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Blocking The Courts: The Trump Triple Threat

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One thing seems undeniably true about the health care bill's demise: when the public has a right to something, it's pretty hard for politicians to take that away. But things aren't always so simple, especially when the public may be unaware of what officials are up to. Take the issue of access to the courts. Most Americans believe they have a fundamental right to go to court if they've been hurt by corporate or other misconduct. Voters certainly did not send politicians to Washington to block that access. But in three separate instances so far, the Trump administration (with Congress' help) has begun doing just that, and the general public has no idea.

The problem actually started six years ago, when the U.S. Supreme Court began doing terrible damage to the right to access the courts. The Supreme Court decided that when it comes to remedying harm caused by corporate wrongdoing, companies themselves could keep Americans out of court. They could force customers or employees into private, secretive arbitration systems controlled by the very corporations that cheated or harmed them in the first place. And no class actions, where individuals can join with others in one case, would be allowed. When a company practices a pattern of discrimination or receives a windfall through small injuries to large numbers of people (think, a bank charging millions of customers illegal fees), a class action is the only realistic way for individuals to access the courts, and for a law-breaking company to be held accountable.

To fix misguided Supreme Court decisions like this, Congress or federal agencies must act. And indeed, the agencies got busy. By 2016, three proposed or final rules were issued to restore fundamental legal rights taken away by the Supreme Court. The first proposed rule was released in May 2016 by the Consumer Financial Protection Bureau (CFPB), the agency set up after the 2008 financial collapse to protect consumers from abusive lending practices. The CFPB proposed a limited rule, which it just finalized this month. (The embattled CFPB still survives under Trump although his budget would destroy it.) The CFPB rule would simply allow defrauded or cheated individuals to file class actions against banks, lenders, credit card companies and other financial institutions that

violate the law. For example, the rule would allow customers to join as a group to sue banks that commit widespread fraud, like Wells Fargo.

Enter the Trump Administration. Acting Comptroller of the Currency and Trump appointee, Keith Noreika, immediately tried to block the rule with bogus, [last-minute](#) arguments never once raised during the CFPB's exhaustive two-year rulemaking process. And now, congressional resolutions have been introduced to permanently ban this modest rule. The mechanism they are using – the Congressional Review Act – cannot be filibustered. Trump would sign a bill repealing the rule if it ever reached his desk. [It is becoming an epic fight.](#)

Second, last fall, the Centers for Medicare & Medicaid Services (CMS) said nursing homes could no longer require patients to sign forced arbitration clauses. CMS believed that without access to the courts, abused or neglected patients and their families would have little redress, and nursing homes could prolong dangerous conditions. But in June, Trump's CMS announced its intent to repeal this rule, and allow nursing homes to keep out patients who will not agree to such a violation of their legal rights. Consumers and patients are [fighting back](#).

Third, in November 2016, the Department of Education issued a rule to prevent for-profit schools from forcing defrauded students into private arbitration, or preventing them from filing class actions. This 2016 rule, issued after the Department examined extensive evidence of swindles and scams by for-profit schools and colleges, should have gone into effect July 1. But in June, Trump's Education Secretary, Betsy DeVos, blocked it and is now doing a "regulatory reset" to "renegotiate" these and other student protections. Again, the public interest community is [fighting back](#).

Access to the courts is part of America's DNA. For most of our history, harmed or defrauded individuals have been able to resolve disputes before unbiased judges and juries in courtrooms. It's how our nation's Founders wanted it, preserving the right to jury trial in the 7th Amendment as a vital a protection against tyranny and injustice. Perhaps Mr. Trump thinks he knows better. Or perhaps he's not paying attention to what his own government is doing.

But there's no need to let this happen. Most urgently, contact your member of Congress immediately, and tell them to [support the CFPB arbitration/class action rule](#). If Congress repeals this rule, every individual or small business in America will be at risk. It will mean

that the next time an unscrupulous bank or lender steals money from you, your family, or your small businesses, there won't be a thing you can do about it.