

November 16, 2020

The Honorable Jim Inhofe
Chairman
Senate Armed Services Committee
205 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Jack Reed
Chairman Ranking Member
Senate Armed Services Committee
228 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Adam Smith
Chairman
House Armed Services Committee
2216 Rayburn Office Building
Washington, D.C. 20515

The Honorable Mac Thornberry
Ranking Member
House Armed Services Committee
2216 Rayburn Office Building
Washington, D.C. 20515

Dear Chairmen and Ranking Members:

As you work to reconcile the differences between the House and Senate versions of the National Defense Authorization Act for Fiscal Year 2021 (FY 2021 NDAA), we write to urge you to retain House-passed provisions that would protect servicemembers from being forced into arbitration when trying to uphold their federal rights granted by Congress under the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Servicemembers Civil Relief Act (SCRA).

The primary mission of the brave women and men of the U.S. Armed Forces is to protect our nation – a mission that can be jeopardized when their lives are interrupted with consumer scams, abuses, and fraud. This risk is heightened by the particular burdens faced by servicemembers, such as limited access to internet or banking services while deployed. Congress has enacted laws such as SCRA to protect our servicemembers from these types of unscrupulous financial practices. Despite these laws, predatory lenders and other bad actors have circumvented federal protections through forced arbitration. The Department of Defense has long recognized the relationship between financial issues which negatively impact servicemembers and the use of forced arbitration and indeed stated in a 2006 report¹:

“Service members should maintain full legal recourse against unscrupulous lenders. Loan contracts to Service members should not include mandatory arbitration clauses or onerous notice provisions, and should not require the Service member to waive his or her right of recourse, such as the right to participate in a plaintiff class. Waiver isn’t a matter of ‘choice’ in take-it-or-leave-it contracts of adhesion.”

Just as no servicemember should be the victim of corporate financial abuse, no servicemember should face employment discrimination because of their service. Take the case of Kevin Ziober², a U.S. Navy reservist whose employer fired him just hours after throwing him a going away party before his imminent deployment to Afghanistan. Ziober sued his employer, arguing that the company violated USERRA when they fired

¹ Department of Defense, Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents (Aug. 9, 2006), <http://1.usa.gov/rVdafq>.

² *Ziober v. BLB Res., Inc.*, 839 F.3d 814, 823 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 2274 (2017).

him for fulfilling his military service. His employer, however, forced him into arbitration. Ziober fought all the way to the Supreme Court to be able to bring his claim in court, but was unable to enforce his rights under USERRA due to a forced arbitration clause in his employment contract.

Access to the court system to enforce rights granted under the law is one of the fundamental principles of our democracy. Servicemembers and veterans should not be denied their right to their day in court if their federal, statutory rights are violated. Forced arbitration deprives servicemembers of that basic right. Arbitration is a private system without any legal protections. There is no public filing of cases, public review of decisions, or requirement that arbitrators have legal training or even follow the law.

Attached is a letter from numerous military and veterans organizations in strong support of this effort to protect our men and women in uniform: Veterans of Foreign Wars of the United States (VFW), Military Officers Association of America (MOAA), Iraq and Afghanistan Veterans of America (IAVA), among many others. As the letter states:

“Forced arbitration is a one-sided, non-transparent process in which servicemembers have very little chance at achieving a favorable outcome when their rights and protections set forth under these federal laws are violated.”

We urge you to retain the following provisions from Division A of the House-passed NDAA in the final FY 2021 NDAA:

- **Sec. 534 . – Clarifications Regarding Scope of Employment And Reemployment Rights Of Members Of The Uniformed Services.** This provision would ensure servicemembers are protected from the use of forced arbitration when they enforce their rights under USERRA.
- **Sec. 540A. – To Resolve Controversies Under Servicemembers Civil Relief Act;**
- **Sec. 540B. – Limitation on Waiver Of Rights And Protections Under Servicemembers Civil Relief Act;** and
- **Sec. 540C. – Clarification Of Private Right Of Action Under Servicemembers Civil Relief Act.**

These provisions would ensure that servicemembers are protected from the use of forced arbitration when they enforce their rights under SCRA. We urge you to include these protections in the FY 2021 NDAA to support our nation’s servicemembers’ and veterans’ fundamental right to seek remedies through the court system for being unjustly fired or exploited.

Sincerely,

/s/ RICHARD BLUMENTHAL
United States Senate

/s/ LISA MURKOWSKI
United States Senate

/s/ JON TESTER
United States Senate

/s/ ELIZABETH WARREN
United States Senate

/s/ KIRSTEN GILLIBRAND
United States Senate

/s/ SHERROD BROWN
United States Senate

/s/ MARIA CANTWELL
United States Senate

/s/ JOE MANCHIN III
United States Senate

/s/ MAZIE K. HIRONO
United States Senate

/s/ PATTY MURRAY
United States Senate

/s/ GARY C. PETERS
United States Senate