



Consumer Federation of America



National Association of Consumer Advocates



May 6, 2020

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, DC 20515

The Honorable Chuck Schumer
Minority Leader
United States Senate
Washington, DC 20510

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

As organizations focused on consumer rights and consumer protection, we are concerned by reports that a broad range of businesses are seeking immunity from potential liability related to contracting COVID-19.^{1,2,3} Associations representing hotels, restaurants, convenience stores, and the hundreds of members of the U.S. Chamber of Commerce, among others, have stated their

¹ Jeff Stein and Robert Costa, *White House Readies Push to Slash Regulations as Major Part of its Coronavirus Economic Recovery Plan*, WASH. POST (April 21, 2020), <https://www.washingtonpost.com/business/2020/04/21/white-house-coronavirus-regulations/>.

² Latest Updates, *Testing Is Biggest Obstacle to Reopening States, Experts Say*, NEW YORK TIMES (April 15, 2020), <https://www.nytimes.com/2020/04/15/us/coronavirus-cases-update-live.html?action=click&module=Spotlight&pgtype=Homepage>.

³ U.S. Chamber Institute for Legal Reform, *Businesses Face Liability Concerns When Employees Return to Work*, <https://www.instituteforlegalreform.com/resource/businesses-face-liability-concerns-when-employees-return-to-work>.

intention to ask Congress to absolve them of responsibility for protecting workers and consumers who enter their doors. The undersigned groups oppose vigorously any proposals that the federal government override state-law claims and remedies that enable workers and consumers to hold companies accountable through the civil justice system. Such proposals, if enacted, would undermine consumer and worker protections, excuse negligent conduct, and show unwarranted disrespect for state law, including centuries-old state-law remedies.

Businesses' calls for immunity are premised on a false choice between the return to a healthy economy and allowing businesses to be held accountable if their carelessness causes people to get sick. Companies' purported concern about lawsuits leading to catastrophic bankruptcies is a smokescreen for an opportunistic attempt to use the anxiety that we all share today to push through a groundbreaking weakening of the law. Indeed, many of the companies seeking immunity now have long been doing so, invoking the bugaboo of tort liability as the cause of their claimed struggles (often even as company profits have in fact thrived).

Because state law—not federal law—provides the mechanism by which injured individuals sue for harm caused by a company or store, these proposals are asking the Congress to override the laws of every state. Such state laws, however, are a crucial means of encouraging businesses to take reasonable steps to protect workers and consumers. They establish the duties of care by which we assess the reasonableness of conduct, and those duties are enforceable through state-law remedies. The duties and the remedies go hand in hand: Overriding the remedies both cuts off individuals' only avenue of seeking compensation for harm and neuters the duty (and a key incentive) for businesses to take reasonable steps to ensure that no harm occurs in the first place.

The potential for a business to be held liable for violating state-law duties of care has existed as long as our nation, through good and bad times. Thus, notably, the problem that the companies propose to solve does not exist. Neither workers nor consumers are flocking to courts to sue for exposure to the coronavirus at work or while shopping. And as the companies themselves recognize, suits for exposure while in a store or restaurant would be exceedingly unlikely to succeed because the individual would have to establish that he or she became sick because of exposure at a particular business location.

Nonetheless, if a consumer can prove that a store's unreasonable failure to take precautions is what caused him to get sick, or if a worker can establish that she became sick because her employer insisted that an already sick coworker come to work, the business should not be shielded from legal accountability. A nursing home that failed to take precautions recommended by its state health department, or a company that encouraged employees to come to work after an outbreak at the facility—these businesses should not be immune from liability. As in any litigation, the businesses may have defenses that will prevail in court—but they should not be immune from liability. That was true before the current crisis and remains true today.

In this pandemic crisis, the States have been on the front lines protecting workers and the public; longstanding state-law claims and remedies are designed to do the same. Good public policy, a commitment to worker and public health and safety, respect for the States and our federalist system, and common sense—all counsel against immunizing companies from liability when their

own conduct causes harm. On behalf our millions of members and supporters, we will actively oppose any attempt to do so. We ask that you block any efforts in Congress to use the COVID-19 pandemic as an excuse to weaken state laws that protect consumers.

If you would like to discuss this issue with us, please contact Remington A. Gregg at rgregg@citizen.org. We would be happy to speak with you and to answer any questions.

Sincerely,

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Consumer Reports
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