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Mandatory Arbitration: Market Relationships Out of Marketer's Control

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ABSTRACT

Purpose: *This article explains, and recommend improvements for, the US system of Mandatory Arbitration (MA). MA is a parallel, privately-controlled justice system adjudicating hundreds of thousands of B2C disputes annually. Millions of US consumers have contractually agreed to MA, very often without even being aware of it. Once a consumer agrees to MA, s/he sacrifices a set of legal rights most take for granted, as detailed in the article. This shifting of rights, and of dispute-resolution process, signals an alteration in the post-purchase phase of the consumer decision process.*

More specifically, this article addresses three key issues. First, it explains Mandatory Arbitration (MA) to an audience often not having a full appreciation of its import and impact. Second, it will explain how the MA contracting process ensures the vast majority of consumers become vulnerable consumers, ripe for exploitation. Third, this article will recommend ways to improve and reform the MA contracting process in ways specifically designed to reduce consumer vulnerability and improve societal outcomes.

Study Design: *For this study, we employed an examination of (1) relevant US statutory law, (2) relevant US case law, focusing on US Supreme Court cases, (3) law review commentary, (4) empirical evidence on both the process and outcomes of mandatory arbitration, (5) commentary from other sources, such as US government agencies and watchdog groups, and (6) procedural documentation from arbitration agencies.*

Findings*: We make specific policy recommendations for the improvement of MA. These recommendations are in the areas of (1) Consumer awareness, (2) Consumer Choice (3) Selection of the arbitrators, (4) Arbitrator's legal training, (5) Discovery, (6) Judicial review, (7) Class action, and (8) Elimination of MA in some circumstances.*

Originality/Value: *The value flows directly from the article's stated Purpose. First, many do not have a solid understanding of MA, and are unaware of how pervasive it is in US commerce. Fewer still are aware of how MA strips consumers of their legal rights. We propose practical reforms to maintain the advantages of Mandatory Arbitration, while preserving the legal rights of consumers.*

Article Classification; *Viewpoint; General Review*

Keywords: *Mandatory arbitration; Consumer vulnerability.*

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I. INTRODUCTION

Corporate legal departments rarely make headlines. But when 75,000 customers simultaneously initiate litigation against a single corporation, we may see an exception to the rule. When that corporation is Amazon, and all the legal actions focus on one single business practice, it's headline news (Corkery 2021; Carter 2021; Roberts 2021).

The proximate cause for these litigation actions is Mandatory Arbitration (MA) – the practice of removing consumer vs corporate disputes from the public courthouse and substituting a closed-door hearing before a private dispute resolution firm (Szalai 2019). Tens of thousands of Amazon customers, resolved to the reality that MA left them with no realistic chance of victory against the $400 billion internet behemoth, banded together to sling a rock at the head of Goliath. Of course, Goliath did not go down. But he did retreat. The consumer's move proved so potent as to force Amazon to change their Terms of Service in a single swoop, wholly abandoning their long-standing adherence to MA as their method for handling consumer disputes (Corkery 2021; Roberts 2021).

More about the Amazon debacle shortly, but first - how did we get here? What is MA, and from where did this shadow court system arise? How does it work? What are the advantages to this system, allowing it to become so pervasive in US business practice? And what makes it so egregious as to motivate tens of thousands of Amazon customers literally into open revolt?

The purpose of this article is three-fold. First, it will attempt to explain a key portion of the modern B2C relationship to an audience that often lacks an understanding of it: the millions of times per year when the entire marketing system breaks down and corporations face their own customers as direct legal adversaries (Repa 2015). This relatively new dimension of B2C relationships alters the definition/parameters of the "post-purchase phase." Marketers must comprehend/model this phase in order to manage customer relationships through it.

Second, this article will explain how the MA contracting process ensures the vast majority of consumers become vulnerable consumers, ripe for exploitation, at least with respect to this specific portion of the agreement (Schmitz 2010). Their lack of knowledge about both contract law and MA discourages consumers from reading the agreement, thus making them unable to question it. Indeed, as will be discussed, it is often not even necessary for the consumer to see the MA clause in order to be bound by it (*Rodriguez v. Instagram* 2014). This creates a self-reinforcing and self-fulfilling sense of helplessness, in turn landing the consumer in a weakened posture in case of a dispute (Schmitz 2010). Third, this article will recommend ways to improve and reform the MA contracting process in ways specifically designed to reduce consumer

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vulnerability.

II. WHAT IS MANDATORY ARBITRATION?

MA is a co-existing, privately controlled justice system. Once two parties have contractually agreed to MA, disputes between them may no longer be resolved in the public courthouse. Rather, their only resolution comes via a closed-door, private process, where a third-party arbitrator will hear both sides and reach a final disposition. The arbitrator's conclusions are usually non-appealable. The arbitrator is normally hired by the corporation in the dispute, with the consumer having no input in their selection (del Prodo 2021). This streamlined process is typically faster and less cumbersome than the normal legal process but requires the consumer to sacrifice significant legal rights. Among these is the right to an appeal, the right to full discovery, the right to have a trained legal expert administer the proceedings, and the right to bring a class action, as will be more fully discussed (Leslie 2018).

(A) The Scope of Mandatory Arbitration Agreements in 21st Century US Consumer Life

MA is part and parcel of hundreds of millions of US consumer relationships (Szalai 2019). As long ago as 2004, it was estimated that approximately one-third of the consumer relationships entered into by the average American made use of MA (Demaine and Hensler 2004). A subsequent study in 2008 looking only at large-market-share players in the telecommunications, credit and financial services industries found that over three-quarters of their standard consumer contracts contained MA clauses (Eisenberg, Miller and Sherwin 2008). A 2009 study by Public Citizen examined standard contracts from major players in several industries - credit cards, banks, cell phones, computer manufacturers, cable television and high-speed Internet, auto dealers, and brokerages – also found that three-quarters included MA clauses (O'Donnell 2009). A 2010 study examined consumer contracts in the credit card and cell phone industries, finding that 86% included MA clauses (Schmitz 2010).

The predominance of MA agreements in consumer contracts has continued to expand since the time of those studies; There are over 800 million consumer arbitration agreements in force in the US (Szalai 2019). Virtually all mobile wireless contracts include mandatory arbitration clauses, as do over half of all issued credit card contracts and well over 80% of private student loans (US Consumer Financial Protection Bureau 2015). Greater than 60% of all US consumer e-commerce transactions include an MA agreement. These MA clauses are now used freely in non-negotiable adhesion contracts, leaving the consumer with the option to accept the MA clause (which they hope to never use) or to do without the service or good. According to a

recent report from the US Consumer Financial Protection Agency, avoiding mandatory arbitration agreements might be near impossible for many US consumers (Consumer Financial Protection Agency 2015).

Perhaps even more surprising than the number of MA contracts is how commonplace it is for a consumer to find herself embroiled in a MA proceeding. Even prior to much of the rise in the use of MA clauses, the number of consumer relationships so dysfunctional that they resulted in arbitration was surprisingly large. In 2001 alone, the American Arbitration Association (AAA) – the largest single provider of arbitration services in the US - administered close to one-quarter of a million cases (American Arbitration Association 2001). In just the first ten months of 2021, that number expanded to over 360,000 disputes, for an annual pace of approximately 430,000 cases. (American Arbitration Association 2021). In 2006 alone, an AAA competitor, the National Arbitration Forum, conducted 214,000 consumer arbitration disputes (Office of the Minnesota Attorney General 2009).

III. THE EVOLUTION OF MANDATORY ARBITRATION

Arbitration, and agreements to arbitrate, are nearly as old as organized commerce itself. Such agreements were commonplace in the thriving merchant centre of medieval Venice (Stempel 2004). They were equally common among merchants in medieval England (Reuben 2003).

Arbitration agreements were essentially self-enforcing at this early point in their history. Once a person had entered into an agreement to arbitrate, he usually felt compelled to honour it simply to remain in good standing with others in his trade. But as time went on, the geographic reach of some such agreements became broader and broader: they were no longer just agreements with another merchant in your local area, where you might feel your reputation to be at risk. Quite predictably, more and more holders of arbitration agreements ended up in court, asking the court's aid to enforce the terms of the agreement (Reuben 2003).

As a matter of policy, ancient English courts did not favour arbitration clauses. At this time, an arbitration clause was seen as revocable by its very nature: anything else was asking a person to forfeit rights in advance, which was seen as unacceptable. Both English and US courts retained this stance for centuries (Reuben 2003). These early courts recognized the contribution of mandatory arbitration to vulnerability and inherent unfairness.

The US Congress saw fit to clarify the issue in 1925 with the passage of the Federal Arbitration Act (FAA). The Act states in relevant part:

> "A written provision in any maritime transaction or a contract evidencing a transaction

> involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 USC § 2. (*ATT Mobility vs Conception* at 1745).

The purpose and effect of the statute were to place arbitration clauses on an equal footing with any other clause within a commercial contract. However, at the time of passage, it was not intended to apply to consumer agreements (*Prima Paint Corp. v. Flood & Conklin Mfg. Co* 1967). The "commercial and maritime" language was taken to indicate that such agreements would be used in their traditional B2B context, reflecting their background as agreements between fellow merchants, each enjoying relatively equal bargaining power (Sternlight 2005).

US Supreme Court decisions long preserved this limited range of application, declining to enforce an arbitration agreement between, for example, a securities broker and an investor. The Court specifically noted in a 1950's decision that the B2C contract was not an agreement among peers: the broker had superior knowledge and power within the relationship, and thus not appropriate for MA (*Wilco vs Swan,* 1953). Again, MA contracts in the B2C context were viewed as exploiting consumer vulnerability.

By the 1980s, the Court had completely reversed itself. B2C arbitration was not only acceptable and enforceable (*Shearson/American Express v. McMahon*, 1987), but the Court now interpreted the above FAA passage as the Federal Government's endorsement of, and favourable attitude towards, arbitration generally (*S&E Contractors v. the United States* 1972). The Court's new interpretation signalled to the market that concerns regarding consumers' vulnerability would take a backseat to the increased efficiency and corporate flexibility created by MA.

Once the Supreme Court voiced approval of arbitration in consumer contracts, MA began to appear in industries and contexts where it had previously been deemed unacceptable, ushering in the previously-discussed proliferation of MA agreements in B2C contexts. The Supreme Court has specifically approved of MA clauses applying to, among other areas, consumer protection, employment, anti-trust and civil rights (Schmitz 2009). This attitude of favouring arbitration in a continually wider variety of applications remains the Court's stance (*Lamps Plus, Inc. v Varela* (2019); *AT&T Mobility v. Concepcion* (2011); Stephan (2020); Leslie (2018)).

IV. THE ARBITRATION PROCESS

The FAA legislation, and concomitant expansion in the use of MA, set the stage for the

emergence of arbitration specialists who recruit and train the arbitrators themselves, establish the detail of arbitration processes and generally manage the task of acting as an alternative judicial system. Major players in this market include the American Arbitration Association (AAA), the International Chamber of Commerce (ICC) and the Financial Industry Regulatory Authority (FINRA). While specific details alter across providers, an examination of the published processes from these three organizations provides a reasonably consistent basic outline of how the arbitration process operates for most that make use of it (American Arbitration Association 2014; Financial Industry Regulatory Authority 2021; International Chamber of Commerce 2021;).

The mandatory arbitration process originates when two parties make an agreement that provides for mandatory arbitration to take the place of court proceedings in resolving disputes between the parties. This agreement states that all disputes between the parties will be resolved via arbitration and will normally name the arbitration provider that would be used.

The process then "lies dormant" until one party should file a complaint (variously referred to as a "request," a "demand," or a "claim." Such specifics of terminology will be disregarded throughout this discussion to place focus on concepts.)

The arbitration association then handles preliminary matters such as notification of all parties and collecting set fees to pay for the arbitration. As the ICC deals with international arbitration, it plays a larger role in this phase, dealing with matters such as selecting the location for the hearing. The association then coordinates the selection of the arbitrator(s) selected from the association's existing pool.

At a preliminary hearing (often conducted by phone), the arbitrator sets out process specifics such as a timeline for the proceeding, rules on discovery or other exchange of information and submission of witness lists. Naturally, this is followed by the actual discovery and information exchange processes.

The next major step in the arbitration hearing itself. The arbitrator declares the hearing "closed" when s/he determines that all parties have had the opportunity to be heard. The arbitrator now takes some period of time to consider the evidence presented then renders a final award which is communicated to all parties. It is important to note there is no written record of the proceedings, eliminating any possibility of an appellate review. Therefore, this single hearing normally marks the conclusion of the process.

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V. Advantages of Mandatory Arbitration

MA has strong, tangible, documented advantages that may be simply summarized: lower cost and greater speed. (Ware 2013). Evidence gathered over an extended period of time indicates MA is less expensive than court litigation. A survey of attorneys conducted by Howard (1995) estimated that with all relevant costs considered, a defendant in a courtroom employment suit would be billed five times as much as a parallel case in arbitration. A similar study by Shell (1989) found that defendants in courtroom litigation incurred expenses about two and one-half times greater than defendants in arbitration. More recent research shows an even greater cost advantage for arbitration. A review of three studies focusing on arbitration cost found the most expensive mean cost estimate to be $2,256, far below the costs of a court case. (Horton and Chandrasekher 2015). A study by the US Consumer Financial Protection Agency put the mean consumer cost at only $206 (Consumer Financial Protection Agency 2015).

Many consumers may be even more impressed with the contrast in speed. Colvin (2011) conducted an analysis of approximately 4,000 arbitration cases. The data revealed the full time to completion for an arbitration resulting in an award was just about exactly one year. This is approximately one-half of the time for a similar case in courtroom litigation (Colvin 2011). Fellows (2006) reports that when consumers bring a case against a corporation, it comes to a conclusion in 4.35 months in arbitration. In courtroom litigation, the consumer can expect it to stretch on for 19.4 months.

This is in line with more recent empirics, showing US courtroom trials to stretch on for two to three years, while arbitrations conclude in only eleven months (Horton and Chandrasekher 2015). While others have argued this increase in speed is largely a function of the smaller disputed dollar amounts involved, the temporal contrast remains impressive. Further, as a practical matter, simply dumping the huge number of arbitrations onto the already-overcrowded US state and federal court systems may not be a realistic alternative. For these reasons, improving MA rather than eliminating MA is the more practical, responsible choice.

VI. Policy Recommendations & Discussion

The US Department of Defense (DoD) finds MA to be so disadvantageous it has flatly labelled pre-dispute MA clauses “predatory.” The DoD declares that MA agreements limit dispute resolution and interfere with protections afforded US armed service members, noting that “Service members need to have … judicial remedies through the courts for redress”. As a result, the Military Lending Act (MLA) outright bans MA clauses in lending contracts as part of its consumer protections for service members, in recognition that practices such as these

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undermine the quality of life (Hines 2012). Specifically:

> "[C]ontracts 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 is not a matter of "choice" in take-it-or-leave-it contracts of adhesion." – US Department of Defense, 2006

This statement from the DoD speaks clearly to the consumer disadvantages of mandatory arbitration and its contribution to consumer vulnerability. In the marketing literature, vulnerability is defined by the experience of a lack of personal control (Baker, Gentry, Rittenburg 2005); the lack of choice created by MA contributes to this sense of loss of control. Mandatory arbitration exacerbates an inherently unequal contractual relationship between a corporation and an individual consumer.

As stated above, simply eliminating MA for all US consumers would be neither practical nor desirable. For example, the "FAIR Act," reintroduced by Rep. Hank Johnson (D-GA), calls for the complete elimination of arbitration and has yet to be presented to the Congressional floor (Frisby 2021). Such efforts may be overzealous and miss the mark in balancing the various needs and cost to be balanced in the regulation of arbitration.

However, for reasons cited by the DoD, inter alia, MA cries out for reform. The most urgent needs lie in the areas of (1) Consumer awareness, (2) Consumer Choice, (3) Selection of the arbitrators, (4) Arbitrator's legal training, (5) Discovery, (6) Judicial review, (7) Class action, and (8) Elimination of MA in some circumstances.

Consumer Awareness

At the very minimum, steps must be taken to ensure consumers are aware they have agreed to MA and understand the resultant compromise of their rights. MA is widespread, poorly understood by consumers and often powerful in its outcomes – a combination resulting in pervasive consumer vulnerability across social classes and income ranges (US Consumer Financial Protection Bureau (CFPB) 2015). As discussed, mandatory arbitration (MA) is a larger issue than most realize, having ballooned over just the last 20 years. Millions of consumers are directly involved in MA proceedings each & every year (Repa 2015). The majority of US adults have agreed to mandatory arbitration as part of a consumer contract, knowingly or not. You, the reader, have or will likely agree to mandatory arbitration any time you sign a cell phone contract, purchase health insurance, initiate a brokerage account, get a new credit card, contract to build a home or place a loved one in a nursing facility.

Many consumers may be agreeing to arbitration without realizing or understanding it. In many cases, it is legal for the corporation to only notify the consumer of the full terms of the binding arbitration agreement *after* the consumer has signed on to the service, with those terms included in bill stuffers or only viewable online, thus potentially overlooked. Even if all terms are included in the original contract, those terms are often in small fonts deep into the boilerplate of a lengthy contract (Shmitz 2010). In many cases, a corporation may simply make the unilateral addition of a binding arbitration clause to an existing agreement (*Rodriguez v. Instagram* 2014).

When consumers agree to MA clauses yet ignore them, corporations enjoy relative freedom to "update" such agreements, presumably with terms even more favourable to the corporation, and consumers continue to ignore them. It is legally acceptable for notice of a MA agreement to appear in an easily-overlooked "bill stuffer" (*Badie v. Bank of America*) or simply placed inside the box with the product the consumer has already purchased (*Hill v. Gateway 2000*, Inc.). This creates a vicious cycle of consumer vulnerability, potentially leading to exploitation. When consumers are unaware, corporate lawyers enjoy enhanced drafting liberty. Simultaneously, consumers enjoy little confidence in their own ability to interpret and apply the MA contract language, creating even more of an environment where consumers remain unaware. The cycle of vulnerability and exploitation becomes self-perpetuating (Schmitz 2010).

Consumer Choice

Many of the consumer issues with MA would be eliminated by striking the "mandatory" from "mandatory arbitration." MA, in its current form, requires consumers to sacrifice multiple legal rights prior to the occurrence of any actual dispute. Allowing consumer-selected arbitration at the time of the dispute rather than in advance would largely restore the consumer's rights. Indeed, it seems likely that many consumers will agree to arbitration given its many benefits, but forcing consumers to unknowingly and without option agree to solve some vague future issues in a specific way is an abuse of power. Instead, allow consumers to make decisions for themselves. In this case, it would be good practice to offer the consumer some small, reasonable incentive for agreeing to arbitration, as the business stands to financially benefit from such clauses and could thus pass along the anticipated savings to the consumer. Because arbitration does provide at least the potential for fair and efficient dispute resolution, it remains an attractive option for many consumers.

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Neutral Parties Must Select the Arbitrators

Arbitration clauses commonly stipulate the corporation will select, hire and pay the arbitrators, with the customer having no input to the choice (Consumer Financial Protection Bureau 2015), setting up a conflict-of-interest situation. Presumably, the arbitration firm chosen by the corporation will want to please that corporation in order to retain the corporation's business. There is empirical evidence to support this concern. A study by Public Citizen examining approximately 34,000 California arbitration disputes determined that arbitrators found in favour of corporations and against consumers 94% of the time (O'Donnell, 2007, p, 2). A similar study by Christian Science Monitor put the parallel statistic at 96%. The Monitor study further concluded that "the 10 most frequently used arbitrators – who decided almost 60 per cent of the cases heard – decided in favour of the consumer only 1.6 per cent of the time, while arbitrators who decided three or fewer cases decided for the consumer 38 per cent of the time"(Baribeau 2007). Others have disputed these claims (Rutledge 2008).

Recent research analyzed litigants by how frequently they participated in arbitration, separating players into five tiers. Of course, almost all consumers are one-shot players, falling into the lowest-frequency tier. A logit regression revealed that the consumer's chances of victory fell by 94% when they opposed players in the highest tier and fell by 74% when opposing those in the second-highest tier. Corporations with the dual home-field advantage of playing far more frequently, plus hiring the arbitration provider, appear to fare far better (Horton and Chandrasekher 2015).

Consumers trying to avoid contracts with mandatory arbitration clauses would be unfairly limited in their market participation as MA clauses are prevalent in many Pro-forma contracts. These clauses are unavoidable in certain arenas, such as credit cards and cell phones, which have become an essential part of consumers' lifestyles (Leslie 2018; Schmitz 2010).

Arbitrators Must-Have Legitimate Legal Credentials

Once the consumer agrees to MA, knowingly or not, s/he sacrifices many of the US legal system's normal protections. The arbitrators themselves may or may not have a background in the law and, therefore, may not be aware of many consumer safeguards built into the law (Leslie 2018). They may not even feel compelled to adhere to legal procedures. One survey of AAA arbitrators found that early 90% felt it was acceptable to ignore the law if they believed it could lead to a more just result (Horton and Chandrasekher 2015). The US Supreme Court has affirmed that arbitrators are not required to adhere to legal procedure (*Wilco v. Swan* 1953). Often the rule of law, and courtroom procedures, are specifically designed to protect the weaker

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player, and in arbitration, they are sometimes disregarded.

Consumer Must Be Protected with Both Full Discovery and Judicial Review

Legal discovery is severely truncated in arbitration proceedings. Therefore, many consumers have no pathway to obtain the documents necessary to build their own cases against the corporation (Levinson 2008, Lemley and Leslie 2015). Without full access to the corporation's records and communications, it may be literally impossible for the consumer to build a case.

The ruling made by the arbitrator is usually not subject to any review by any entity. The proceedings are private, shielding corporate "bad actors" from adverse publicity (Black and Gross 2002). Judicial review is perhaps the most important safeguard built into the justice system, and it is essentially nonexistent in MA.

Class Arbitration or Class Action Must Be Permitted in All Cases

Standard MA contract language precludes class action suits or class arbitration, thereby enabling businesses to treat consumers unfairly without repercussion as long as it is spread out over many consumers. The class action (the legal ability to bind together for the purposes of proving wrong-doing) is often the most effective way for vulnerable consumers to take on large corporations and other institutions, as they can hold these institutions responsible for the entire harm caused and thus have an impact on the institutions' behaviour (Chandrasekher and Horton 2019).

A recent Supreme Court ruling dealt with a claim based on the allegation that AT&T had promised a free phone (worth about $30) for customers signing a new contract, then not following through on the promise. Customers attempted to bring a class action against AT&T, with potentially thousands of customers being affected. However, the presence of a binding arbitration clause meant consumers could not bring suit in court, class-actions included. The binding arbitration clause also forbade class arbitration. Customers were left with only two choices: they could absorb their loss or go through the time, effort, and expense of a courtroom proceeding with no better outcome possible than a recovery of thirty dollars (*ATT Mobility vs Concepcion* (2011).

Understandably dissatisfied with that choice, some AT&T customers challenged the validity of this restrictive aspect of the arbitration agreement in court, attempting to invalidate the arbitration agreement. While the California Supreme Court sided with the consumers, the US Supreme Court sided with AT&T, leading some to conclude that corporations may effectively steal from their customers, so long as they do not steal too much from any single individual (*AT&T Mobility v. Concepcion* 2011; Alliance for Justice 2011). This illustrates that the

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specific barring of class action lawsuits found within mandatory arbitration agreements effectively limits consumers' agency in the event of a dispute post-purchase. The mere threat of class-action might have prevented such corporate malfeasance (Consumer Financial Protection Bureau 2015).

All of which leads us back to Amazon. The Amazon saga was initiated by 2019 reports accusing the e-commerce giant of surreptitiously recording children via its Echo Dot Kids unit (Morris 2019). This triggered a series of courtroom class-action filings, all successfully quashed by Amazon due to its MA clause (Randazzo 2021). However, a few enterprising law firms, led by Keller Lenkner, lept through a complex maze of both technological and legal hoops, allowing them to rapidly file over 75,000 individual arbitration actions naming Amazon as the defendant. This flood of actions effectively overwhelmed both Amazon's legal resources and the arbitration provider capacity (Corkery 2021). Amazon quietly changed their online statement of terms of service within days, removing any arbitration requirement and substituting the federal and state courts near Amazon HQ in Washington (Randazzo 2021).

In sum, the burden of fairness in the creation of contracts is on the firm due to the greater knowledge and experience, and they should be held to a higher level of culpability. The fact that MA clauses appear more frequently in consumer contracts than in business-to-business (Eisenburg et al. 2008) indicates these firms, and their lawyers, are well aware of the practical differences between the two situations. This difference in frequency could be appropriate if MA alleviated the inherent one-sided nature of consumer contracts. Instead, it appears that MA has been used to limit these corporations' legal and social responsibility vis a vis their customers.

Consumer's lack of knowledge and influence in the process leads to feelings of helplessness and inability to take effective action, which is at the heart of vulnerability. This sense of vulnerability causes consumers to quietly sacrifice their legal rights in advance of any actual dispute. In the event of an actual dispute, this can lead to tangible loss without recourse as consumers have no other options beyond arbitration if an MA clause is in effect.

Elimination of MA in Certain Consumer Arenas

Mandatory arbitration should not be an option in certain consumption arenas. Specifically, these clauses have no place in healthcare or other services that serve already stressed, marginalized populations. Consumers utilizing these services are already facing few choices and often coping with unforeseen and unfamiliar services. It is inconsistent with these

organizations' commitments to the well-being of their patients and consumers and unfair to those under duress or for those who receive services without directly signing the contract. In these relationships, consumers individually lack the same power that these large organizations enjoy. Thus, the organization has an obligation to rise to the level of trust consumers have in them and avoid contributing to consumer vulnerability.

VII. CONCLUSION

In this paper, we explored the history of mandatory arbitration and its development within society its good and bad contributions to the quality of society, all of which contextualizes our recommendations for change. Consumers need to have the agency to choose when the issue arises. Arbitration is often an efficient method of dispute resolution, and it is likely that many consumers and firms will continue to use it without being forced to by a pre-dispute agreement.

MA contributes to the causes, experiences, and negative outcomes of consumer vulnerability. In a contract with MA, the consumer is required to agree to a specific and binding method of dispute resolution before the commercial relationship and service provision has even begun. These contracts are binding and non-negotiable for consumers and require consumers to give up their legal rights in advance, often without knowledge or choice. These standard contracts are created by the company's lawyers in a language not intended for a non-professional audience, and there is little motivation for consumers to read these contracts before agreeing to them.

This article presents several specific options designed to bring about positive changes. Yet more research is needed to address the implications of these policy changes. Exploring MA in consumer contracts provides an opportunity to influence public policy to the benefit of the free-market system. Specifically, this article contributes a legal understanding of the current state and path of mandatory arbitration. With this understanding, researchers may further analyze the impact of mandatory arbitration on consumer vulnerability, leading to significant improvements in society as a whole.

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