A **New York Times magazine story** written by Emily Bazelon illustrates how forced arbitration denies consumers justice and the benefits of consumer protection laws. The piece titled "How Payday Lenders Prey Upon The Poor - And The Courts Don't Help" was published April 18, 2014. The article focuses on payday lending, a practice in which consumers are sold short-term loans at annual interest rates of 300-500 percent.

Although North Carolina outlawed payday lending in 2001, several lenders evaded the law by affiliating with out-of-state banks to offer the short-term, high-interest loans. A team of consumer protection lawyers brought class action lawsuits against several payday lenders in North Carolina. In early 2011, three of the lenders settled for $37.5 million. Others continued to fight and argued that arbitration clauses in their documents meant that customers could not pursue claims together or in court - they could only pursue relief through arbitration and only on an individual basis, an extremely unlikely scenario given the relatively small damages at stake involved in an individual claim.

In April 2011, the United States Supreme Court issued a decision in another class action lawsuit, AT&T Mobility v. Concepcion, which likely would have compelled a different result in the North Carolina payday lending lawsuits which settled. The plaintiffs in the Concepcion case had signed a standard AT&T cell phone contract that, in the fine print, forced dissatisfied customers into individual arbitration. A lower court ruled that AT&T's ban on class action lawsuits could not be enforced under California law. However, the U.S. Supreme Court reversed in a 5-4 decision. The Court relied on a 1925 federal law, the Federal Arbitration Act, which was "designed to promote arbitration." Even though the Federal Arbitration Act was originally enacted to promote quick and inexpensive resolution of disputes between merchants in arms' length transactions, arbitration has now become the norm in all consumer agreements with large corporations. Consumers now have practically no option but to resolve disputes with large companies through arbitration. Standard form contracts typically contain arbitration provisions which require arbitration of disputes and deprive customers of any opportunity to have disputes resolved in court.

The New York Times piece notes that at least 139 class action lawsuits have been thrown out of court due to arbitration clauses. Due to the Concepcion case and other pro-business Supreme Court decisions, the victims of payday and predatory lending in North Carolina are now without a remedy. Quite simply, no rational claimant or attorney will pursue a claim through arbitration, expending substantial time and expenses, to recover individual damages. As a result, consumers are left with no viable means of challenging unfair or unscrupulous (or even illegal, e.g. payday lending) business practices. Congress has the power to repeal or modify the Federal Arbitration Act so that it does not apply to ordinary consumer disputes. Additionally, Congress could enact the Arbitration Fairness Act which would bar arbitration provisions in consumer agreements, employment contracts, and elsewhere. Finally, the Consumer Financial Protection Bureau has the power to issue its own regulations on mandatory arbitration provisions.
