



# As hurricanes expose inequalities, civil courts may be 'great equalizer'

BY MARTHA MCCLUSKEY AND SIDNEY SHAPIRO, OPINION CONTRIBUTORS — 10/16/18 04:30 PM EDT  
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While hurricanes like Florence are technically “natural” disasters, the Carolinas are experiencing the ways that the distinctly human-made problems of social and economic inequality reinforce and aggravate storm damage. Exhibit A is the catastrophic breaches and spills from the enormous manure “lagoons” located on North Carolina’s many factory-scale hog farms.

In the industry, these farms are known as Concentrated Animal Feeding Operations, or CAFOs, but nobody with a nose passing within a few miles of one would say that food is the thing in large concentrations. Torrential rainfall and floodwaters from Florence caused dozens of lagoons to overflow, releasing a toxic stew of contaminants harmful to human and ecological health, including *E. coli* and other bacteria.

The residents of the surrounding communities put most directly at risk are disproportionately poor or people of color. These communities have long suffered from neighboring CAFOs’ woefully antiquated waste disposal practices.

Critically, though, civil courts have provided them the opportunity to fight back and obtain some measure of justice. Earlier this year, residents began bringing suits against Murphy-Brown, the multinational corporation that owns most of North Carolina’s largest hog farms.

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The suits claim that the company's failure to use modern waste disposal methods creates a nuisance that prevents them from enjoying their property. Despite the huge power disparity, the communities are winning.

In the first three cases, [juries have awarded tens of millions of dollars in damages](#). (Those awards were drastically reduced under [a North Carolina law](#) that places a low cap on punitive damages.)

Such lawsuits illustrate how the U.S. civil courts remain [one of our society's "great equalizers"](#) — a place where even the wealthiest individuals and most powerful corporations can be held accountable. The dynamics at play in these lawsuits explain how the pursuit of civil justice contributes to the benefit of a fairer economy for all.

One way civil courts promote a fair economy is by compensating those who have been harmed by a corporation's irresponsible actions or dangerous products. This is particularly important for members of historically disadvantaged communities, such as the CAFOs' neighbors, because without such compensation, they would be forced to bear the costs of the farms' harmful actions, resulting in a wealth transfer that is not only unjust but regressive in nature. For individuals and families struggling to make a living, put food on the table, and educate their children, the ability to recover compensation can mean the difference between economic disaster and economic stability and survival.

Just as important, the continued threat of liability from future lawsuits may induce CAFOs to modernize its waste disposal practices. In the absence of regulation, CAFOs face no other real legal deterrent to placing profits ahead of the welfare of its neighbors.

Now that Hurricane Florence has exposed the CAFOs' neighbors to a new set of harms, they may have to return to the civil courts.

In 2017, Hurricane Harvey produced a similar example of the critical role of the courts for those harmed by corporate refusal to adequately prepare for disasters. First responders and members of fence-line communities in Crosby, Texas, are suing Arkema, a large chemical manufacturer, for injuries they claim were suffered as a result of preventable [explosions at the company's facilities](#) there in the aftermath of the storm.

Unfortunately, the role of the civil courts in promoting a fair economy may be in peril. Americans' access to the courts has been eroded by a decades-long bombardment from corporate lobbyists and attorneys. They have successfully pressed for legislation, such as the cap on punitive damages in the hog farm nuisance cases, and devised [contract provisions that hobble the effective functioning of our courts](#).

Accordingly, lawmakers concerned with promoting a fair economy should make the fight for citizen access to the courts a top priority. That should include resisting further attacks on civil justice and exploring legislative reforms that would affirmatively restore full and meaningful access to the courts.

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