

Safety Over Forced Arbitration Act

Senator Sheldon Whitehouse

The Safety Over Forced Arbitration Act of 2019 prohibits mandatory, pre-dispute arbitration in cases where claims implicate public health and safety, including environmental cases. This means that the case can be heard in open court, so that the general public is aware of the risks and can take steps to learn about and prevent further harm.

Arbitration Background

- The Seventh Amendment of the Constitution guarantees Americans the right to a jury trial in civil cases. Open jury trials not only allow citizens the ability to seek redress against large, powerful wrongdoers, but are also a way to inform the general public of dangers to the community.
- Mandatory arbitration clauses deny aggrieved parties access to the court and instead funnel litigation into closed-door arbitrations, away from the public eye.

Arbitration in Public Health and Safety Cases

- When claims affecting the broader public's health and safety are arbitrated, it denies the public the opportunity to learn about the potential harms. Instead of having the facts exposed in open court, where members of the community and the press can learn about what happened, the case is litigated in secret arbitration proceedings where the participants are often bound by confidentiality agreements.
- As an example, the use of mandatory arbitration clauses are especially prevalent in contracts and leases involving mining, drilling and fracking contracts between landowners and drilling companies.
- This means if the mining activity creates an environmental hazard for the landowner, like contaminating the landowner's soil or drinking water, the landowner cannot sue in open court. As a result, the surrounding community may never learn of the potential harm the activity created, until it is too late.

The Safety Over Forced Arbitration Act

- The Safety Over Forced Arbitration Act would help prevent future harms to the public by prohibiting binding arbitration in cases that implicate the broader public health and safety. This means that the landowner in the above example could choose to keep his case in court.
- The bill requires that all parties to the suit consent in writing to use arbitration in such cases. It does not, however, ban the use of arbitration.
- If all parties elect to enter arbitration, the bill requires that the arbitrator provide written explanation of the factual and legal basis for any outcomes from the arbitration proceedings, and those documents could not be sealed.