

December 10, 2019

The Honorable Susan Collins
Chair
Transportation, Housing and
Urban Development, and Related Agencies
U.S. Senate Committee on Appropriations
S- 128 Capitol Building
Washington, D.C. 20510

The Honorable Jack Reed
Ranking Member
Transportation, Housing and
Urban Development, and Related Agencies
U.S. Senate Committee on Appropriations
S- 128 Capitol Building
Washington, D.C. 20510

The Honorable David E. Price
Chair
Transportation, and Housing and Urban
Development, and Related Agencies
2358-A Rayburn House Office Building
Washington, D.C. 20515

The Honorable Mario Diaz-Balart
Ranking Member
Transportation, and Housing and Urban
Development, and Related Agencies
1016 Longworth House Office Building
Washington, D.C. 20515

Dear Chairs Collins and Price and Ranking Members Reed and Diaz-Balart:

Amtrak is one of the most important transportation systems in this nation. Amtrak serves more than 30 million passengers each year, and more than 800,000 people travel by train just during Thanksgiving week.¹ Every Amtrak passenger has a right to a safe ride, fair treatment, and a system deserving of the \$2 billion taxpayer funding that keeps Amtrak solvent. Unfortunately, this year, Amtrak decided to undermine each of these customer expectations by including forced arbitration clauses with all ticket purchases.

In brief, this new policy means that for any dispute ranging from a customer complaint to a mass casualty crash, passengers and their families are stripped of their right to go to court.² All Amtrak disputes now must be resolved in a secretive, privatized system. The customer's right to have a case heard by an objective judge or jury is gone. Arbitrators do not have to follow the law or precedent. Any right to appeal is severely limited. And all proceedings take place behind a veil of secrecy from public scrutiny.³ The safety implications of such secrecy are enormous.

Amtrak's new arbitration provision is broad. The provision explicitly states that the agreement is "intended to be as broad as legally possible" and that it applies not only to the individual who buys the ticket, but to others for whom the ticket was bought including "family members, minor passengers, colleagues and companies."⁴ The arbitration clause would even force severely-

¹ Amtrak, *Press Release, Amtrak Adds More Frequencies and Extra Capacity on Most Northeast Trains for Thanksgiving Week Travel*, Nov. 5, 2019, available at <https://media.amtrak.com/2019/11/amtrak-adds-more-frequencies-and-extra-capacity-on-most-northeast-trains-for-thanksgiving-week-travel/>.

² Politico, "Amtrak's New Ticket Rules Won't Let Passengers Sue in a Crash" (Nov. 8, 2019), available at https://www.politico.com/news/2019/11/08/amtrak-crash-sue-068175?fbclid=IwAR3Fp_gA-6hUrDnIGMtI6F6Tle5Bu-0M6gJQs-sN6_PhV1y2KmM7u0ifpfQ.

³ More than 60% of e-commerce sales are covered by broad forced arbitration agreements. See Imre Szalai, *The Prevalence of Consumer Arbitration Agreements by America's Top Companies*, 52 U.C. Davis L. Rev. 233, 234 (2019) available at <https://lawreview.law.ucdavis.edu/online/vol52/52-online-Szalai.pdf>.

⁴ Arbitration Agreement available at <https://www.amtrak.com/terms-and-conditions.html#arbitrationAgreement>.

injured crash victims into arbitration. In addition, the arbitration clause includes a long list of claims that it expressly covers including crashes caused by Amtrak's gross negligence, where passengers suffer disfigurement, wrongful death, medical and hospital expenses, and discrimination and failure to accommodate an actual or perceived disability.

This development is particularly outrageous considering that Amtrak's financial solvency is already protected by a \$295 million aggregate liability cap, which applies no matter how horrific a crash is or the number of people killed or injured. This cap was first enacted by Congress in 1997 and was updated following the May 2015 Philadelphia train derailment that killed eight and injured more than 200. It was recognized then that victim settlements could suffer without the increase and Congress thought it was important to remedy that situation. But safety issues raised by this crash and other problems still have not been resolved, and mass injury crashes have continued.⁵

The last thing Amtrak should do now, said Rep. Stephen Lynch (D-Mass.) during a recent U.S. House of Representatives subcommittee hearing, is create new "disincentives for Amtrak to be as robust as possible in pursuit of safe conditions." He continued that a forced arbitration clause that prevents passengers from taking their claims to court is a "disservice to the passengers we care about."⁶ At the same hearing, Jack Dinsdale, National Vice President at the Transportation Communications Union, said that forcing Amtrak customers into arbitration will "make passengers question whether they want to board [the] train."

Amtrak's decision to force customers into arbitration shields it from accountability and scrutiny when placing passengers in unsafe conditions or sweeping discrimination and other wrongdoing under the rug. Given its unique relationship with the federal government, and the fact that the company receives billions in taxpayer dollars, Amtrak should be a strong steward for the American public and leading the way when it comes to customer-friendly policies.

Last June, the House of Representatives passed the Forced Arbitration Injustice Repeal (FAIR) Act on a bipartisan basis by a vote of 225-186. The FAIR Act prohibits the use of forced arbitration in consumer, employment, civil rights, and antitrust disputes. Amtrak's recent decision will not be popular. A full 84% of voters support prohibiting companies from forcing them into binding, secretive arbitration proceedings.⁷ We urge you to stand with the majority of voters and promote accountability and urge Amtrak to reverse course and not force their customers into forced arbitration. With questions, please contact Remington A. Gregg, at rgregg@citizen.org.

⁵ Washington Post, "Amtrak Makes Financial Gains but Safety Issues Persist" (Oct. 1, 2019), *available at* https://www.washingtonpost.com/local/trafficandcommuting/amtrak-makes-financial-gains-but-safety-issues-persist/2018/10/01/888a0ade-c590-11e8-b1ed-1d2d65b86d0c_story.html; *see also* Occupational Health & Safety Magazine, "NTSB Issues Scathing Final Report on Amtrak Crash" June 25, 2019, *available at* <https://ohsonline.com/articles/2019/06/25/ntsb-issues-scathing-final-report-on-amtrak-crash.aspx>.

⁶ U.S. House of Representatives Committee on Transportation, Subcommittee on Railroads, Pipelines, and Hazardous Materials, Hearing on "Amtrak Now and Into the Future" (Nov. 13, 2019), *available at* <https://transportation.house.gov/committee-activity/hearings/amtrak-now-and-into-the-future>.

⁷ Guy Molyneux & Geoff Garin, Nat'l Survey on Required Arbitration, HART RESEARCH ASSOC. (Feb. 28, 2019), *available at* <https://www.justice.org/sites/default/files/2.28.19%20Hart%20poll%20memo.pdf>.

Sincerely,

Alliance for Justice
American Association for Justice
Americans for Financial Reform Education Fund
Center for Auto Safety
Center for Justice & Democracy
Center for Popular Democracy
Center for Responsible Lending
Consumer Action
Consumer Advocacy and Protection Society (CAPS) at Berkeley Law School
Consumers for Auto Reliability and Safety
D.C. Consumer Rights Coalition
Earthjustice
Economic Policy Institute
Empire Justice Center
Florida Alliance for Consumer Protection
Googlers for Ending Forced Arbitration
Impact Fund
NAACP
National Association of Consumer Advocates
National Center for Transgender Equality
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
National Employment Lawyers Association
National Employment Law Project
People's Parity Project
Public Citizen
Public Good Law Center
Public Justice
Teamsters Local 117
Texas Watch
Washington State Labor Council, AFL-CIO
U.S. PIRG

Cc:

The Honorable Peter DeFazio, Chairman
The Honorable Sam Graves, Ranking Member
U.S. House of Representatives Committee on Transportation and Infrastructure

The Honorable Daniel Lipinski, Chairman
The Honorable Rick Crawford, Ranking Member
U.S. House of Representatives Subcommittee on Railroads, Pipelines, and Hazardous Materials