

United States Senate
Washington, DC 20510-1304

July 30, 2020

**The Top Ten Reasons Why Sen. McConnell's Immunity Red Line Is
Dangerous to Health and Safety**

Dear Colleague,

Senators McConnell and Cornyn have finally revealed the text of their 65-page corporate liability immunity bill, the so-called "SAFE TO WORK Act." Enactment of this bill would allow large corporations to cut corners when it comes to the health and safety of their workers and customers, putting lives at risk.

Below are the Top Ten Reasons why the McConnell immunity bill should be opposed.

- 1. No protection for workers.** The McConnell immunity bill does nothing to protect workers, improve safety standards, or give businesses incentive to take proper precautions to reduce the spread of the coronavirus. In fact, it does the opposite—it views workers, customers, and victims as the problem, and it sets high hurdles that would prevent meritorious coronavirus claims from having their day in court.
- 2. Weaker safety standards.** The McConnell immunity bill would federally preempt the right of workers and victims to bring cases under state law to seek accountability for coronavirus-related harms, and would supplant state laws that require businesses to act with reasonable care. Then it would provide that businesses are shielded from liability if they simply make an effort to comply with the weakest available safety guideline, as long as they weren't grossly negligent. This would gut existing state safety standards and enable businesses to cut corners.
- 3. Business immunity for misconduct.** Under current state law, if a business has taken reasonable precautions, it won't be held liable for negligence. State laws give businesses incentive to act reasonably, and most businesses do. But the McConnell bill sets the immunity threshold at "gross negligence," meaning it would immunize businesses from accountability for conduct that can qualify as negligent or even reckless under current state law. That won't make us safer – it will make us less safe.
- 4. Immunity for corporations that ignore CDC guidelines.** Because CDC guidelines are not mandatory, the bill would enable corporations to be shielded from liability even if they make no effort to comply with CDC guidance. Why would Congress federally preempt state laws and then allow businesses to ignore federal CDC safety guidance?
- 5. Makes complying with health, safety, civil and disability rights laws optional.** Instead of establishing a strong, clear, and enforceable federal safety standard like an OSHA emergency temporary standard that would provide both safety and predictability, the McConnell bill would go the other direction and actually shield businesses from enforcement proceedings under laws like the Occupational Safety and Health Act, the Fair Labor Standards Act, and the Americans with Disabilities Act, and more.

6. **Targets legitimate claims.** Sen. McConnell says his bill is aimed only at frivolous coronavirus lawsuits, but his bill would also wipe out legitimate claims by workers and victims. By forcing injured workers and victims to meet a higher burden of proof, heightened pleading requirements, limits on discovery, and other restrictive hurdles in federal court, the bill would make it nearly impossible for them to even file a claim, let alone prevail.
7. **Preempts all medical malpractice suits for five years.** The McConnell bill would upend the medical liability systems of all 50 states and impose sweeping federal preemption of nearly all healthcare related cases, including for claims that are not related to COVID. The bill's provisions on medical liability expand beyond treatment for coronavirus to become a catch-all category for any healthcare provider "impacted as a result of coronavirus."
8. **Federal liability immunity is not needed.** Republicans have not made the case for why federal liability immunity is even necessary. There is no wave of worker or victim lawsuits that justifies federal preemption of state laws and grants of broad immunity. According to the lawsuit tracker that Sen. McConnell cites, out of over four million COVID infections and 150,000 deaths, workers and victims have filed only six COVID-related medical malpractice cases, 16 consumer personal injury cases, and 72 conditions of employment cases. The few cases that have been filed raise legitimate claims of worker and patient safety that deserve to be heard, and state legal systems can easily handle them.

There is no need for the federal government to step in and override state liability laws, especially after the federal government has been deferring to states on nearly every other aspect of the COVID response. If states need to adjust their liability laws, they can do so—and 28 states have done that already during this pandemic.

9. **Entirely one-sided in favor of corporations.** Under the McConnell bill, corporations get immunity but can still sue others. Most of the coronavirus-related lawsuits that have been filed so far involve businesses suing other businesses or insurance companies. The McConnell bill does not cut off the rights of businesses to file coronavirus-related lawsuits—it only cuts off the rights of workers and people who get sick. In fact, the bill's priorities are so upside down that it even allows corporations and Attorney General Bill Barr to sue workers for bringing a claim for a COVID infection if the employer deems it "meritless."
10. **Exploits the crisis in order to achieve long-term corporate immunity.** The liability immunity under this bill would last five years, from December 2019 through 2024. The fact that Republicans are proposing five years of liability immunity for corporations and just a few months of assistance for workers and families shows exactly where their priorities lie.

Bottom line, the McConnell corporate immunity bill would upend state laws, give businesses incentive to cut corners, jeopardize the safety of frontline workers and families, and risk further spread of the virus. It's a big and unnecessary giveaway to big business, and that's not what America needs.

Sincerely,



Richard J. Durbin
United States Senator