of the Senate a little over a week ago, and they were published in Politico, as I recall, where it would be this. The Supreme Court has weighed in on this nomination, and that would be Chief Justice Roberts has intervened and made comments in this way: that before Scalia had passed away, he argued that the confirmation process is not functioning very well, that it has gotten too political.

I was very proud of Senator GRASSLEY when he stepped up on the floor of the Senate and rebutted that argument and he made the case that, no, the confirmation process in the United States Senate has gotten political precisely because the Court itself is making political decisions rather than decisions based upon the law and the supreme law of the land, the Constitution.

So when you see political decisions come out of the Court—and those decisions, I have described some of them; there are many others—that means that the confirmation process itself is political.

And when I sat before the Supreme Court and heard the oral arguments before the Court—and I hope to do that again next week—I was amazed. I expected that I would hear profound constitutional arguments before the United States Supreme Court. I mean, I grew up, I guess, naively believing that those were the arguments made before that Court. I think the Warren Court had already turned that thing in the other direction, and I didn't realize it.

But when I first sat before the United States Supreme Court and listened for those arguments, thinking it was going to be an amazing educational experience for me, what I found was there weren't any profound constitutional arguments made. Those arguments, instead, were being made to the swing Justice on the Court to try to get to that individual's heart, because they understood the various proclivities in the thinking and the rationale that might come. They went back and looked at the lives, the lifestyle, the history of the Justices and wondered what moves their heart rather than what moves their rationale. We should only have Justices whose rationale is moved by constitutional arguments before the Court.

Let's see. Who else do I have?

President Obama, who made the argument that he wants appointments to the Supreme Court who have—what is the word?—compassion, empathy. President Obama's word is ''empathy.''

We are not looking for empathy on the Supreme Court. We are looking for Justices that can rule on the letter and the text and the original meaning and understanding of the Constitution, and the letter and text of the law here in Congress that we passed.

And, yes, they can take into consideration congressional intent, but they can't amend the language. If the language says one thing, they don't get to add words to it. They should ship it back over here and tell us what they have interpreted that it said, and then the Congress can decide whether or not we want to act.

We take an oath to support and defend the Constitution. That doesn't mean we are bound by a decision of the Supreme Court that turns the Constitution on its head.

So this fight that is going on in the Supreme Court with the nomination to the Court now is one that will turn the destiny of the United States of America.

Depending on who ends up as the next President of the United States, I have every confidence that Senator GRASSLEY holds his ground, that there will not be hearings before the United States Senate Judiciary Committee, that the Senate prerogative will prevail, and that the people will go to the polls in November and elect a President. Part of that decision will be: Will that President make the right appointment to the Supreme Court?

In the meantime, CHUCK GRASSLEY, the man who is now the chairman of the committee, stands in the gap in the same way that Leonidas stood against Xerxes at the Battle of Thermopylae when he led the 300 to stand in that gap and face 300,000 Persians. He is holding his ground. He is holding his ground nobly. He is holding it with conviction. He is holding it with determination. And we need to stand with him, beside him, and behind him in every way that we can and understand that this is a political assault that is going at him.

We should reward him for his convictions by electing a President who will make that appointment to the Supreme Court who reflects the will of the people. And the will of the people, I trust, will still want to see an appointment to the Supreme Court of a Justice who would stand up and say this Constitution means what it says.

The text of this Constitution has to mean what it says, and it has to be interpreted to mean that which it was understood to mean at the time of its ratification. And if you don't like what it does for our policy, then get to work and amend the Constitution. That is why that provision is there. That is why we have the amendments to the Constitution today.

So I thank Senator GRASSLEY for his strong stand. I thank MITCH MCCONNELL for his leadership in the Senate. I thank everyone over there who holds their ground, and everyone here in this Congress who takes an oath to support and defend the Constitution and means it.

Mr. Speaker, I yield back the balance of my time.

□ 1730

FORCED ARBITRATION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2015, the gentleman from Georgia (Mr. JOHNSON) is recognized for 60 minutes as the designee of the minority leader.

GENERAL LEAVE

Mr. JOHNSON of Georgia. Mr. Speaker, I ask unanimous consent that Members have 5 legislative days to revise and extend their remarks and include extraneous materials related to the subject of this Special Order, which is forced arbitration

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

Mr. JOHNSON of Georgia. Mr. Speaker, it has been very thought-provoking to listen to the comments and observations of my good friend, STEVE KING from Iowa, and my other good friend, Representative TED YOHO from Florida.

It is always good to hear the impressions of laypersons about the law. I say that not in a condescending way because I know that my good friend, STEVE KING, is a successful businessman, construction, and he knows all about the business, and my friend, TED YOHO, is an esteemed doctor of veterinary medicine.

So being a lawyer myself by training, it is good for me to hear the impressions and observations of laypersons. I

say that in a noncondescending way. So I thank the gentleman from Iowa, Representative KING, for holding it down for us for that last hour.

The preamble to the U.S. Constitution, which is the introductory statement setting forth the general principles of our American government, reads: ''We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.''

I want to just put a bookmark right where it says ''establish Justice.'' It says that right after it says ''in Order to form a more perfect Union, establish Justice.''

So justice was something that was foremost in the minds of the Framers of our Constitution who, I believe, just as STEVE KING said, were divinely inspired in their deliberations and their decisionmaking in terms of our Constitution.

They were focused on the delivery of justice. They realized that justice was key. With that ideal, they established in Article III a court system, the judicial power and the framework for the court system. The judiciary, of course, is a coequal branch of government.

The courts, since the inception of this country, have served as a check and a balance on the excesses of the other branches of government while at the same time dispensing justice to individuals who are found to have violated the law or who have been aggrieved by the misconduct of someone else and, so, they come to court seeking justice. So justice is the business of the court system, and the court system's business is to render justice.

Now what is that word, justice? What does it mean? It is the maintenance or administration of what is just by law, as by judicial or other proceedings, in a court. Justice is the judgment of persons or causes by a judicial process to administer justice in a community. That is what justice is all about, and that is what courts do.

People bring to the court of justice their causes of action so that they can receive justice in the courts. The courts are set up with a set of procedures, rules, as to how you proceed in court. And then there are substantive laws upon which the court looks to the precedent that has been set and decides cases brought to it in accordance with those precedents.

Sometimes it must make new precedent, it must make new law, and it is done in accordance with the constitutional principles that have been laid out by our Framers. So this legal system has worked well. This legal system of trial by jury has worked very well.

In addition to maintaining order through the criminal laws, the civil laws have enabled people to achieve justice when they have been wronged, including wronged by corporations.

Companies don't like being brought to the bar of justice to be held accountable for wrongdoing. We know that corporations are powerful entities. They have more money than the average person. They are more powerful.

So the way to equalize the power of just an individual against a corporation that he or she has accused of wrongdoing—the equalizing factor has always been the jury system, a jury of one's peers.

That is what people have relied upon to address grievances, particularly with powers that are more powerful than they. They know that a jury of their peers is a mechanism whereby the truth can be found and that justice can be rendered.

So going to court and having a jury trial when a person is aggrieved is a part of the fundamental fabric of this Nation. That is how we have done business for so long.

It used to be before we had TV and radio that people would go down to the town square where the courthouse was always located and they would take the afternoon and they would go into the courtroom. They would have a calendar. They would know what cases were being heard.

It was a published calendar, and everybody knew that a certain lawyer would be in town to try a case. They would make their schedule such that they could go down and see that proceeding. It would be an open court. Nobody would be excluded. Everybody would know in advance what was going to happen.

You could sit there and watch the adversary process take place. You would see a judge seated, such as the Speaker is seated in this Chamber. That would be the person who would decide what laws were applicable. The jury would be to his or her left or right, and the judge would instruct them on the law.

After they have heard all of the evidence from the attorneys in that adversary process, the judge would instruct the jury on the law and charge the jury to find the facts in its own wisdom and apply justice.

The plaintiff would either win or lose, and the people would be in the courtroom watching the proceedings. And then, whatever happened everyone would have to live with.

Sometimes the plaintiff won. Sometimes the defense won. That is the way that it has always been in this country up until pretty recently.

Over the last 30 years or so, we have had an erosion of that process. The rich and powerful corporations have conspired to find ways that they can avoid being held accountable for the misdoings that they would be charged with committing by a regular person.

Let's face it, ladies and gentlemen. Corporations are just like people. People do wrong and, when they do wrong, you have to have some way of making them do right, of making it right. That is what the courts have always been for.

These corporations have gotten so powerful that they have come up with a way of privatizing the justice system. They have come up with a dispute resolution mechanism, which is not inherently bad, but it is being forced on people. That is the dispute resolution process known as arbitration.

Arbitration is a great alternative dispute resolution process when it is decided upon by the parties after a dispute has arisen.

But to bind a party to have to resolve a dispute in the arbitration setting as opposed to being able to exercise your Seventh Constitutional Amendment right to a jury trial and binding yourself, to have to go through an arbitration process, this is the scheme that has been hatched by the corporate interests who don't want to be held accountable in court.

So what they have done is inserted these forced arbitration clauses into agreements that they have with consumers.

So any kind of consumer agreement, for the most part nowadays, has a forced arbitration clause in it which requires that, in the event a dispute arises, the parties will settle that dispute not in a court of law, but in an arbitration proceeding.

Now, arbitration proceedings, unlike the courthouse, are done in private. There is no calendar that is published, and the people are not invited to come in. It is a secret proceeding.

It is a proceeding where, instead of having a judge trained in the law, you have got the possibility of having a layperson deciding the case. And that layperson may not be impartial.

That person may be making their living from getting referrals from the corporations to decide the arbitration cases that come before them. So it is an unfair process. It is a secret process.

The rules of procedure that are followed and required in a court are not required in an arbitration process nor are the substantive laws upon which cases are decided on precedent.

There is no requirement that the substantive law be used by the arbitrator in making the decision. Of course, there is no jury trial. There is no trial by a jury of one's peers.

So it is a very unfair setting, and it produces results that favor the corporations. This is what we are here to talk about today, this unfair, privatized secret system of justice that deprives people of having their day in court.

It is unaccountable. It is unaccountable to anyone other than to the corporate bosses that refer the cases to them. It is very unfair to the consumer, to the little guy.

So having said all of that, I yield to the gentleman from the State of Pennsylvania, MATT CARTWRIGHT, my friend, a distinguished trial attorney himself and, also, a member of the Oversight and Government Reform Committee in this Congress, the ranking member of the Health Care, Benefits, and Administrative Rules Subcommittee and,

also, a member of the Committee on Natural Resources.

□ 1745

Mr. CARTWRIGHT. Mr. Speaker, I thank the gentleman from Georgia for yielding to me and for laying out the problem.

I rise proudly to remind my colleagues in this Chamber that what—as Representative TED YOHO of Florida just mentioned—what is in the Constitution really, really matters. In fact, I credit TED YOHO for carrying the Constitution with him at all times. I know that he says what is particularly dear to him in the Constitution is the Bill of Rights—those first 10 Amendments to the Constitution.

And Representative JOHNSON alluded to it earlier, it is the Seventh Amendment that we are talking about right now. If you are scoring at home, the Seventh Amendment is the thing that gives you the right to a jury trial in a civil case. And I'll quote it: ''In suits at common law . . . the right of trial by jury shall be preserved . . .''

It is a short sentence, it is unambiguous, it is easy to understand, and it is something that makes us Americans—that we can go to court and have our disputes settled by a jury trial. It is one of the things that has made this Nation great. It is one of the things that we went to war over in the American War of Independence because the British king was trying to take that right away from us. In suits of common law, the right of trial by jury shall be preserved.

But I am here to say, Mr. Speaker, that there have been attacks on the Seventh Amendment. As Mr. JOHNSON pointed out so deftly, it is in the last 25 or 30 years that these attacks have come to a crescendo. Even in the Supreme Court of the United States now, they are getting so squishy on the Seventh Amendment that they think it is all right—it is a case called Concepcion from about 5 years ago—it is all right for corporations to have you enter into contracts that do away with your Seventh Amendment right to a jury trial in the event of a dispute. This is called a pre-dispute forced arbitration clause. It rears its ugly head in all sorts of ways to hurt workers and consumers and homeowners and Americans of every stripe.

Now, what is wrong with this?

What is wrong—and, again, Mr. JOHNSON of Georgia alluded to this. The main problem is that it is a secret system of justice. It is not out in the open. He is right. America has a tradition of open court systems, trials that you can go watch, proceedings of justice that are open and transparent and open to the sunlight so that sneaky things don't happen, things that they would be embarrassed to tell you about don't happen. That is the purifying aspect of sunlight overall, and that is why we treasure our justice system here in the United States.

It is the opposite when you talk about forced arbitrations. You are talking about arbitrators who have been selected by who knows who. Certainly not elected, certainly not appointed by elected officials. Accountable to no one. No one.

Is that really who you want deciding your case when you have a dispute?

Absolutely not.

Mr. Speaker, there is something even more insidious about these forced arbitration clauses, and that is this. It does away with any possibility of a class action.

Now, why do we care about that?

The ordinary American consumer may never get into a class action or know about one or care about one. But here is what happens.

If, for example, your credit card company—when you signed up for your credit card, you signed a boilerplate agreement. There is no way you read through that whole thing, but there was a forced arbitration clause in there. It says, in any dispute between us and the consumer, the dispute shall be decided by an arbitration.

What that means is that they can do anything they want to you. They can say, this month, in honor of it being April, we are going to charge everybody $45 for no reason. Forty-five dollars goes on your bill. If you don't pay it, they start dunning you and hurting your credit record. They can do that just for fun.

What are you going to do? Are you going to go to court over it?

No. You are going to join a class action because nobody can afford to hire a lawyer where $45 is the amount in controversy. That is why we have class actions, so the corporations don't get away with that monkey business.

In forced arbitration clauses, that precludes any possibility of going to court and, thereby, it precludes any possibility of a class action. That means a lot of wrong can happen in this country at the hands of unaccountable corporations. They can get away with it because there is no chance of a class action.

Well, I am here to raise my voice in support of something Mr. JOHNSON from Georgia has done. He has written something called the Arbitration Fairness Act, which remedies much of what I am talking about.

I am also here to stand up and add my voice in support of things that the administration has done: executive orders, either already done or in the works, in the Department of Education to combat forced arbitrations against for-profit universities; in the Department of Defense to combat actions of predatory lenders against our armed service men and women and our veterans; executive orders in the Consumer Financial Protection Bureau to combat arbitration clauses such as the one I discussed about a credit card company; executive orders by the CMS, Center for Medicare Services, to combat abuses in arbitration clauses in nursing homes so that you wouldn't be able to bring a court case against a nursing home because you signed on the dotted line when you put mom or dad in the home so no matter what they do to mom or dad, you can't go to court, you have to go to arbitration. CMS is working on an executive order to curb that abuse.

An executive order in the Department of Labor to enforce rules and laws about safe work places and fair pay to prevent these forced arbitration clauses from taking these cases out of the sunlight and into the dark back rooms of the arbitrations where goodness knows what is going to happen, and it is probably not justice.

We have a statue of Thomas Jefferson right outside these chambers, Mr. Speaker. Thomas Jefferson said: ''I consider trial by jury as the only anchor yet imagined by man, by which a government can be held to the principles of its Constitution.''

We need to honor those words of Thomas Jefferson, we need to honor the Seventh Amendment, we need to support Mr. JOHNSON in his Arbitration Fairness Act, and we need to support the administration with executive orders fighting these unfair and nontransparent mandatory forced arbitration clauses.

Mr. JOHNSON of Georgia. Mr. Speaker, I thank Representative CARTWRIGHT.

It is amazing that when you are standing across the yard with the fence in between you and your neighbor and you are telling your neighbor about that great day of fishing that you had and you are telling him about this fish that was that long, you can do as much lying about the length of that fish—sometimes you didn't even catch a fish—and it is okay to lie to your neighbor.

But it is different when you go downtown and go to the courthouse because at the courthouse you are going to testify, you are testifying under oath, subject to being held accountable for perjury if you lie.

But it is amazing that in a forced arbitration proceeding, there is absolutely no requirement that you be administered, or that a witness be administered an oath before they are allowed to testify. So, therefore, in an arbitration proceeding, the lever of perjury to force someone to tell the truth is not there and it hurts the pursuit of justice.

Mr. Speaker, I thank Mr. CARTWRIGHT for his testimony and his statements today.

I would point out that last year, the New York Times published an exhaustive and in-depth investigative series that pulled back the curtain and catalogued the immense harms of forced arbitration. In part 1 of the series, which was entitled ''Arbitration Everywhere, Stacking the Deck of Justice,'' the Times explored the rise and dramatic spread of forced arbitration clauses, their impact on American workers, consumers, and on patients. This investigation found that corporations crippled the consumer challenges

across a wide swath of harmful practices simply by banning class action litigation.

Furthermore, once corporations have blocked individuals from going to court as a class, the investigation found that most people simply dropped their claims entirely.

Why?

Because the amount in controversy was so small that it was not cost effective to hire a lawyer to go to court to recover such a small amount. The net result is that the corporate wrongdoers have escaped being held accountable because of these forced arbitration clauses, which equates to a ban on participating in class action litigation and, in some of those clauses, they had the words in there about class actions being bought.

Mr. Speaker, I yield to the gentlewoman from California (LINDA T. SÁNCHEZ), my friend, who serves on the Ways and Means Committee. She is a former labor lawyer. She has had an interest in this issue of arbitration, forced arbitration, for a couple of sessions of Congress. She has introduced legislation that would outlaw forced arbitration agreements in nursing home contracts—you know, where we go to take our loved ones who have to be committed to a nursing home and we have no choice but to sign the contract which has the arbitration clause in it because all of the other nursing homes have the arbitration clause in them as well. Representative SÁNCHEZ has filed legislation that would get at that very unfair process.

Ms. LINDA T. SÁNCHEZ of California. Mr. Speaker, I thank Mr. JOHNSON.

I rise today to join Mr. JOHNSON and Mr. CARTWRIGHT in bringing attention to the very unfair and deplorable practice of forcing people into arbitration.

In practice, what this consists of is generally those with more power, meaning very wealthy corporations, including confusing but legally binding language buried in the fine print of contracts, contracts that pretty much purveyed every aspect of our lives. This creates this insidious process in which people, in order to get a credit card or a cell phone or to put a loved one into a nursing home, have to accept the terms of this contract without really knowing what they are buying into.

I want to start by saying that the concept of arbitration is a great one. I strongly support the principles of arbitration and the arbitration process because arbitration can do many good things. It can clear court dockets, it can help provide a more swift resolution to a problem, and it can also reduce legal fees. Those are the benefits of a fair arbitration process. In many ways arbitration can be a great thing.

But—and this is the thing—people think that arbitration is this wonderful process. But what they don't realize is that buried in that fine print in forced arbitration, there can also be terms that limit the evidence that you can introduce. If you are forced into arbitration, there can be limits on the damages that you can claim. It can exclude your ability to request a jury trial. And mandatory binding arbitration has to be entered willingly by both parties, not just the party with the greater economic power. But, in fact, they know that they hold that leverage over the average consumer so they put this kind of limiting language into these arbitration clauses all the time.

Many retailers, banks, and online services have forced arbitration clauses written into their contracts. These arbitration agreements can be forced on vulnerable parties who have little knowledge about what they are signing or what it means to sign away those rights. Frankly, most consumers have little or no choice in the matter because the contracts are ''take it or leave it.''

□ 1800

Why does this hit so close to home?

My father has Alzheimer's, and at a certain point, he could not care for himself anymore, so we had to investigate nursing homes that could provide the kind of around-the-clock care that was required for him that my brothers and sisters and I simply could not.

Sadly, in the nursing home arena, this is where, oftentimes, mandatory—forced—arbitration clauses are buried in these contracts for the admission of your loved one. Loved ones who cannot care for somebody who is physically ill or frail, again, have no real choice in the matter. They need to find facilities to care for their loved ones because they, simply, cannot do it on their own.

That is why, in Congresses past, I introduced the Fairness in Nursing Home Arbitration Act. That legislation would make predispute mandatory arbitration clauses in long-term care contracts unenforceable, and it would restore residents and their families their full legal rights. What the legislation would do is say that you cannot force arbitration onto families who, in an emotional time and in a medical crisis, are looking for care for their loved ones. You cannot force them to sign something that they don't agree with or even understand. My bill would have allowed families and residents to have maintained their peace of mind as they looked for the best long-term care facilities for their loved ones.

For desperate families who are unable to provide the adequate care at home, the need for an immediate placement for their loved ones makes these contracts, basically, take it or leave it, which gives them no choice at all in the matter. Families who are in the midst of these painful decisions to place a parent or a loved one in a nursing home rarely have the time or the wherewithal to fully and thoughtfully consider what it is they are signing when they sign a contract that contains a mandatory arbitration clause. They are not in a position to adequately determine what agreeing to such a clause will mean for their loved ones should the unthinkable happen.

The Centers for Medicare & Medicaid Services, CMS, is slowly working to include some of my bill's provisions through the regulatory process, but much work still remains in this area. In September of last year, Democrats sent a letter to CMS and called for a final rule that will ensure that nursing home residents will only enter into arbitration agreements on a voluntary and enforced basis after a dispute arises, not before.

We need commonsense solutions to forced arbitration agreements, solutions that would protect the average consumer, who is unfamiliar with the concept of arbitration and is not trained in the law. Many people may not even be aware of the rights they are signing away at a time when they are least prepared to make important decisions. As Members of Congress, we are called on to serve our constituents and to protect them from flagrant violations of their rights. We should be doing more to protect vulnerable families from these forced arbitration policies.

I thank my colleague, Mr. JOHNSON, for being such a strong voice on this issue.

Mr. JOHNSON of Georgia. I thank the gentlewoman from California.

Next, I yield to the gentlewoman from Texas, my good friend SHEILA JACKSON LEE, a senior member of the Judiciary Committee and the ranking member on the Crime Subcommittee. She is also a member of the Homeland Security Committee. She is a lawyer and a former judge.

Ms. JACKSON LEE. I thank the gentleman from Georgia for his leadership, along with Mr. CONYERS, and for the introduction of a very important initiative, H.R. 4899.

Mr. Speaker, many would think, particularly as we have watched the mediation and arbitration process grow as a newly developed practice amongst lawyers and one that businesses and others have seemed to adopt, that that was, in fact, helping consumers by allowing the concept of arbitration to be able to be utilized, thereby, allegedly, lowering the costs of litigation.

In a 2010 survey, 27 percent of employers, covering over 36 million employees—or one-third of the nonunion workforce—reported that they required the forced arbitration of employment disputes. The practice of forced arbitration is widespread and damaging. For example, the ability to obtain key evidence that is necessary to prove one's case is often restricted or eliminated in arbitration proceedings, and it can be nearly impossible to appeal adverse decisions by arbitrators.

We know that, in the Bill of Rights in the Constitution, there is a right to a trial by jury, a jury of one's peers. Therefore, it is a sacred right. This new practice had been projected as helping

the victim: oh, it will be a low-cost procedure; you will get an immediate decision; you won't have the stress of litigation; you might not even have to hire a lawyer. But, as indicated, the ability to obtain key evidence that is necessary to prove one's case is often restricted or eliminated in arbitration proceedings, and it can be nearly impossible to appeal adverse decisions by arbitrators.

I was one of the first Members to bring attention to this issue when I prevailed upon the late Chairman Hyde to authorize the Judiciary Subcommittee on Administrative and Commercial Law, when I was the ranking member, to hold a hearing on that matter involving Carl Poston and the NFL Players Association, with Gene Upshaw, then executive director, in the LaVar Arrington case. You may recall the LaVar Arrington case as being of the former Washington Redskins football player who was forced into arbitration in order to resolve a contract dispute.

Forced arbitration of State and Federal employment discrimination laws is also harmful to women workers. In 2015, nearly 64,000 discrimination claims were filed with the Equal Employment Opportunity Commission under title VII, and more than 41 percent of those charges were for sex-based discrimination. Sex-based discrimination, including sexual harassment, remains a persistent problem for women in the workplace. Nearly 83 percent of sexual harassment charges that are filed with the EEOC are filed by women. Just imagine that mandatory arbitration of claims under State or Federal family and medical leave laws could have a disproportionate impact on women as well.

I am pleased that this legislation was introduced, because it is a legislative initiative to restore rights. The bill is rightly named the Restoring Statutory Rights Act. It is also, I believe, the restoration of constitutional rights. Let me quickly tell you of the case of Stephanie Sutherland, which illustrates the difficulties of this forced arbitration.

Stephanie was hired by her company to work as a staff assistant. Her work involved relatively routine, low-level clerical work for which she was paid a fixed salary of $55,000. She routinely worked 45 to 50 hours per week, but because she was classified by her employer as exempt from overtime, she did not receive any additional compensation. By the time Ms. Sutherland was terminated in 2009, she had worked 151 hours of overtime for which she should have been paid $1,867 had the Fair Labor Standards Act and the New York State labor laws been observed. She filed a class action lawsuit and sought to recover overtime for her work in excess of 40 hours a week and for other current and former nonlicensed staff—one or two staff employees of the firm—who worked overtime.

When Ms. Sutherland was hired, she was given an offer letter that also provided, if an employment-related dispute arises between you and the firm, it will be subject to mandatory mediation. That was what the company attempted to do—enforce mandatory mediation. In her lawsuit, she attempted to enforce her rights because the Federal Fair Labor Standards Act had a provision to expressly permit lawsuits for minimum wage. To this end, the lower court was sympathetic to Ms. Sutherland's arguments. However, the United States Court of Appeals reversed, relying on the 2013 Supreme Court case.

Therefore, we do have a conflict in the issue of dealing with arbitration that is forced. This is the core of why this legislation is so very important. I believe that, if parties agree to engage in mediation and arbitration, Mr. Speaker, so be it; but if you choose to use the court system that is designed by the Constitution as one of the three branches of government that all Americans should have access to, I will make the argument that you should not be forced into arbitration or mediation.

I believe Mr. JOHNSON—and I look forward to joining him on his legislation—along with Mr. CONYERS, is really lifting up the Constitution to ensure that every citizen has access to the courts of this land to help decide their issues of conflict and to choose the forum which they desire to use. I thank the gentleman for yielding to me, and I look forward to working with him on this very crucial constitutional issue.

Mr. Speaker, I am pleased to join my colleagues of the Congressional Progressive Caucus to discuss the critical importance of an impartial and fair justice system, corporate accountability, consumer and employee protection, as well as the importance of enforcing laws on the books.

I would like to thank Congressman HANK JOHNSON (D–GA) for his leadership in putting forth this Special Order.

The practice of forced arbitration is widespread and damaging.

In a 2010 survey, 27 percent of employers—covering over 36 million employees, or one-third of the non-union workforce—reported that they required forced arbitration of employment disputes.

Although arbitration can be a valid and effective method of dispute resolution when both parties voluntarily agree to arbitrate, forced arbitration clauses that limit an employee's legal rights in a non-negotiable contract are abusive and erode employees' traditional legal safeguards.

For example, the ability to obtain key evidence necessary to prove one's case is often restricted or eliminated in arbitration proceedings, and it can be nearly impossible to appeal adverse decisions by arbitrators.

I was one of the first Members to bring attention to this issue when I prevailed upon Chairman Hyde to authorize the Judiciary Subcommittee on Administrative and Commercial Law to hold a hearing on that matter involving Carl Poston and the NFL Players Association (Gene Uphsaw, Executive Director) in the LeVar Arrington case.

You may recall LeVar Arrington as the former Washington Redskins football player who was forced into arbitration in order to resolve a contract dispute.

Forced arbitration of state and federal employment discrimination laws is especially harmful to women workers.

In 2015, nearly 64,000 discrimination claims were filed with the Equal Employment Opportunity Commission (EEOC) under Title VII, and more than 41 percent of those charges were for sex-based discrimination.

Sex-based discrimination, including sexual harassment, remains a persistent problem for women in the workplace.

Nearly 83 percent of sexual harassment charges filed with the EEOC are filed by women.

In a national survey by ABC News and the Washington Post, one in four women reported experiencing sexual harassment, compared to one in ten men.

Mandatory arbitration of claims under state or federal family and medical leave laws could have a disproportionate impact on women as well.

Nearly 56 percent of employees who took time away from work to deal with a serious personal or family illness, or to care for a new child under the FMLA in 2012 were women.

If my colleagues fail to take necessary action, mandatory arbitration will continue to be a barrier to justice for workers.

I am pleased by the action of Mr. CONYERS and Mr. JOHNSON for their leadership on Tuesday, Equal Pay Day, for introducing a very important piece of legislation that will address these inequities, (H.R. 4899) the Restoring Statutory Rights Act, which I am pleased to be an original cosponsor of.

The Restoring Statutory Rights Act would ensure that when Congress or the states have established rights and protections for individuals, including protection against wage discrimination, that they are able to enforce these rights in court.

This bill amends the Federal Arbitration Act to prohibit mandatory pre-dispute, commonly known as ''forced,'' arbitration agreements for claims rising under federal or state statute, the U.S. Constitution, or a state constitution.

The bill would further require that a court determines whether an agreement is unconscionable, legally invalid, or otherwise unenforceable as a matter of contract law or public policy.

Under current law, parties may resolve statutory claims, including claims rising under anti-discrimination statutes, through forced arbitration instead of the justice system.

This important legislation is a critical step in eliminating longstanding and unacceptable discrimination and barriers imposed on women and minority.

It should be noted that forced arbitration is a private system controlled by corporations to prevent corporate accountability.

Buried in the fine print of countless employment, cell phone, credit card, retirement, and nursing home contracts, forced arbitration eliminates Americans' access to the courts, tipping the scales of justice in favor of corporate wrongdoers.

When corporations force arbitration on individuals using nonnegotiable and many times unnoticed contract terms, it becomes an abusive weapon.

Forced arbitration means giving up the most fundamental legal protection: the right to equal justice under the law.

For decades, we have fought hard for dozens of laws that protect against discrimination based on age, sex, religion, race, disability, and unequal pay for equal work, such as the Civil Rights Act and the Equal Pay Act But these laws are meaningless if unenforceable in court.

It's time to close the arbitration loophole that gives employers and businesses the right to ignore civil rights and consumer protection laws.

Although states have tried to address this problem through their consumer protection laws, the courts have interpreted the Federal Arbitration Act (FAA) to trump state laws leaving consumers very little recourse.

Arbitration can be a fair and effective method of dispute resolution when parties voluntarily agree to arbitrate.

When the choice of arbitration is post-dispute—and therefore understandable and voluntary—it is a fair process that parties choose willingly.

I call upon my colleagues to come together and pass legislation that would reinstate workers' ability to enforce their rights in a court of law and protect the rights of women and minorities.

More than 20% of employees are covered by mandatory arbitration clauses.

Tens of millions of consumers use consumer financial products or services that are subject to pre-dispute arbitration clauses.

Federal court statistics show that 17,977 labor claims and 35,965 civil rights claims were filed in 2012.

National Arbitration Forum (NAF) arbitrators ruled in favor of consumers in less than 0.2% of all cases (30 out of 18,075) heard.

These 30 victories only occurred in hearings where a consumer brought claims against a business; when companies brought claims against consumers, they were successful in hearings 100% of the time. The employee win rate after arbitration was 21.4%, which is lower than employee win rates reported in employment litigation trials (36.4% in federal court and 43.8% in state court).

In cases won by employees, the median award amount was $36,500 and the mean was $109,858, both of which are substantially lower than award amounts reported in employment litigation ($384,223 for federal court litigation and $595,594 in state court litigation.)

A 2015 study of federal court employment discrimination litigation by Theodore Eisenberg found that the employee win rate has dipped in recent years to an average of only 29.7 percent.

At the same time, another 2015 study found that the employee win rate in employment arbitration had also dipped in recent years, to an average of only 19.1%; similar dip in employee win rates has occurred in state courts.

58% settlement rate in federal court employment-discrimination litigation.

While recent research on mandatory arbitration found a 63% settlement rate across all employment cases in that forum.

In court, summary judgment motions were filed in 77% of the court cases, while summary judgment motions were raised in 48% of arbitrations.

The win rate was 32% lower in mandatory arbitration than in litigation.

Plaintiffs' overall economic outcomes are on average 6.1 times better in federal court than in mandatory arbitration ($143,497 versus $23,548) and 13.9 times better in state court than in mandatory arbitration ($328,008 versus $23,548).

21.1% of employment cases in mandatory arbitration are brought by employees without legal counsel.

Damages from arbitration are 16% of the average damages from federal court litigation and a mere 7% of the average damages in state court—thus lawyers are reluctant to take cases that are subject to mandatory arbitration.

Whereas on average plaintiffs' attorneys accepted 15.8% of potential cases involving employees who could go to litigation, they accepted about half as many, 8.1% of the potential cases of employees covered by mandatory arbitration.

The first time an employer appeared before an arbitrator, the employee had a 17.9% chance of winning, but after the employer had four cases before the same arbitrator the employee's chance of winning dropped to 15.3%, and after 25 cases before the same arbitrator the employee's chance of winning dropped to only 4.5%.

The study results provide strong evidence of a repeat employer effect in which employee win rates and award amounts are significantly lower where the employer is involved in multiple arbitration cases where the same arbitrator is involved in more than one case with the same employer, a finding supporting some of the fairness criticisms directed at mandatory employment arbitration.

In the credit card market, larger bank issuers are more likely to include arbitration clauses than smaller bank issuers and credit unions. As a result, while less than 16% of issuers include such clauses in their consumer credit card contracts, just over 50% of credit card loans outstanding are subject to forced arbitration clauses.

In the checking account market, which is less concentrated than the credit card market, around 8% of banks, covering 44% of insured deposits, include arbitration clauses in their checking account contracts.

40% of the arbitration filings involved a dispute over the amount of debt a consumer allegedly owed to a company, with no additional affirmative claim by either party. In another 29% of the filings, consumers disputed alleged debts, but also brought affirmative claims against companies.

The average disputed debt amount was nearly $16,000. The median was roughly $11,000. Across all six product markets, about eight cases a year involved disputed debts of $1,000 or less.

Overall, consumers were represented by counsel in roughly 60% of the cases, though there were some variations by product. Companies almost always had counsel.

Of the 1,060 arbitration cases filed in 2010 and 2011, so far as we could determine, arbitrators issued decisions in just under 33%.

In approximately 25%, the record reflects that the parties reached a settlement. The remaining cases ended in an unknown manner or were technically pending but dormant as of early 2013.

Mr. JOHNSON of Georgia. I thank the gentlewoman from Texas for her tremendous, informative presentation, which is all based constitutionally as the great lawyer that she is.

Next, Mr. Speaker, I yield to my friend, the gentleman from Massachusetts, JOE KENNEDY, who is an esteemed member of the Energy and Commerce Committee.

Mr. KENNEDY. I thank Congressman JOHNSON. I am honored to be here with the gentleman, and I thank him for his leadership on this important issue.

I thank, of course, Ranking Member CONYERS, who has for so long been a guiding light in our party on issues of justice.

Congressman, you and Mr. CONYERS together have been this Chamber's champions on civil rights and equality in our justice system. You are, once again, leading the fight as we call for reforms to an unjust and unequal arbitration system. I am grateful, and I thank you for your leadership.

Mr. Speaker, at the foundation of our democracy is one simple promise: no matter who you are or where you come from or what you have done, you will be seen as equal before the law.

Thomas Jefferson, himself, wrote centuries ago:

> The most sacred duties of government is to do equal and impartial justice to all citizens.

Forced arbitration, Mr. Speaker, is an affront to that duty—a manipulation of the justice system that tips our scales in the direction of influence, money, and power. It removes even the slightest veneer of fair treatment in cases ranging from sexual harassment and discrimination to loss of housing and shelter, to neglect and abuse inside substance abuse treatment centers and retirement homes.

When a plaintiff sits at an arbitration table across from a powerful corporation to challenge a fraudulent charge or to question its practices, the protections that we have spent centuries instilling in our justice system get washed away. There is no judge, no jury, no avenue for appeal. There is no justice at that table.

At the very moment you need to access our courtrooms most, you find yourself locked out, diverted to a room outside the scope of our judicial system and beyond the bounds of our laws. Without your choice or sometimes even knowledge, forced arbitration transforms a level playing field into an uphill climb. At that point, most Americans turn around; but for the few who muster the will or the resources to continue their cases, there is no guarantee to counsel, forcing them to face off against some of the most experienced legal minds in our country completely on their own.

The Arbitration Fairness Act would help remedy this profound shortcoming in our justice system and ensure that equal access to legal protection doesn't come along with a price tag. Mr. Speaker, that is one of the most fundamental promises we make in our country. I am grateful to Mr. JOHNSON for his leadership on the issue.

Mr. JOHNSON of Georgia. I thank the gentleman from Massachusetts for his wise words.

Mr. Speaker, at this time, I congratulate the writers of The New York

Times' exposé, a three-part series on forced arbitration. The second part of the series examined the secretive nature of forced arbitration, and the third part of that series talked about the forced arbitration in the context of binding persons to arbitrate secular claims in religious tribunals, applying religious law.

□ 1815

I would strongly encourage those who are interested in this subject to look to The New York Times article because it gives you a good understanding of where we are as far as forced arbitration is concerned. I applaud the reporters for their groundbreaking work in writing that series and producing it.

Jessica Silver-Greenberg, Michael Corkery, and Robert Gebeloff have done yeoman's work. They have exposed a threat to the justice system that shakes the tenets of our very democracy to its core. They deserve the highest commendation that I can give them, and that is just simply a shoutout from the well of the House.

I understand that the Pulitzer Prizes for journalism will be announced this coming Monday. If I could nominate this series, I would certainly do so. I certainly support their nomination for that award.

Next, Mr. Speaker, I yield to the gentleman from Rhode Island (Mr. CICILLINE), my good friend, the former mayor of Providence, Rhode Island, a lawyer in his own right, a member of the Judiciary Committee upon which I also serve and, also, a member of the Foreign Affairs Committee.

Mr. CICILLINE. Mr. Speaker, I thank the gentleman for yielding. I want to particularly thank the gentleman for his extraordinary leadership on this very important issue of forced arbitration, which is denying many, many Americans the right to have their grievances heard.

I want to thank both Mr. JOHNSON and Mr. CONYERS for not only the legislation, but for continuing to raise this issue.

As many of my colleagues have said, forced arbitration denies individuals the most basic right to have their grievances heard fairly. No court, no lawyer, no judicial proceedings, all the things that we have over many centuries recognized as essential to the fair and impartial resolution of disputes.

But there is an area that I want to speak about in particular where forced arbitration, I think, is particularly damaging and particularly unfair.

In the coming weeks, I will introduce legislation that will protect the rights of our troops to pursue justice in our courts. My legislation will simply clarify the original intent of the Uniformed Services Employment Rights Act of 1994, also known as USERRA, and allow veterans and servicemembers to have their claims heard in court.

This legislation was intended to protect the men and women of the Armed Forces from losing their jobs as a result of their service to our country. It specifically prohibits employment discrimination due to military service and guarantees benefits and reemployment rights to those who leave their civilian jobs to serve.

However, these rights have rapidly eroded in recent years. Employers are requiring their employees to sign forced arbitration agreements barring access to justice for servicemembers. As my colleagues have discussed this evening, these agreements are often heavily tilted toward the parties who insist upon them.

In mandatory arbitration, the employers can select the arbitrator and the location of the forum, and the avenues for appeal are entirely closed off. In many instances, these clauses are imposed by employers without the knowledge or consent of their employees.

While USERRA explicitly prohibits any agreement that limits any right or benefit provided under the statute, some Federal courts have misinterpreted the law to exclude procedural rights.

As a result, many of the 1.3 million brave men and women who serve in our military may return to civilian life without their jobs and without the ability to fully assert their rights in the courts.

This includes servicemembers like Javier Rivera, an Army Reservist who was deployed for 6 months only to learn that his job had been filled in his absence. Despite 900 job openings, his former employer claimed that he could not find a single open position for him upon his return.

Under these circumstances, USERRA should have provided some relief. At the bare minimum, it should have guaranteed him the opportunity to have his claim heard in a fair, objective forum. However, because of a forced arbitration clause in his contract, he had no access to the courts at all.

Denying our servicemembers and veterans this essential right directly conflicts with the intent of USERRA. By limiting their access to legal recourse, it represents a direct affront to all who serve in our military.

Our troops face many potential threats in service to our country. The last thing they should be concerned about is whether they will be able to keep their job.

A Nation that asks young men and women to defend this country with their lives should protect them from losing their livelihoods when they come home.

So I urge my colleagues to support this legislation to help preserve access to justice for our servicemembers and veterans and to recognize this is just one very powerful example of what the real damage and the gross unfairness of forced arbitration clauses do to millions of Americans.

I thank Mr. JOHNSON again for yielding, for his extraordinary leadership on this issue, and for his fight to ensure that all Americans have access to the courts and fair resolutions of their grievances.

Mr. JOHNSON of Georgia. Mr. Speaker, as this Special Order has powerfully documented, forced arbitration isn't open, isn't just, and isn't fair. Simply put, forced arbitration clauses have become an exculpatory mechanism to rig the justice system.

Arbitrators don't have to be lawyers. Their decisions are practically irreversible. There is no record kept of the proceedings upon which you could appeal. There isn't even a requirement that witness testimony be given under oath.

As The New York Times investigative series illustrated, arbitration can even take place in the offices of the party representing the defendant.

There is also overwhelming evidence that forced arbitration creates an unaccountable system of winners and losers through what is called a repeat player advantage process that favors corporations over one-time participants, such as individual workers and consumers.

An analysis of employment arbitrations found that workers' odds of winning were significantly diminished in forced arbitration.

In 2012, the Center for Responsible Lending likewise reported that companies with more cases before arbitrators get consistently better results from these same arbitrators. Why? Because they are the ones who refer cases to the arbitrators.

The arbitrators want to eat. They know that, if they rule against whoever is referring the cases to them, then that is going to cut short their ability to feed themselves.

And so they rule in favor of the hand that is feeding them, and that is arbitrators, who are not even required to be lawyers and who have a perverse incentive to favor the repeat business over the consumers or the worker that they will never see again.

I am particularly alarmed by the growing number of companies that hide forced arbitration clauses outside of the four corners of the document.

For example, General Mills included a forced arbitration clause in its privacy policy that bound any consumer who downloaded the company's coupons or participated in its promotions.

Under its new terms, consumers also waived the right to a trial simply by liking the company's page on Facebook or mentioning the company on Twitter. Can you imagine giving up your Seventh Amendment jury trial right on Facebook?

It has become an increasingly common practice to use gotcha tactics to deceive consumers and employees by providing so-called notice of binding arbitration in brochures, email and memoranda, job application forms, signs outside of restaurants binding you—if you set foot in there and consume, binding you to forced arbitration, in-store application kiosks, employee training programs, contests and

games associated with company promotions. People have to watch out. Even on the side of a cereal box you can waive your right to a jury trial.

Just imagine a child finding glass in their cereal, but because the company prohibited class action litigation through forced arbitration, the child's parents would have to individually not go to court, but go to an arbitrator to have their claim adjudicated.

What if it affected several thousand children? That same forced arbitration clause would prevent class litigation to ensure that our children's food is safe to eat.

These are actual cases where someone potentially lost their right to hold a company accountable for unlawful conduct in a public courtroom. In all of these cases, we are not even talking about an agreement with a dotted line.

I am reminded of Justice Kagan's dissent in American Express v. Italian Colors where she observed that the Federal Arbitration Act was never meant to be a mechanism easily made to block the vindication of meritorious Federal claims and insulate wrongdoers from liability.

The tides are turning. Americans are beginning to fight to restore their right to a jury trial. Policymakers are using every tool available to fix our laws so that corporations can no longer escape public accountability.

I thank my colleagues for their participation in this Special Order. Before I close, I want to also thank the Congressional Progressive Caucus for their tireless work to advance a progressive agenda of equality and opportunity for all.

I will close with this observation. The American people would fight back if someone came into their home and said: We are going to take away your Second Amendment right to bear firearms. They would fight.

But when corporations take away their Seventh Amendment right to a jury trial, they remain mum, but not for much longer.

People are standing up. People are tired. They are desiring change. They are angry and realize that they have been taken advantage of.

They want to level the playing field, and that is exactly what the legislation that we have introduced in this Congress will accomplish.

Mr. Speaker, I yield back the balance of my time.

Mr. CONYERS. Mr. Speaker, during the congressional debates on arbitration more than 90 years ago, witnesses testified about the benefit of resolving disputes without judicial intervention. They noted, for example, that when arbitration is properly used, it can help parties avoid the uncertainty, delay, and costs of protracted litigation. Their testimony ultimately led Congress to pass the Federal Arbitration Act of 1925, which empowered courts to enforce arbitration agreements.

As the use of pre-dispute forced arbitration agreements—especially with respect to consumer transactions and employment agreements—has proliferated in recent years, however, it is clear that arbitration is not always beneficial to all parties and it may, in fact, eviscerate the protection of critical federal consumer and civil rights statutes. It is also apparent that the secrecy of arbitration awards can be used to hide awareness of wrongdoing by businesses. And, there are serious concerns about whether some arbitrators are indeed neutral.

The New York Times, in an excellent three-part series of investigative articles on the use of forced arbitration agreements published last year, reported that ''clauses buried in tens of millions of contracts have deprived Americans of one of their most fundamental constitutional rights: their day in court.'' Based on its exhaustive investigation of court records and hundreds of interviews with lawyers, judges, arbitrators, corporate executives, and plaintiffs, the Times found that arbitration practices are often closed, fail to adhere to rules of evidence or even substantive law, and are nearly impossible to appeal. The arbitration provisions that prohibit class actions, as the Times reports, are viewd by state judges as virtual 'get out of jail free' cards ''because it is nearly impossible for one individual to take on a corporation with vast resources.'' By privatizing the justice system, arbitration ''bears little resemblance to court'' and has become an ''alternate system of justice'' for businesses precisely because it tends to favor them, according to the Times.

Nothwithstanding these concerns, the use of pre-dispute forced arbitration clauses has become virtually ubiquitous. They appear in credit card agreements, car rental agreements, and employee handbooks. They even appear in nursing home agreements when they are signed ''at the time of admission only because the resident or family member does not even notice or understand the arbitration clause, or sign[ed] . . . out of fear that otherwise the admission will be jeopardized,'' according to the National Senior Citizens Law Center.

Pre-dispute mandatory arbitration agreements do not offer any option to reject. Once signed, these agreements force consumers and employees to irretrievably waive their right to judicial redress for harms they have suffered, prevent them from availing themselves of any class action remedy, and deny them the right to otherwise obtain justice under applicable state and federal law.

As a result, millions of consumers and employees across our Nation are legally bound by forced arbitration clauses in contracts with little or no ability to negotiate them.

Accordingly, it is time for Congress to reconsider the value of pre-dispute mandatory arbitration agreements. We must restore integrity to the arbitration process and limit the enforceability of mandatory arbitration clauses that provide no opportunity for consumers and employees to opt-out.

Congress should not restrict the rights and options of consumers and employees to resolve disputes Rather, arbitration should be one option among many to resolve disputes. Legislation that protects consumers and employees is a common-sense solution for all Americans.

For example, H.R. 2087, the ''Arbitration Fairness Act,'' is an excellent measure that was introduced by my colleague, Representative Henry C. ''Hank'' Johnson, Jr. This bill would make pre-dispute arbitration agreements unenforceable in employee, consumer, civil rights, and antitrust disputes. Importantly, H.R. 2087 would leave arbitration in effect when it is truly voluntary: after a dispute arises.

Similarly, H.R. 4899, the ''Restore Statutory Rights Act,'' which was also introduced by Mr. Johnson earlier this week, would ensure that the rights and protections established by Congress or the states are enforceable in court.

These bills would help restore balance and fairness to contractual agreements by allowing consumers, employees, franchisees, residents of long-term care facilities, and others to opt for arbitration, rather than have arbitration imposed on them as a pre-condition. Such measures would help ensure a fairer arbitration process because the terms of arbitration.

Congress must do more to protect the right of consumers and employees to have access to the courts. Americans should not be forced to lose this precious right as a result of one-sided, pre-dispute mandatory arbitration agreements.

Mr. WASSERMAN SCHULTZ. Mr. Speaker, I rise today on behalf of American consumers who are too often denied access to justice and forced into arbitration by contracts they were unable to negotiate fairly.

The Federal Arbitration Act was enacted to resolve disputes among businesses of equal standing; not to restrict consumer access to our courts. The horrific distortion of this law has allowed certain actors to tip the scale in their favor and create an uneven playing field in the pursuit of justice.

It is our responsibility to guarantee every American equal access to justice and protect the public from unfair and pernicious business practices. For this reason, I strongly support my colleague, Representative Hank Johnson's bill, the Arbitration Fairness Act. This bill would require that agreements to arbitrate employment, consumer, civil rights or anti-trust disputes be made only after the dispute has arisen. Consumers can only properly evaluate their options, and make a truly voluntary choice, after a dispute has arisen. Arbitration undeniably serves an important role in our legal system, but its use must be a choice, and not a mandate resulting from a one-sided contract.

Americans deserve to choose whether court, arbitration, mediation, or any other method of dispute resolution works best for them. I urge my colleagues to join me in guaranteeing all Americans this meaningful choice by cosponsoring the Arbitration Fairness Act.

HOLDING THE IRS ACCOUNTABLE

The SPEAKER pro tempore (Mr. PALMER). Under the Speaker's announced policy of January 6, 2015, the Chair recognizes the gentleman from Florida (Mr. DESANTIS) for 30 minutes.

Mr. DESANTIS. Mr. Speaker, tax day is fast approaching. If you, as a taxpayer, get audited and the IRS subpoenas documents from you, do you think you could destroy them and say: The heck with it? Could you lie to the IRS when they are asking you about your taxes and investigating you?

If somehow you unintentionally provided false information to the IRS, could you decline to correct the record once you found out that what you told them was not true? If you had a duty to comply with a lawfully issued subpoena, could you just fail to take basic efforts to comply?

I think every taxpayer in America instinctively knows that they would never be able to get away with the conduct I just outlined.

So I think the question that we here in this body have to answer is: Should the IRS be able to get away with conduct that a taxpayer would never be able to get away with? Can we really accept that the IRS gets to live under a lower standard of conduct than the taxpayers that the agency wields so much power over?

We know how this began. The IRS abused its authority. They targeted Americans based on their First Amendment beliefs. They got caught redhanded; so, Congress investigated.

Now, the Department of Justice was supposedly investigating, but that was baked in the cake from the beginning. They were not interested in this case. And, of course, they did not pursue prosecutions. Ultimately, even though Lois Lerner was held in contempt, they didn't pursue that even to the grand jury.

□ 1830

So Congress has tried to get to the truth of this, and Congress is even taking some action, like cutting funding for the IRS. Of course, when we cut funding, all they did was stop answering the phone calls. They didn't take it out of the bureaucracy. They just basically harmed the taxpayers.

So we are trying to get to the truth. We subpoena documents from the IRS, we bring in the Commissioner, John Koskinen, to testify, and we are trying to get the truth on behalf of the American people.

And yet, what has happened?

The IRS destroyed 400 backup tapes containing as many as 24,000 of Lois Lerner's emails that were under not one, but two congressional subpoenas.

Commissioner Koskinen came to the Congress and made multiple statements that are demonstrably false. He breached his duty to correct the record once it was clear that some of his statements were false, such as the fact that he said we will produce every one of her emails. Koskinen even claimed that the IRS went to great lengths to ensure that Congress was given all documents, yet the IRS failed to conduct even basic investigation, such that the inspector general found a thousand emails that were in the IRS' possession all along. It took them 2 weeks to find it.

The IRS didn't look at Lerner's BlackBerry. They didn't look in other areas which were obvious that you would want to look at.

Great lengths?

Give me a break. As Judge David Sentelle noted today in the D.C. Circuit, it is hard to find the IRS to be an agency that we can trust.

So I think the question is: What is the remedy for them frustrating the American people's inquiry into their targeting of Americans?

I have argued, along with my colleagues here, that the appropriate remedy is found in the Constitution, which provides for impeachment of civil officers.

You have an IRS Commissioner who breached multiple duties that he owed to the public, and he violated the public trust, which is what Alexander Hamilton said was kind of the touchstone for what an impeachment should be in the Federalist Papers. Impeachment is not a prosecution or a punishment. It is really a constitutional check.

I think as you listen to some of the conduct that the IRS engaged in—my colleagues will go into more of it—obviously there is a need to get the truth, but there is also a need for this institution here to stand up for itself. It is really a question of the House's self-respect.

How much longer can we, as elected officials, allow the bureaucracy to simply walk all over the Congress?

We are supposed to be the people's representatives. We are supposed to be able to do justice for them when the government is not acting appropriately.

Fear of a media backlash or that people in the beltway will say you shouldn't be doing it, that is no excuse for our failure to discharge our basic constitutional duties.

As James Madison said: ''Ambition must be made to counteract ambition.'' No government agency is above oversight and accountability by the people's representatives.

And so as it stands now, we have filed articles of impeachment that have basically been collecting dust for several months. We think they should be brought up on the Committee on the Judiciary and we should have a debate about whether this Commissioner's conduct satisfied the standards of conduct that the Founding Fathers envisioned for civil officers of the United States.

I think any taxpayer who looks at what the IRS did will instinctively say, you know, it just ain't right that they are able to get away with that when they are dealing with the Congress, but I would never be able to get away with that when I am dealing with the IRS.

I yield to the gentleman from Ohio (Mr. JORDAN), my friend and colleague, a guy who has been really, really fearless on holding the IRS to account.

Mr. JORDAN. Mr. Speaker, I thank the gentleman for organizing this Special Order, but more importantly, for the fight that he has waged in holding the IRS accountable and for saying to the American taxpayer, the American people, when you have individuals running an agency with the power of the Internal Revenue Service, doing what was done under Commissioner Koskinen's watch, he, in fact, should be impeached.

Let's just walk back through the story. Remember how this started. We had conservative groups around the country saying, hey, we are being harassed by the IRS for filing to get tax-exempt status, something that used to be kind of a matter-of-fact thing; we are being harassed for doing so.

So the Congress of the United States called for the inspector general to do an investigation. The inspector general does his investigation. It takes a long time. It takes about a year. They do an investigation and they find, you know what, our very own tax collection agency is, in fact, targeting citizens for their political beliefs. They find it. They find targeting took place. The inspector general of Treasury tells the Treasury officials and tells the IRS what they have discovered, and they are going to file their report the following week.

In an unprecedented move, Lois Lerner, the Friday before the report is supposed to be made public the following week, Friday, May 10, 2013, Lois Lerner does what all kinds of people do when they get caught with their hand in the cookie jar. She wants to get ahead of this story, so at a staged event, bar association event, staged question, planted question from a friend, she gets asked about the targeting and the inspector general's investigation, and she does what all kinds of people do when they get caught. She lies. She flat out lies. She tries to blame good public servants in Cincinnati. She said this was all about Cincinnati.

We all know what the evidence pointed to. It was about Washington. It was about the folks right here in the Internal Revenue Service.

The report comes out the following week. On the following Monday, 2 days later, the President of the United States and the Attorney General say this is inexcusable, and they call for a criminal investigation.

In fact, it is so bad, the President fires the then-Commissioner of the Internal Revenue Service. They bring in an interim Commissioner. For a long time, we have hearings and a bunch of things happen. And, of course, one of the most noteworthy things is the very lady who was at the center of the storm, who lied when she first made