

## Lawsuit Challenges CFPB Rule that Undermines Anti-Discrimination Law

In a lawsuit filed in July, Public Citizen is representing the National Community Reinvestment Coalition, Montana Fair Housing, Texas Low Income Housing Information Service, the City of Toledo, Empire Justice Center, and the Association for Neighborhood and Housing Development in a challenge to a new Consumer Financial Protection Bureau (CFPB) rule that undermines efforts to identify – and in that way deter – housing discrimination.



by Michael Kirkpatrick, attorney, Litigation Group

This spring, the CFPB issued a new rule under the Home Mortgage Disclosure Act (HMDA). The rule excuses thousands of financial institutions from reporting data that is key to uncovering housing discrimination, by raising the loan-volume coverage thresholds for financial institutions

to report data about mortgage loans and home equity lines of credit.

HMDA was enacted in 1975 in response to widespread concerns about “redlining” and inadequate access to credit in certain areas, particularly urban areas inhabited predominantly by people of color.

As a sunshine statute, HMDA seeks to hold lending institutions publicly accountable for making loans responsibly to traditionally underserved populations. HMDA requires certain financial institutions to collect, record, and report specific information about their mortgage lending activity.

Its main purposes are to provide the public with loan data to assess whether financial institutions are meeting the housing needs of their communities, to inform public-sector investment decisions, to identify discriminatory lending patterns, and to enforce anti-discrimina-

See [CFPB](#), Page 10

## Justice Ginsburg

The nation lost a towering figure with Justice Ginsburg’s death – a pioneer, pathbreaker, and crusader for justice and equality.

She became a beloved and iconic figure because of her own trailblazing biography, her breakthrough lawyering for equality, her fierce defense of justice and



by Robert Weissman, president

liberty as a U.S. Supreme Court justice, and, not least, her wit, panache, and readiness to tell it like it is. The loss of someone of such impact and moral force hits

hard.

It should.

As we mourn, we need to reflect on her achievements and spirit, and we need to acknowledge the pain of loss. It is important, too, that we take inspiration and honor Justice Ginsburg’s legacy by doubling down on our commitment to the values she cherished.

See [RBG](#), Page 11

### INSIDE

[Advancing a Proactive Civil Justice Legislative Agenda](#)

[Inside the Campaign to Stop Corporate Immunity](#)

[Dissecting the SAFE TO WORK Act](#)

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# Advancing a Proactive Civil Justice Legislative Agenda

Over the past several decades, Congress and the U.S. Supreme Court have chipped away at individuals' ability to seek legal redress for violations of their rights. As a result, corporations today are often immune from accountability for wrongdoing. Public Citizen is working to flip this dynamic by putting forth a proactive agenda that puts consumers and workers first by correcting laws and court decisions that impede access to the civil justice system.



by Remington  
Gregg, lobbyist  
for Civil Justice  
and Consumer  
Rights

Not surprisingly, combatting forced arbitration is on the top of the priority list. We made significant progress last year when the U.S. House of Representatives passed a bill banning the use of forced arbitration clauses. We will redouble our efforts in the next Congress to pass it in both chambers.

Also on our agenda is expanding opportunities to bring "citizen suits." Doing so would have two advantages. First, citizen suits may offer a way for individuals to seek some measure of justice when they have been barred from court due to forced arbitration. For example, California's Private Attorneys General Act (PAGA)

allows individuals to bring a claim seeking injunctive relief on behalf of employees or the state of California for labor violations, and courts have held that those claims are not subject to forced arbitration clauses in employment contracts. Second, citizen suits bolster enforcement with federal law, by permitting individuals to sue on behalf of the government.

In addition, we are thinking through revisions to the Federal Rules of Civil Procedure to counteract the U.S. Supreme Court's decisions in *Ashcroft v. Iqbal* and *Bell Atlantic Corp. v. Twombly*. Those cases changed longstanding federal pleading standards in a way that enables defendants to obtain dismissal of potentially meritorious cases before discovery. The impact on cases brought by individuals (and, in particular, employment and civil rights cases) has been especially notable.

Preemption is another area where we see an opportunity for proactive change to increase access to courts. Over the past few decades, Congress and the courts have immunized numerous industries from liability to consumers by making a company's compliance with federal law a complete defense to injured consumers' state-law claims. We plan to advocate for legislation

## Civil Justice Project News

*Civil Justice*, Continued from Page 2

to overturn preemption of state-law damages claims brought against businesses including gun manufacturers, medical device manufacturers, and cruise ship companies.

Product liability cases can expose practices that endanger public health, and disclosure of information uncovered in these cases can protect other people, deter misconduct, and catalyze regulatory action. Too often, however, information

revealed during litigation is kept secret by broad protective orders, to which the plaintiffs agree in order to avoid discovery disputes and which the courts impose without assessing the need for confidentiality with respect to specific documents.

We will advocate for rules that bar enforcement of broad protective orders, absent a showing of specific need for confidentiality of the documents covered.

Additionally, we will advocate

for legislation providing that, in statutes that provide for an award of attorney fees to the prevailing plaintiff, the plaintiff may be deemed prevailing when the lawsuit acted as a catalyst in bringing about a goal sought in litigation.

In 2001, in a case called *Buckhannon Board & Care Home v. West Virginia Department of Health and Human Services*,

See [Civil Justice](#), Page 13



Photo of the U.S. Supreme Court courtesy of Emily Prechtl.

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# Inside the Campaign to Stop Corporate Immunity

In May, U.S. Senate Majority Leader Mitch McConnell (R-Ky.) said that he would not advance another coronavirus stimulus package to the Senate floor unless it included a provision to immunize companies from coronavirus-related lawsuits.

After months of drafting, U.S. Sen. John Cornyn (R-Tex.) released a bill in July. Opposition to the proposal was quick and



by Remington Gregg, lobbyist for Civil Justice and Consumer Rights

overwhelming – but the opposition to the bill did not happen organically. Rather, Public Citizen played a key role in

convening a coalition of organizations to oppose the bill, provided critical analysis to Capital Hill allies, and educated the public on the consequences of business immunity.

Through this work, we have so far kept this dangerous proposal from becoming law.

## Coalition Building

As soon as the business immunity proposal was floated, we began work to bring together groups to oppose McConnell’s plan. We helped to prepare

witnesses who testified at a May hearing on business immunity; we submitted written testimony at that hearing; and we organized an opposition letter from 140 organizations that represent a broad coalition of constituencies. We also worked with student organizations to prepare for a June hearing focused on the impact of school reopenings, including the impact of immunizing schools from liability. And we partnered with Young Invincibles and Roosevelt Institute on a student-led forum that heavily focused on how immunizing schools would impact students, like those with underlying health issues.

## Hill Allies

In May, we invited U.S. Sen. Sherrod Brown (D-Ohio) to our kickoff coalition meeting so that he could explain to coalition partners, some of which were new to the protecting civil justice fight, how immunizing businesses would make workplaces less safe, especially for Black and Brown communities.

Business immunity is particularly harmful to these communities because they have been at higher risk of contracting and dying from COVID-19. By focusing on the liability proposal as

not just a civil justice issue, but as a unique racial justice problem, we were also able to shine light on the situation of Black and Brown individuals who are disproportionately on the frontlines of our economy – as cashiers, janitors, and factory workers.

Brown astutely noted that we have been calling frontline workers “heroes” because, while most of us have been able to stay home in relative safety, they are keeping stores open and hospitals clean. As millions marched across the country to declare that Black lives mattered, we wanted to make sure that our Hill champions knew that there was a direct correlation between fighting for justice for Black and Brown communities and stopping the Chamber of Commerce’s push to immunize businesses.

In addition, we worked closely with U.S. House of Representatives and Senate leadership to provide messaging, talking points, and analysis of the legislation, as well as analysis on the impact on consumers and patients if businesses were granted immunity.

## Public Campaign

When Cornyn’s legislative text

See [Immunity](#), Page 5

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Mark A. Chavez  
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Travis Hodgkins  
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*Immunity*, Continued from Page 4

was released in July, we were one of the first organizations to review it and respond to press inquiries. But Public Citizen was not just reactive.

Early in the fight, we began a daily “tipsheet” to provide coalition partners and the press with news and analysis on immunity-related issues. Organizations told us that the tipsheet served as an important tool in providing information for their public

education and lobbying efforts. And journalists routinely came to us to request comments and analysis.

Some of the news outlets that quoted us through this fight include the *Washington Post*, Bloomberg Law, CNBC, NPR, Vox, *Ms. Magazine*, Law.com, HuffPost, and Law360.

In addition, we published an issue brief to debunk the U.S. Chamber of Commerce’s lies

about the need for business immunity. Our focus on countering the false narrative churned out by the Chamber about an oncoming “flood” of litigation was bolstered by two key pieces of information.

First, early in the pandemic, the defense-side firm Hunton Kurth started a litigation tracker of coronavirus-related cases

See [Immunity](#), Page 14

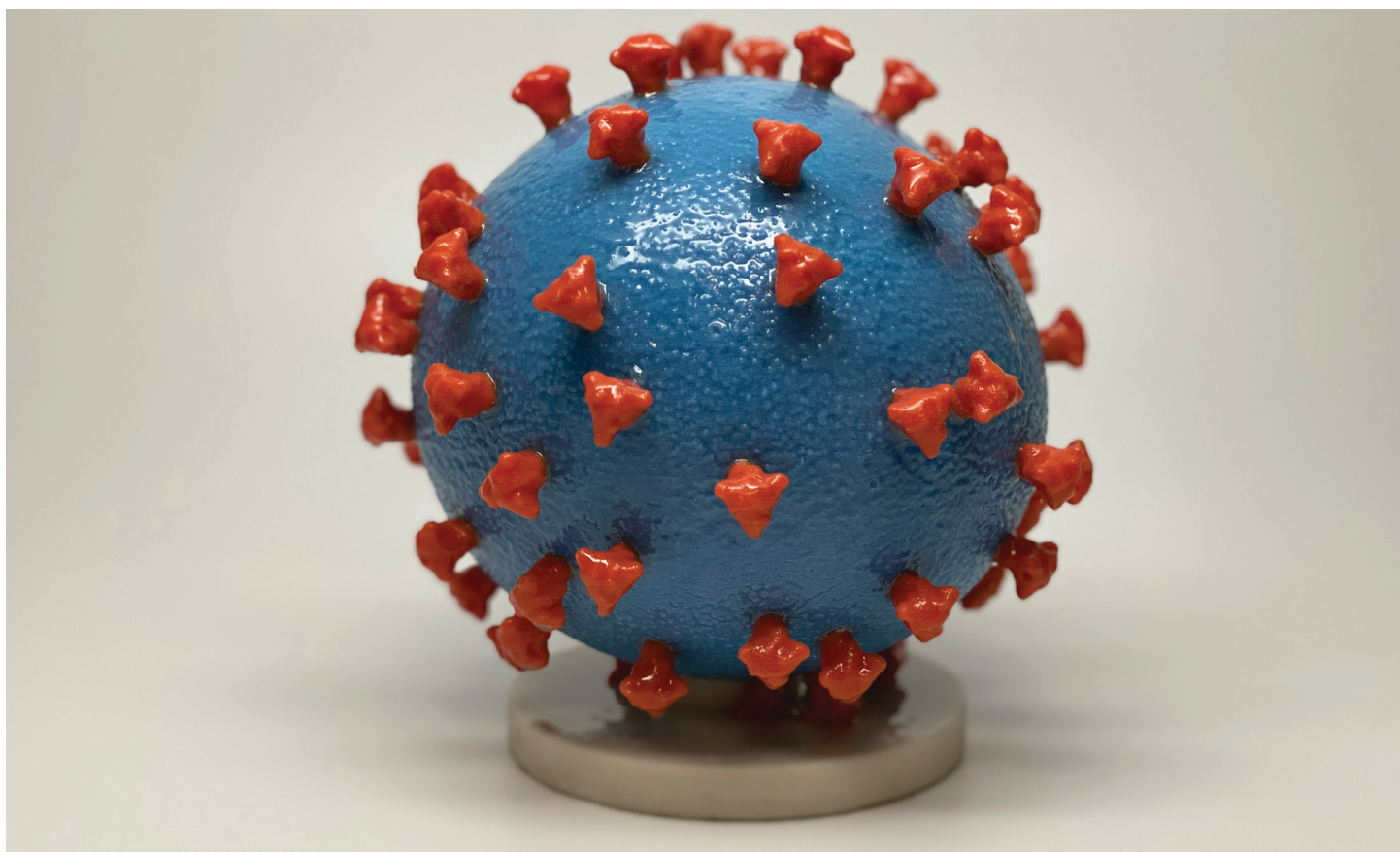


Photo of a 3D print of a SARS-CoV-2 virus particle courtesy of the National Institute of Allergy and Infectious Diseases / Flickr.

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Cy pres awards can have a transformative effect on our ability to advocate for consumers.

We welcome cy pres distributions to help us continue and enhance our work on behalf of consumers. For more information, please contact Amanda Fleming, director of Public Citizen's Civil Justice Project, at (202) 588-7734 or [afleming@citizen.org](mailto:afleming@citizen.org).

Our thanks to these advocates for recent cy pres awards to Public Citizen.

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## Dissecting the SAFE TO WORK Act

America has now surpassed more than 200,000 deaths from COVID-19. Yet the nation has taken few steps to address the economic and health calamity that we face. Instead of working on a bipartisan basis on a package to help struggling workers and families, U.S. Senate Republicans



by Remington Gregg, lobbyist for Civil Justice and Consumer Rights

are blocking relief by insisting that any bill grant businesses immunity from a broad range of potential liability.

For months, U.S.

Senate Majority Leader Mitch McConnell (R-Ky.) has held up a bill, passed by the U.S. House of Representatives, that would provide additional relief for families and businesses. He has stated that he will not allow any relief bill to move forward unless it includes a provision immunizing businesses from coronavirus-related lawsuits.

The provision McConnell seeks would impose a far-reaching prohibition on state-law coronavirus lawsuits. At a May hearing in the U.S. Senate Judiciary Committee, Public Citizen alum Prof. David Vladeck

raised legal and practical questions about the concept. Nonetheless, in July, U.S. Sen. John Cornyn (R-Tex.) introduced the ironically named SAFE TO WORK Act (Safeguarding America's Frontline Employees To Offer Work Opportunities Required to Kickstart the Economy), which would impose significant restrictions on such lawsuits. The bill would erect numerous hurdles to make it effectively impossible for workers, consumers, and patients to pursue claims.

Among other things, the bill allows defendants faced with coronavirus-related lawsuits to remove cases to federal court. The bill bars joint and several liability. And it limits compensatory damages to economic losses: It thus bars compensatory damages for pain and suffering, and for emotional distress caused by the death of a loved one, who, for example, contracted COVID-19 from exposure in a nursing home.

The bill also imposes various restrictions on class actions, for example, by allowing only opt-in class actions. Another provision of the SAFE TO WORK Act includes a requirement that the plaintiff file an affidavit

See [SAFE TO WORK](#), Page 7



from a medical professional who did not treat the plaintiff attesting that the plaintiff suffered the tort alleged. The bill also would require the plaintiff to provide a complete listing of the people and places visited for the last 14 days before the first onset of symptoms and to detail reasons why those people and places were not the cause of the injury.

In addition to the provisions addressing lawsuits under state tort law, the bill would allow employers to skirt compliance with important federal laws merely by showing that they “attempted” to follow some type of safety guideline. That provision would effectively give a free pass to non-compliance with labor and employment laws including:

- The U.S. Occupational Safety and Health Act (OSHA);
- The Fair Labor Standards Act (FLSA);
- The Age Discrimination in Employment Act (ADEA);
- The Worker Adjustment and Retraining Notification

(WARN) Act;

- Title VII of the Civil Rights Act of 1964;
- Title II of the Genetic Information Nondiscrimination Act (GINA); and
- Title I of the Americans with Disabilities Act (ADA).

Opposing the bill, civil rights groups noted that this provision could “[p]otentially immunize an employer that denies a retail worker with a disability, who is at heightened risk of complications because of COVID-19, a reasonable accommodation under federal law, like working in the back of a store rather than in a customer-facing capacity. Warehouse workers who are not paid for the time spent putting on and taking off personal protective equipment may find that this bill could exempt their employer from federal wage and hour laws. And employers who disproportionately furlough African-American workers or give African-American workers suboptimal jobs may seek to

shield themselves from liability by raising defenses provided under this bill.”

The immunity provision would also give employers an exemption from laws prohibiting discrimination in public accommodations during any public health emergency period – not only during the coronavirus pandemic. And the bill would block federal agencies, like the Equal Employment Opportunity Commission and the U.S. Occupational Safety and Health Administration, from investigating or bringing enforcement actions on behalf of workers who have been harmed.

The U.S. Chamber of Commerce lobbied from the start of the pandemic for Congress and state legislatures to grant businesses immunity from liability for a broad range of potential claims. The Chamber said that it wanted “timely, limited, and targeted” protections. The McConnell/Cornyn bill would offer the opposite. The sweep-

See [SAFE TO WORK](#), Page 13

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# Public Citizen FOIA Request Reveals USDA's Collaboration with Meatpacking Industry

From the earliest days of the pandemic, several of the nation's largest outbreaks of COVID-19 have occurred in meatpacking plants. The working conditions in these plants – already one of the most dangerous industries in America – pose an increased risk of virus transmission, as workers work long shifts in close proximity to one another, in grueling tasks at intense paces.



Now, tens of thousands of meatpacking workers across the country have tested positive for COVID-19, with racial and ethnic minority workers suffering disproportionate impact: Although racial and ethnic minority workers make up only 61% of the workforce, they have experienced 87% of COVID-19 cases in meatpacking plants, according to the U.S. Centers for Disease Control and Prevention (CDC).

The U.S. Department of Agriculture (USDA) and the U.S. Department of Labor both have authority over aspects of work at meatpacking plants. Yet neither has taken any meaningful steps to protect the workers from the spread of COVID-19, leading to continuing spread in the plants and the surrounding communities. Although some state and local public health and worker safety agencies have tried to take action, they have been largely

unsuccessful. As a result of a Public Citizen Freedom of Information Act request to USDA, we now know some of the details about why.

On April 28, 2020, the president signed an executive order purporting to invoke the Defense Production Act, which is aimed at ensuring that the military has access to needed supplies and equipment during wartime. The

See [Meatpacking](#), Page 9



Photo courtesy of Emily Prechtel.

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*Meatpacking*, Continued from Page 8

executive order directed the U.S. Secretary of Agriculture to take “necessary or appropriate” steps to ensure meat slaughter and production continued during the pandemic.

Although the order did not actually require meatpacking plants to do anything, and although the Act does not give the president authority to order meatpacking plants to remain open, the industry and many reporters portrayed it as directing the plants to stay open or reopen.

At the time the president issued the order, according to the CDC, nearly 5,000 meatpacking workers had contracted COVID-19. The executive order, however, did not require plants to take any steps to protect workers or otherwise minimize the spread of the virus, and no worker representatives were consulted before the order was issued.

Soon after the president signed the executive order, Public Citizen submitted a Freedom of Information Act (FOIA) request to USDA, requesting communications between the meatpacking industry and USDA regarding COVID-19. In September, USDA finally began producing responsive documents.

### FOIA

Public Citizen submitted a Freedom of Information Act (FOIA) request to USDA, requesting communications between the meatpacking industry and USDA regarding COVID-19. In September, USDA finally began producing responsive documents.

The documents show that the executive order was issued at the request of the North American Meat Institute, the meatpacking industry’s lobbying group. The group even submitted a draft of the order to the White House and USDA one week before the order was issued.

In addition, the documents show that the industry repeatedly sought intervention from USDA officials when state and local agencies sought to enforce their own laws to protect public health, and that top political appointees at USDA tried to stop these agencies from doing their jobs.

One company, Smithfield, was particularly forceful in its requests for USDA intervention. In May 2020, just weeks after its Sioux Falls, South Dakota plant shut down because more than 25% of its workers contracted COVID-19, Smithfield requested

that USDA “order” the plant to reopen. At the same time, Smithfield was resisting OSHA’s attempt to investigate working conditions at that very plant. (Smithfield eventually filed a lawsuit in federal district court to quash OSHA’s subpoena, which it settled in July 2020 on undisclosed terms.)

Public Citizen has also submitted FOIA requests to the Department of Labor about its communications with the meatpacking industry regarding the pandemic. We recently filed a lawsuit in the United States District Court for the District of Columbia challenging that agency’s failure to respond to our FOIA request.

Public Citizen is also collaborating with lawyers across the country in their efforts to protect meatpacking workers and their communities, and to seek relief where industry apathy and greed harm workers. ■

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tion statutes.

The CFPB is responsible for issuing regulations to implement HMDA. In 2015, the CFPB issued a rule requiring lenders to report if they originated at least 25 closed-end mortgage loans or 100 open-end lines of credit in each of the two preceding calendar years.

The rule issued this May raises those thresholds to 100 and 200, respectively. It exempts 40% of financial institutions that currently report data about their closed-end mortgages from having to do so beginning in 2021.

The increased reporting thresholds reduce the amount of information available to assess

## LITIGATION

As a sunshine statute, HMDA seeks to hold lending institutions publicly accountable for making loans responsibly to traditionally underserved populations. HMDA requires certain financial institutions to collect, record, and report specific information about their mortgage lending activity.

whether financial institutions are meeting the housing needs of their communities.

The CFPB's new rule reduces the availability of data that the public has used to uncover and address redlining and other fair lending and fair housing violations and make identifying such practices more difficult.

The loss of information will be felt most acutely in minority

communities. Raising the reporting thresholds will compromise enforcement work against unfair and deceptive lending because there will be less data available to monitor such activity.

Our clients in the lawsuit, *National Community Reinvestment Coalition v. CFPB*, No. 20-2074 (D.D.C.), depend on

See [CFPB](#), Page 14



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RBG, Continued from Page 1

With RBG's passing, we know exactly what to do, because she gave us the road map: ensure her successor is chosen by the winner of the November election.

There is a backdrop to this, of course. When President Barack Obama nominated Judge Merrick Garland to fill Justice Antonin Scalia's seat 269 days before the 2016 election, U.S. Senate Majority Leader Mitch McConnell refused to allow the

nomination to move forward.

No vote, no hearings. The people must have their say at the voting booth, McConnell proclaimed.

Well, less than 50 days before Election Day in 2020 – and with early voting already underway in more than a half dozen states – that standard requires a delay in filling RBG's seat.

Of course, it took McConnell only a couple hours after Ginsburg's death to announce

that he had no intention of honoring her dying wish or consistently applying the purported principle he had professed just four years earlier.

But this is not a decision that McConnell gets to make unilaterally. He can't confirm a new justice if four Senate Republicans refuse to go along with his scheme. At least two Senate Republicans have already said they won't aid and abet McConnell's plot.

It's up to us to mobilize to hold them to their statements – and to pressure at least two other Republican senators to join them.

For good reason, much of the public discussion about the Supreme Court focuses on basic questions of equality and individual rights.

The choice of Ginsburg's replacement will have profound import for racial justice, women's rights – including the right to choose – LGBTQ equality, and more. The choice of her replacement also will influence the jurisprudence over another category of fundamental issues that receive less widespread



Photo of Justice Ginsburg courtesy of Camilo Schaser-Hughes / Flickr.

See [RBG](#), Page 12

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attention: the rights of human beings as against those of corporations.

This conflict is epitomized most famously in *Citizens United v. FEC*, which sabotaged our democracy by conferring on corporations the power to spend whatever they want to influence elections.

The issues reach far beyond *Citizens United*, however:

- How easy or difficult is it for workers to join together in unions to demand corporations establish reasonable working conditions and pay a decent wage?
- Can corporations escape accountability for defective products, rip offs, employment discrimination, and more just by inserting fine-print language in form contracts?

### SUPREME COURT

The choice of Ginsburg's replacement will have profound import for racial justice, women's rights — including the right to choose — LGBTQ equality, and more.

- How much power does the government have to break up monopolies and stop monopolistic practices?
- Can corporations invoke the First Amendment — intended to protect the political and expressive interests of real, live people — to prevent government from adopting public health measures and consumer protections?
- Do corporations have more rights to sue over governmental action than citizens?

The list goes on and on. These are central questions

about what kind of society we want to live in and what our democracy will look like — or whether we will even have one.

I want to acknowledge this: We are living through a hard and scary time, and RBG's untimely death makes it more so.

We feel isolated — we are isolated — because of the pandemic. That's why it is so important that we mark RBG's passing by joining together, building our collective power, and working together to fight for justice.

Together, we will find our way to brighter days ahead. ■

Alan Morrison

## SUPREME COURT ASSISTANCE PROJECT



**The Alan Morrison Supreme Court Assistance Project offers pro bono assistance at the U.S. Supreme Court level:**

- Opposing petitions for certiorari to protect public interest victories in lower courts;
- Filing petitions for certiorari seeking review of important legal questions;
- Briefing cases on the merits; and
- Preparing advocates for oral argument before the Supreme Court.

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*Civil Justice*, Continued from Page 3

the Supreme Court reversed longstanding appellate court precedent applicable to scores of federal fee-shifting statutes.

The Court held that statutes that provide for an award of attorney fees to a “prevailing plaintiff” do not authorize a fee award when the lawsuit achieved the desired result by prompting the defendant to change its conduct. We seek to restore the law as it was understood for decades until the *Buckhannon* decision.

In 2018, the Consumer Financial Protection Bureau received more than 81,000 complaints about debt collectors. Yet court decisions have made consumers’ ability to hold debt collectors accountable for abusive and harassing conduct more difficult.

For example, from the time that the FDCPA was enacted in 1977 until 2013, the courts,

reading the plain language of the statute, were nearly unanimous in restricting the awards of costs to prevailing defendant costs.

In 2013, the Supreme Court ruled in *Marx. v. General Revenue Corp.* that prevailing defendants in FDCPA cases should be awarded costs in most cases. This decision created a deterrent to suits against debt collectors who harass or abuse consumers. We will work with Congress to revise the statute to override the court’s decision.

Many existing consumer protection statutes were enacted before current standing doctrine was developed. As a result, although these statutes contain private rights of actions for plaintiffs who were the victims of statutory violations, recent court decisions make it harder for consumers to bring claims to enforce a range of statutory

violations.

So we are thinking through amendments to consumer protection statutes to include congressional findings regarding the noneconomic harms and the risks of future harms to consumers that result from statutory violations, with the goal of bolstering consumers’ ability to show standing.

We will begin working soon in earnest to build a coalition that supports this agenda. The next steps will be finding congressional champions, helping to draft legislation, and making it a priority to pass this agenda in the next Congress.

Advancing this agenda will not be easy – not when corporate America has lobbyists on speed dial to stop reforms that may impact their profits – but it is past time to get started. ■

*SAFE TO WORK*, Continued from Page 7

ing bill throws up numerous roadblocks to bar plaintiffs from being able to vindicate their rights and to hold corporate actors accountable.

In an attempt to counter the narrative that they took no action on passing additional relief packages, Senate Republicans recently voted on a pared down version of the SAFE Act that would allocate a small amount of economic aid and health resources, while still

### SAFE ACT

The U.S. Chamber of Commerce lobbied from the start of the pandemic for Congress and state legislatures to grant businesses immunity from liability for a broad range potential claims. The Chamber said that it wanted “timely, limited, and targeted” protections.

including the harmful liability immunity provisions. The bill was resoundingly rejected by all Senate Democrats – not a small feat. After several weeks with

no action, Democratic leaders recently asked the White House to return to the negotiating table. So, like the pandemic, this story continues. ■

*Immunity*, Continued from Page 5

filed. This tracker proved invaluable to debunk the Chamber's oft-repeated rhetoric that allowing individuals to sue businesses would ruin them because it showed that most of the cases filed were not filed by individuals, but other businesses.

Second, our messaging was reinforced by polling showing that the public does not support immunizing businesses from accountability. Sixty-four percent of voters oppose letting corporations off the hook by giving them immunity from liability if it is proved that a company "engaged in unsafe practices." That includes 72% of Democrats, 64% of Independents, and 56% of Republicans.

These numbers are not surprising because the fight over immunity from state-law liability is a fight over people's ability

### CORPORATE IMMUNITY

Public Citizen played a key role in convening a coalition of organizations to oppose the bill, provided critical analysis to Hill allies, and educated the public on the consequences of business immunity. Through this work, we have so far kept this dangerous proposal from becoming law.

to hold wrongdoers accountable for causing harm. It is a fight to preserve access to the civil justice system for all people, so that workers, consumers, and patients have the tools long provided by our legal system to get a fair shake.

We are optimistic about prevailing on this issue because people care about access to justice issues. They may not understand legalese, or frankly care about the wonky details of the civil justice system.

At their core, though, people understand that cutting off a person's right to access the courts is cutting off their right to justice.

As it has for nearly 50 years, Public Citizen will continue to fight to protect individuals' right to access the courts. In a time of #METOO and #BLM, where social justice and civil justice are increasingly intertwined, our fight to protect access to the courts remains as important as ever. ■

*CFPB*, Continued from Page 10

HMDA data for their research into illegal lending discrimination and advocacy to promote fair housing.

The CFPB attempts to justify the 2020 Rule based on its claim that the benefit of reducing the reporting burden on small lenders outweighs the cost of the new rule – loss of data.

We argue, though, that the burden of reporting is modest but the loss of information will have a substantial negative impact on the ability to identify

discriminatory lending or areas in need of public sector investment.

In summary judgment briefing this fall, we will argue that the new HMDA rule reflects the CFPB's refusal to consider public comments on the impact of its 2020 rule on visibility into lending practices in traditionally underserved communities.

It also cuts off the source of data that, as commenters explained, has fueled groundbreaking investigative report-

ing into redlining and housing discrimination.

And the rule reverses much of the increased transparency into housing discrimination that resulted from new disclosure provisions in the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act.

Indeed, the rule contradicts previous findings by the CFPB itself that higher thresholds would preclude effective monitoring of housing discrimination. ■