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Law Professors: Forced Arbitration for Shareholders in Corporate Bylaws Not Valid Under State Law

Washington, DC — A group of 21 law professors released an analysis today exposing the legal fallacies behind suggestions that the Securities and Exchange Commission (SEC) could allow forced arbitration in companies' governing documents. In their review of existing law, these leading legal authorities make clear that investors could not be restricted to arbitration when bringing forward federal securities claims due to the scope of what Delaware state law permits in corporate charters.

While the SEC is responsible for enforcing the federal securities laws, it is not required to follow, basic rules of state corporate law. Thus, while most of the public discussions to date relating to the use of forced arbitration clauses to block securities fraud cases has focused upon federal law, it's extremely important to note that the core rules of Delaware corporate law (where most major U.S. Corporations are incorporated) bar the adoption of forced arbitration clauses in corporate bylaws, and that the SEC is bound by federal law to respect such state law.

The findings of the paper were lauded by leaders of [Secure Our Savings](#) (SOS), a coalition comprised of more than 40 national and state-based organizations that has been calling on the SEC to safeguard Americans' rights to join together to hold law-breaking corporations accountable in a court of law.

“We have already shown why forced shareholder arbitration is not permitted under federal securities laws. This group of highly respected law professors, representing a wide range of views, explain why forced arbitration is also impermissible under Delaware corporate law,” said Barbara Roper, Director of Protection for Consumer Federation of America, a member of the SOS coalition. **“That should put an end to suggestions that companies can do an end run around the SEC to adopt forced arbitration clauses in their governing documents outside the IPO context.”**

The analysis reads, in part:

“The signatories to this submission hold a wide range of differing views regarding the utility of federal securities class actions. What they hold in common, however, is the view that Delaware corporate law does not permit a corporate bylaw (or charter provision, for that matter) to require that claims arising under the federal securities laws be resolved in arbitration or indeed in any specified venue.”

The law professors' full analysis is available [here](#).

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The [Secure Our Savings](https://secureoursavings.com) (SOS) Coalition is comprised of more than 40 national and state-based organizations. It assembled to call on the U.S. Securities and Exchange Commission (SEC) to stand by its mission and longstanding policy of empowering and protecting American investors, including retired servicemembers, first responders, and teachers, by safeguarding their right to join together to hold law-breaking corporations publicly accountable in a court of law. To stay up to date on SOS Coalition activities, visit <https://secureoursavings.com>.