



May 11, 2020

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The Honorable Nancy Pelosi
Speaker
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The Honorable Kevin McCarthy
Minority Leader
House of Representatives

The Honorable Mitch McConnell
Majority Leader
United States Senate

The Honorable Chuck Schumer
Minority Leader
United States Senate

Re: Preserving Access to Courts for Victims of COVID-19 Pandemic

Dear Speaker Pelosi, Leader McCarthy, Leader McConnell, Leader
Schumer:

Advisory Council

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John Passacantando
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We, the undersigned, are Board, Member Scholars, and staff with the Center for Progressive Reform (CPR), a nonprofit research and educational organization working to protect health, safety, and the environment through analysis and commentary. We write now to call upon you to ensure that our courthouse doors remain open to all Americans to pursue any meritorious civil justice claims for injuries they suffer arising from the COVID-19 pandemic. In particular, we request that you reject any legislation that would unduly interfere with the ability of workers, consumers, and members of their families to hold businesses accountable when their unreasonably dangerous actions have caused them to contract COVID-19.

Our civil courts have long played a critical role in protecting Americans against unacceptable harms. Now, amidst the COVID-19 pandemic and the economic dislocation it is causing, the remedies provided by tort liability will be needed more than ever. Countless frontline workers – from doctors and nurses to warehouse and delivery workers – have been toiling for weeks to arrest the spread of this awful disease while ensuring that those of us forced to seek refuge in our homes are able to do so in relative comfort. Yet, even as the pandemic enters its third month, these workers still lack basic protections like adequate distancing in the workplace, cleaning supplies, and personal protective equipment. Nor do they have the benefit of clear, enforceable industry-specific standards that would help minimize their exposure to the virus in the course of carrying out their work. While some agencies are

rolling out guidance documents to businesses about best practices, this guidance is unenforceable through the regulatory system. Thus, when intentionally careless or negligent businesses ignore this guidance and leave workers and consumers needless in harm's way, those who contract COVID-19 have no recourse except through the civil courts.

At the same time, state and local governments are rolling out conflicting and inconsistent plans for reopening businesses and other public accommodations within their jurisdictions. As a result, even the most vigilant among us may not fully appreciate the risks we face when reentering certain segments of the public sphere. Worse still, many of us appreciate the risks yet feel compelled to conduct certain kinds of business in public that we do not regard as truly voluntary (e.g., returning to our jobs or voting).

As these cases illustrate, we face a situation where policymakers have failed to institute clear, enforceable standards to prevent harm before it can occur. The civil courts are most essential in these circumstances to protect Americans. That is because when regulation fails, our civil courts offer a means for justice when otherwise avoidable harms are not prevented. Most businesses will take reasonable precautions for protecting their workers and customers in the absence of guidance from federal, state, and local policymakers. For the sizable minority of scofflaws, though, the credible threat of liability provided by the civil courts is our best hope for inducing them to take these precautions as well. And, if they do not, then the individuals who are harmed, or their surviving family members, will at least have the possibility of holding those businesses accountable. The damages they receive will never fully compensate them for the losses they have suffered, of course, but they are the best tool our society has for offering them some modicum of justice.

The many high-road businesses in our economy should join us in welcoming a vigorous role for civil courts because their conscientious efforts to protect their workers and customers will insulate them against civil liability.

They also need not fear the prospect of a flood of bogus claims against them. Lobbyists intent on weakening our civil courts have been pedaling unsupported myths about such bogus claims for decades, long before the arrival of the COVID-19 pandemic. In fact, tort law has useful mechanisms in place for weeding out non-meritorious lawsuits. For example, health care workers operate under a standard of care that takes into account emergency circumstances like these. Cases holding medical professionals liable for judgments made in emergencies are virtually nonexistent.

High-road businesses should recognize that the threat of tort liability will deter the scofflaw members of their industry from gaining an unfair competitive advantage by cutting corners on health and safety. Access to justice isn't just the right the thing to do; it's also good for their bottom lines as well.

Looking forward, the most important thing we can do to revive our economy is to assure Americans that it is safe to resume many economic activities. The best way of doing that is through clear, enforceable standards for protecting workers and consumers against exposure to COVID-19. In their absence, though, the best assurance we can provide to Americans that avoidable exposures caused by companies' failure to institute protective measures will be

remedied is through the effective and efficient operation of our civil courts. We urge you now to provide Americans with this assurance by defeating measures that might serve to unduly limit our meaningful access to those civil courts.

We appreciate your attention to this request.

Sincerely,

William Andreen

Edgar L. Clarkson Professor of Law
University of Alabama School of Law

Alejandro Camacho

Professor of Law
University of California, Irvine School of Law

David Driesen

University Professor
Syracuse University College of Law

Gilonne d'Origny

Board Member
Center for Progressive Reform

Michael Duff

Professor of Law
The University of Wyoming College of Law

Heather Elliott

Alumni, Class of '36 Professor of Law
University of Alabama School of Law

Victor Flatt

Dwight Olds Chair in Law
The University of Houston Law Center

David Flores

Senior Policy Analyst
Center for Progressive Reform

Robert Glicksman

J. B. and Maurice C. Shapiro Professor of
Environmental Law
The George Washington University Law
School

James Goodwin

Senior Policy Analyst
Center for Progressive Reform

Alexandra Klass

Distinguished McKnight University Professor
University of Minnesota Law School

John Knox

Henry C. Lauerman Professor of International
Law
Wake Forest University School of Law

Thomas McGarity

Joe R. and Teresa Lozano Long Endowed
Chair in Administrative Law
University of Texas at Austin School of Law

Joel Mintz

Professor Emeritus of Law
C. William Trout Senior Fellow in Public
Interest Law
Nova Southeastern University, Shepard
Broad College of Law

Sidney Shapiro

Frank U. Fletcher Chair in Administrative Law
Wake Forest University School of Law

Matthew Shutz

Executive Director
Center for Progressive Reform

Amy Sinden

Professor of Law
Temple University Beasley School of Law

Karen Sokol

Associate Professor of Law
Loyola University, New Orleans, College
of Law

Joseph Tomain

Dean Emeritus
Wilbert and Helen Ziegler Professor of Law
University of Cincinnati College of Law

Katie Tracy

Senior Policy Analyst
Center for Progressive Reform

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