



Access to Justice

**DEFENDING OUR COUNTRY
AND OUR COURTS**

A report by
EARTHJUSTICE



with contributions from
**THE AMERICAN CIVIL LIBERTIES UNION,
PUBLIC CITIZEN,
and THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

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Introduction

The American people's ability to access justice through the courts is under attack. At the urging of large corporations and powerful special interests, members of Congress and the Trump administration aim to limit access to the federal justice system. These efforts threaten individuals' ability to protect civil rights and liberties, defend consumer and environmental protections, and advance public health and safety.

The federal judiciary is a vital part of the constitutional system of checks and balances. It has played a critical role in safeguarding our rights and freedoms. Court decisions have protected the right to vote; struck down segregated schools, secured marriage equality, upheld protections for public health and safety, and compelled the government to follow the law and protect air, water, and wilderness.

This report, prepared by Earthjustice with invaluable contributions from the American Civil Liberties Union, Public Citizen, and The Leadership Conference on Civil and Human Rights, examines actions of the Trump administration and Congress that threaten people's ability to have their day in court. These dangerous policies, which are being pursued at the behest of powerful corporate and ideological interests, seek to diminish the role of the courts in securing important public protections for individuals, workers, families, communities, and the environment, with particularly profound implications for already marginalized groups.

Since January 2017, members of Congress have introduced more than 50 bills that would eliminate or severely limit court access, targeting laws related to environmental protection, public health, consumer rights, and civil rights and liberties. Several federal agencies have also adopted policies to limit judicial remedies and to make litigation more expensive.

Among the legislative proposals and administrative actions are measures that, in certain contexts:

- **Make the courts off-limits with “no judicial review” clauses**, eroding the role of courts to hear challenges to certain government actions;
- **Expand the use of forced arbitration** and/or restrict people's ability to bring class action lawsuits;
- Make public interest litigation **too risky or too expensive to pursue**;
- **Interfere with judges' discretion** and limit the power of courts to effectively redress injuries; and
- Undermine the government's ability to reach **timely and meaningful case settlements**.

Already, the administration has acted to limit environmental lawsuits (discussed in Section V) and Congress has struck down a Consumer Financial Protection Bureau rule that was designed, in part, to prohibit the financial services sector from forcing their customers into mandatory arbitration. Other measures threaten cases that seek to address violations of civil rights, environmental laws, or public health and safety protections. They will limit the ability of people in America to hold the government and powerful corporations accountable and undermine courts' ability to serve as a check on the president and Congress.

The intensity and frequency of these rollbacks has brought together public interest organizations to sound the alarm. Earthjustice stands united with allies from other sectors and movements against any attempts to block the courthouse doors, because every person in America deserves access to justice.

I. Making Courts Off-Limits: “No Judicial Review” Clauses

Judicial review is a vital part of America’s system of constitutional democracy. The term “judicial review” refers to the power of the courts to review both acts of Congress and executive branch agencies’ actions or inactions.

Currently, many federal agency actions are subject to judicial review, meaning that individuals harmed by such actions can test the agency’s conduct in court against the requirements of applicable law.¹ Similarly, many federal and state laws provide members of the public an avenue to challenge corporate wrongdoing in court.

Judicial review allows people to go to court to uphold a wide array of rights. It allows the public to hold the government accountable for abuse of power or failing to create or enforce regulations that put laws into effect. Through judicial review by the courts, members of the public can contest the legality of measures passed by Congress (or state legislatures) or challenge agency actions.

The Threats

The most direct way to deny access to justice is to make the courts off-limits through legislation that includes phrasing that denies “judicial review.” This language is sometimes embedded in broader bills that first give additional powers to federal agencies, or industries, or Congress itself, then shield those actors from the courts’ oversight by prohibiting judicial review.

Since 1973, over 200 bills have become law using “no judicial review” or similar language.² In the current Congress, there are over two dozen bills that would also eliminate judicial review, while substantively aiming to undermine critical laws protecting public health and the environment.

Here are some examples:

- **Removing Judicial Review of Agency Decisions:** S. 951, the “Regulatory Accountability Act” (RAA) sponsored by Sen. Rob Portman (R-OH), is designed to affect the federal rulemaking process to make it nearly impossible for federal agencies to effectively implement laws protecting American workers, consumers, and the environment.³ By declaring a proposed rule to be “major” under the RAA, a political agency head could impose a raft of procedural and substantive impediments to prevent the adoption of new public protections. For example, it would force agencies across the board to adopt “the most cost-effective” regulations for corporations, rather than regulations that maximize net benefits to the public.⁴ In addition, it would take a rulemaking process that is already routinely subject to unacceptable delays and make it much worse, adding 53 new requirements to the rulemaking process⁵, each of which would provide industry lobbyists with a new opportunity to slow down or stop regulatory decision-making.

Significantly, however, the bill gives the agency head broad discretion to determine what is, and what is not, a “major” rule and then shields that decision from oversight by the independent courts with these words: “determination of whether a rule is a major rule shall not be subject to judicial review.”⁶ For good measure, the bill gives the agency head an even broader pass on “judicial review” through language stating, “Any determination, action, or inaction of the Administrator under this subsection shall not be subject to judicial review.”⁷

- **Disrupting Checks and Balances:** H.R. 26, the “Regulations from the Executive in Need of Scrutiny Act of 2017” (REINS Act) sponsored by Rep. Doug Collins (R-GA), would require both houses of Congress to pass legislation approving a major rule within a 70-day window in order for the new public protections to take effect.⁸ By simply doing nothing, even one chamber of Congress could effectively veto implementation of existing laws. This represents, in effect, a preemptive disapproval of all significant regulatory actions by all federal agencies – a disapproval that can only be overcome if both houses of Congress can muster the wherewithal to take action to save each and every such rule individually (and within a narrow 70-day window).

In 2015, for example, federal agencies collectively promulgate 76 major rules.⁹ Under H.R. 26, the House and Senate would each have to take actions 76 times to approve each agency rule individually. Nothing about how Congress functions suggests that it is capable of performing such a task – it passed only 93 substantive laws in all of 2015¹⁰ – and for each rule it failed to approve, the public protections would never take effect, depriving Americans of the intended benefits.

Just as disturbing, the bill seeks to shield critical decision-making from oversight by the judicial branch by including the language, “No determination, finding, action, or omission” taken under the authority of the REINS Act “shall be subject to judicial review.”¹¹ Thus, not only would the bill let Congress effectively hold all federal regulations hostage, it would also ensure that the public is powerless to seek any judicial remedies where Congressional action or inaction causes harm. The bill passed the House by a vote of 237-187 in January 2017.¹²

- **Blocking Judicial Review of the Endangered Species Act (ESA):** Members of Congress have introduced a suite of bills that would eliminate judicial review of agency decisions regarding the protection of various animals and plants.¹³ For example, Rep. Rob Bishop (R-UT) has proposed a bill that would bar judicial review of a final rule deciding not to protect the sage grouse under the ESA.¹⁴ Other bills aim to eliminate judicial review of agency decisions to delist wolves as well, blocking people from suing the government under the ESA even if the species’ numbers are crashing.¹⁵

POLITICAL ANIMALS

Oil and gas companies – which have long battled plans to protect the sage grouse – are Rep. Bishop’s top campaign contributors, having donated over \$430,000 to his campaigns over the course of his career.

Rep. Rob Bishop, Top Industries 2001-2018, Center for Responsive Politics, 2001-2018; Matthew Brown, “Oil, gas industry challenges efforts to protect sage grouse in West,” The Associated Press, May 12, 2016

In addition, members of Congress have introduced bills that would restrict or block judicial review of energy development decisions by agencies on public lands and Indian lands.¹⁶ Another bill, H.R. 1682 sponsored by Rep. Robert Latta (R-OH), would shield manufacturers that violate the terms of the ENERGY STAR energy efficiency appliance program from consumer suits.¹⁷ The bill would prevent consumers from suing manufacturers for being sold products, either negligently or intentionally, that failed to provide the energy efficiency promised.¹⁸ Such products could collectively cost consumers millions of dollars or more in energy costs over the life of the product.¹⁹ In short, wealthy corporations would get all the economic benefits of selling their products under the ENERGY STAR label without any legal accountability if their claims are invalid and consumers are hit with higher energy expenses as a result.

II. Forcing Arbitration and/or Restricting Class Actions

Corporate interests use other maneuvers in addition to “no judicial review” provisions to prevent individuals from accessing the courts. For example, they seek to insert forced arbitration provisions into consumer and employment contracts.

FORCED INTO ARBITRATION

The New York Times reported in 2015 that “it has become increasingly difficult to apply for a credit card, use a cellphone, get cable or Internet service, or shop online without agreeing to private arbitration.”²⁰ Forced arbitration provisions require consumers, in order to receive good or services, to agree that any later-arising dispute will be resolved before a private arbitrator and not in the courts. These provisions, which use fine-print “take-it-or-leave-it” agreements to rig the system, have become ubiquitous in such varied settings as agreements governing bank accounts, student loans, cell phone plans, employment, and even nursing home admissions. In addition to blocking people from resolving disputes through the court system, arbitration proceedings themselves tend to be secretive, are often biased toward corporations, and fail to provide procedural safeguards or a right to appeal (even if arbitrators ignore the facts or law). When forced arbitration clauses are combined with class action bans, neither judges nor arbitrators can assess or remedy the full scope of wrongdoing that affects multiple victims.²¹

Forced arbitration stacks the deck against consumers. For example, in September 2017, Equifax announced that the personal data of more than 140 million people were compromised in a data breach that occurred months earlier.²² The company came under further fire for directing customers to a site to sign up for a free year of credit monitoring – but that included a mandatory arbitration clause.²³ Facing public pressure, Equifax later rescinded the clause.²⁴

WHY FORCED ARBITRATION IS UNFAIR

In forced arbitration, consumers lose the right to go to court to settle disputes with businesses. Instead, they must go before private tribunals that have the power to render final and binding decisions. These tribunals are typically chosen by businesses and compete with one another to provide these services to business clients. In addition, arbitration is usually conducted in secret, often imposes onerous costs on consumers, and provides extremely little opportunity for meaningful relief.

Public Citizen, Forced Arbitration: Unfair and Everywhere, September 2009

The Threats

The Trump administration and Congress are pursuing additional ways to expand the use of forced arbitration, making it harder for people to seek justice in court.

- **Giving Banks a Blank Check to Rip Off**

Customers: In November 2017, President Trump signed into law a bill overturning a rule that allowed customers to bring class action lawsuits against financial institutions that cheated them. The rule was written by the Consumer Financial Protection Bureau (CFPB), an agency designed to protect consumers from abusive and deceptive practices by the financial industry.²⁵ Vice President Pence cast the tie-breaking vote that wiped away these important consumer protections.²⁶

This rollback of the CFPB rule could prevent millions of consumers from being able to hold Equifax accountable for its misdeeds. If victims are prevented from banding together, Equifax can continue to evade full responsibility for failing to adequately protect the personal information of millions of its customers.²⁷

Similarly, in 2017, Wells Fargo admitted that its employees had secretly opened millions of unauthorized accounts in their clients' names in order to meet quotas, putting customers' credit at risk.²⁸ The company has repeatedly tried to force customers who seek to sue the bank to arbitrate instead.²⁹

- **Reversing Critical Protections for Nursing Home Residents:** Forced arbitration clauses are so ubiquitous that even nursing homes are requiring prospective residents, before they will be admitted, to sign away their right to bring a lawsuit if a dispute later arises.³⁰ Individuals typically feel compelled to sign because they are under extreme pressure to find a place where they or a parent can be cared for, often because the person is sick and unable to care for themselves anymore.

Recognizing this problem, the Obama administration's Center for Medicaid and Medicare Services finalized a rule in 2016 that would have barred nursing homes that receive federal funding from using forced arbitration clauses in contracts.³¹ The nursing home industry, along with the Trump administration, is now working to reverse these critical protections.³² Forcing residents who are abused and neglected into secretive proceedings is not only bad for the victims of abuse, but also serves to shield information about nursing homes' poor performance or substandard care from public scrutiny.³³

PAYBACK FOR BIG BANKS

Rep. Jeb Hensarling (R-TX), chair of the House Financial Services Committee, was a co-sponsor of the resolution that led to the rescission of the CFPB's arbitration rule. He is heavily backed by industries that opposed the rule. Hensarling received nearly \$1.5 million in campaign contributions from commercial banks and \$1.5 million from securities and investments over the course of his career.

Similarly, a Public Citizen analysis in July 2017 found that the financial industry had contributed over \$100 million in campaign contributions to Senate co-sponsors of the resolution.

Center for Responsive Politics, Rep. Jeb Hensarling –Top Industries, 2001-2018 (As of March 2018); “U.S. Senators Opposed to the CFPB’s Arbitration Rule Received More Than \$100 Million From the Financial Sector,” Public Citizen, July 20, 2017

- **Forcing Forest Management Plans into Binding Arbitration:**

H.R. 2936,³⁴ the so-called “Resilient Federal Forest Act of 2017” sponsored by Rep. Bruce Westerman (R-AR), would force most, if not all, challenges to forest management plans into an agency-run binding arbitration process without the possibility of federal judicial review. Additionally, the bill mandates that when legal challenges are not brought into the binding arbitration but are permitted to be brought to trial, the use of preliminary injunctions is prohibited (see Section IV for more on the importance of injunctive relief). The bill passed the House on November 1, 2017.³⁵

SELLING OFF AMERICA’S FORESTS

The sponsor of H.R. 2936, the so-called “Resilient Federal Forest Act of 2017,” Rep. Bruce Westerman, was first elected in 2014 and has already accumulated over \$250,000 in campaign contributions from forestry and forestry-products companies, his top industry contributor. In the 2018 election cycle, Rep. Westerman has already received over \$116,000 from forestry products, making him the second top recipient of timber cash and an “industry favorite” in Congress.

H.R.2936 - Resilient Federal Forests Act of 2017, Congress.gov, October 4, 2017; Center for Responsive Politics, Rep. Westerman, 2013-2018; Top Industries, 2017-2018

Making the Case Against Mandatory Arbitration: Preserving Tongass National Forest

The Tongass National Forest, the largest national forest in the country, has been home to Alaska Natives for over 10,000 years.³⁶ The lush old-growth rainforests of the Tongass contain a bounty of salmon, bears, deer, wolves, eagles, and other species that have sustained the Native residents of the region for centuries and support robust fishing and visitor industries today.³⁷

Mike Jackson, a tribal leader of the Kake Village, worked as a logger for over a decade. After seeing the impact of his labor, “in particular the damage to wildlife on which his family had depended for generations, he said to himself, ‘I just can’t live with this.’”³⁸ He joined efforts to protect the Tongass and participated in a series of successful efforts protecting his village’s traditional use area and other pristine Tongass lands.³⁹

From 2001 to 2015, a national debate ensued about management of the “roadless” areas of the national forests – at the time, some 60 million acres of public lands nationwide that remained pristine, road-free, and undeveloped – including most of the lush rainforest surrounding Kake.⁴⁰ In 2001, the Clinton administration adopted a rule protecting those places nationwide from most new roads and logging,⁴¹ but attacks on the rule, both in the agency and in court, left those protections in doubt until Jackson’s village and others won a decisive court victory in 2015.⁴²

While those battles played out, the Forest Service repeatedly tried to build new roads and sell new timber sales in roadless areas of the Tongass, including in the old-growth forests vital to Jackson and the other residents of Kake. Jackson said, “We must not lose more roadless areas here...For Tribal members, these lands are essential sources of food, medicine, clothing, and traditional items for artistic and spiritual use.”⁴³

Tribes, conservation groups, and tourism businesses successfully challenged these sales in court, exposing repeated agency failures to comply with the law. As a direct result of these lawsuits, the Forest Service has not offered a new roadless area timber sale in the Tongass since 2009.

Protection of these areas from logging now enjoys broad support. Following the recommendations of a regional stakeholder group – including the State of Alaska, local communities, and diverse industry interests – the Forest Service adopted a new forest management plan in 2016 keeping the roadless areas of the Tongass off-limits to logging.⁴⁴ The struggle to protect Tongass roadless areas is an inspiring success story.

The Resilient Federal Forests Act, H.R. 2936, would have been devastating if it had been in place during the critical battles to preserve the Tongass. If it had been law at the time, the Forest Service could have shielded its planning and lease sales from judicial review using its own internal arbitration, likely meaning that road building and logging would have moved forward without opportunity for independent legal scrutiny. Those seeking to enforce protections for forest ecosystems would have lost their right to sue. As a result, thousands of acres of pristine old-growth rainforest would now be gone, and the American public would have missed its chance to reach a consensus about the value of protecting this unique and irreplaceable national treasure.⁴⁵

RESTRICTING CLASS ACTION LAWSUITS

Class action lawsuits enable individuals to band together to seek redress for unlawful conduct. Class actions are powerful tools for combating corporate and government wrongdoing, empowering people to fight against discrimination, environmental destruction of their neighborhoods, the sale of defective products, and many other types of injustice.

Some of America’s most well-known court cases were class action lawsuits. *Brown v. Board of Education*, which invalidated the disturbing and discriminatory policy of “separate but equal” in educational institutions and began the long process of dismantling segregation in schools, was a class action. In the class action lawsuit *Anderson et al. v. Pacific Gas & Electric Company*, depicted in the 2000 movie *Erin Brockovich*, the citizens of Hinkley, California banded together to sue Pacific Gas & Electric for contaminating the town’s groundwater with cancer-causing chemicals.⁴⁶ And in the late 1990s, thousands of people took the American Home Products Corporation to court in a series of class action lawsuits, arguing they were harmed after using “fen-phen,” a weight loss drug combination.⁴⁷

The Threats

Members of Congress have introduced numerous bills that would curtail people’s ability to bring class action lawsuits, including, for example:

- **Protecting Bad Acting Corporations and Governments:** H.R. 985, the misleadingly-named “Fairness in Class Action Litigation Act” sponsored by Rep. Bob Goodlatte (R-VA), would severely restrict people’s ability to bring class action lawsuits of any kind.⁴⁸ In addition to proposing burdensome changes to class action procedure, the bill would impose restrictions on what constitutes a “class,” requiring that plaintiffs prove each member has the same type and scope of injury before a federal court can certify the class.⁴⁹ The American Bar Association (ABA) called this “a nearly insurmountable burden for people who have suffered personal injury or economic loss at the hands of large institutions with vast resources, effectively barring them from bringing class actions.”⁵⁰ The bill also includes the text of another piece of legislation (H.R. 906), the misleadingly named “Furthering Asbestos Claims Transparency Act,” which would create burdensome obstacles for victims of mesothelioma – a deadly form of cancer caused by asbestos.⁵¹ The bill would divert resources from trust funds created to compensate victims, and compromise victims’ privacy by putting personal data in a public database.⁵² H.R. 985 passed the House in March 2017.⁵³

Making the Case to Protect Class Actions: Brown v. Lexington County et al.

In March 2016, Twanda Marshinda Brown received two traffic tickets – one for driving without a tag light and the other for driving with a suspended license.

Unable to keep current on payments for more than \$2,000 in fines and fees, Ms. Brown spent nearly two months in jail. She was separated from her 13-year-old son and other children, and she lost her job.⁵⁴ Ms. Brown said, “There was no way that I could pay. I did not want my children to go without food, electricity, and rent. And I had not yet gotten my first paycheck at my new job.”⁵⁵

Over three decades earlier, in 1983, the Supreme Court ruled that a person couldn’t be jailed simply because they couldn’t afford to pay court fines.⁵⁶ But a 2010 ACLU report found that the practice of jailing those who can’t pay court fines and fees was on the rise.⁵⁷ And so were a vast array of court fees themselves – a National Public Radio investigation found that “the costs of the criminal justice system in the United States are paid increasingly by the defendants and offenders. It’s a practice that causes the poor to face harsher treatment than others who commit identical crimes and can afford to pay.”⁵⁸ And it’s a practice that impacts African Americans and Latinos disproportionately, given greater poverty rates in these communities.⁵⁹

In June 2017, the ACLU filed a class action lawsuit against Lexington County, South Carolina on behalf of Ms. Brown and others similarly situated, on the grounds that the county was systematically and unconstitutionally operating a modern-day debtors’ prison by jailing hundreds of poor people “for no reason other than their poverty and in violation of their most basic constitutional rights.”⁶⁰ This lawsuit followed the model of a similar class action brought by the ACLU on behalf of indigent people against the City of Biloxi, Mississippi.⁶¹ That case resulted in a landmark settlement agreement, which now requires the provision of court hearings and court-appointed counsel for indigent people charged with nonpayment of court fines and fees.⁶² Without the ability to band together as a class, individual plaintiffs would have little recourse in these cases because individual cases are easily undermined – defendants simply release the individual debtor (and/or waive all fines and fees) and argue to the court that the case should be thrown out because the person is no longer suffering any harm. As a class action, however, the case could proceed to challenge the legality of the practice more broadly.

However, H.R. 985, which passed the House in 2017, would severely restrict class-action type cases, and therefore the ability of victims of debtors’ prisons and others to seek meaningful remedies.

III. Making It Too Risky and Too Expensive to Sue

Where individuals have a legal right to bring a case in court, they also need the courts to be accessible on a practical level. The more expensive it is to go to court, the less accessible the courts become.

Congress has recognized the importance of addressing the legal and financial hurdles individuals face in bringing public interest litigation, especially when attempting to hold the federal government and big corporations accountable. To facilitate this kind of citizen policing of government and industry, many statutes allow what are called “citizen suits.” These provisions empower members of the public to bring legal action against the government or private entities (like corporations) that break certain federal rules (like the Clean Air Act or Clean Water Act). While the default rule in the United States is that each party to litigation bears its own costs, many of these statutory provisions, including a statute called the Equal Access to Justice Act (EAJA), give judges the discretion to award reasonable attorneys’ fees to citizens who successfully prove a violation of federal law.⁶³

According to a 2013 report by the nonpartisan Environmental Law Institute, these “fee-shifting” provisions have three general purposes. “First, they enable individuals to hire lawyers in order to vindicate certain rights, often rights that have been expressly granted by the legislative branch. Second, they give the government, and specifically executive agencies, a financial incentive to obey the law. Third, these provisions help ensure that parties whose rights have been violated are made whole through the court system.”⁶⁴ Moreover, if recovery of attorneys’ fees were not available, wealthy corporations and the government would have an incentive to drive litigation costs up to frighten prospective litigants or to bankrupt claimants with otherwise valid grievances.

The Threats

Congress is trying to unravel these important laws. Worse still, it is pursuing ways to make public interest litigation dramatically more financially risky.

A number of bills pending in Congress would limit or eliminate attorneys’ fees awards in cases against the government. Other bills would go further, and actually attempt to punish individuals and groups who bring citizen suits by requiring them to pay the attorneys’ fees of all opposing parties if they lose their case.

- **Barring Recovery of Attorney Fees:**

H. Amdt. 367 to the House fiscal year 2018 Omnibus Appropriations bill H.R. 3354, sponsored by Rep. Jason Smith (R-MO), would prevent agencies from awarding attorneys’ fees to prevailing parties in court settlements under the Clean Air Act, Clean Water Act, and Endangered Species Act.⁶⁵ This provision would have a chilling effect on individuals, community groups, and small organizations to vindicate the public’s right to clean water and clean air, and to protect vulnerable wildlife.⁶⁶ The amendment passed the House in September 2017.⁶⁷

- **Punishing Victims of Police Brutality by Limiting Relief:**

H.R. 2437, the “Back the Blue Act of 2017” sponsored by Rep. Ted Poe (R-TX), which takes steps to deny access to habeas corpus, also limits the ability of victims of illegal or unjustified police violence to receive adequate compensation. The bill prohibits the recovery of attorneys’ fees in certain instances for victims who win a police brutality case. The bill also limits the amount of non-economic damages (often known as damages for “pain and suffering”) plaintiffs can obtain.⁶⁸

JUSTICE FOR “JUST US”

The 115th Congress’s efforts to make it too expensive to sue has been disturbingly selective. Members of Congress have introduced 57 bills that would expand or allow for recovery of “reasonable” attorneys’ fees on issues like abortion restrictions, gun rights, and welfare reform. At the same time, these same members have introduced, cosponsored or voted for 21 bills that would restrict or eliminate reasonable attorneys’ fees for environmental, public health, and consumer issues.

Congress.gov Advanced Search (115th Congress bills filtered for “reasonable attorneys’ fees” language; see also 21 bills identified in Appendix labeled as “too expensive to sue.”)

- **Punishing Plaintiffs with “Loser Pay”**

Provisions: In addition to prohibiting awarding attorneys’ fees to successful plaintiffs, H.R. 1179, the so-called “Discouraging Frivolous Lawsuits Act” sponsored by Rep. Tom Rice (R-SC), would require the losing party to cover all opposing parties’ legal costs in cases filed under the Clean Water Act.⁶⁹ Such “loser pays” provisions could dissuade individuals, communities, non-profit organizations, and small businesses from bringing cases to protect the nation’s clean water resources out of fear of being held liable for the government and other parties’ expenses if they lose the case.

Additional proposed legislation in Congress would eliminate EAJA fee recovery in all federal forestry cases, cap fee awards in Endangered Species Act cases, and bar fee recovery in successful challenges to energy development on public lands, while requiring losing parties to pay all other parties’ fees.⁷⁰ The measures clearly put a thumb on the scale in favor of wealthy corporations against public interest groups and individuals.

JUSTICE DENIED

Another recent action underscores the effort the Trump administration has taken to restrict access to justice for minorities and indigent people. In early February, The New York Times reported that the Department of Justice had “effectively shuttered” the Office for Access to Justice, a component that helps low-income people and underserved communities access legal aid.

Katie Benner, “Justice Dept. Office to Make Legal Aid More Accessible Is Quietly Closed,” The New York Times, February 1, 2018

Making the Case for Keeping Access to the Courts Affordable: Fighting Pollution Injustice

For years, the mostly African-American residents of Rochelle, Georgia were forced to live with raw, untreated sewage spewing into their yards and bubbling up through their drains.⁷¹ John Jackson fashioned a makeshift valve to prevent sewage from gurgling into his house and said he’d been shoveling dirt over leaked sewage in his yard for 30 years.⁷² Rufus Howard’s house was narrowly spared from being flooded with raw sewage when a sewer line backed up, sending waste “shooting out” under his home. “It was stinking,” he said, “like I don’t know what.”⁷³ Sittie Butts lamented that when she heard the familiar bubbling sound of the pipes backing up, “We try to keep the kids away.”⁷⁴ And at an Easter service at the Piney Grove Baptist Church, a deacon found raw sewage pooled on the floors.⁷⁵

The city’s sewer system dated back to the 1940s. Many of the sewage pipes were broken and decaying and in desperate need of repair.⁷⁶ Mr. Jackson said complaints to the city went unanswered: “It wasn’t of use to even go to city councils because if you would say something about a problem they would always tell you, ‘We’ll get around to it,’ or they didn’t have money or this and that.”⁷⁷

In May 2013, fed up by decades of inaction, eight residents of Rochelle gave notice to Mayor James Rhodes of their intention to file a civil suit over the city’s clear violations of the Clean Water Act. The reasoning was two-fold: the city had failed to obtain the necessary permits to discharge raw sewage into Mill Creek, and the city violated the permit it did have (from the National Pollutant Discharge Elimination System) by failing to report spills outside of the permitted area, and “allowing adverse impacts to human health and the environment.”⁷⁸

The suit was filed in August 2013.⁷⁹ By the following year, the citizens and the City of Rochelle negotiated a settlement in which the city agreed to install and repair the sewage system on the north side of the town.⁸⁰ Alisa Coe, the Earthjustice attorney who represented the Rochelle residents said:

“This is exactly how the Clean Water Act is supposed to work: When the government fails, ordinary citizens can go to court to enforce the law.”⁸¹

If the “loser pays” legislation, H.R. 1179, had been law at the time of the Rochelle case, this case likely would never have been brought. Lawyers must inform clients of the risks of litigation. Clients like those in the Rochelle case would likely be averse to the risk of being liable for the city’s fees. As no lawyer can ever guarantee success on a claim, no matter how meritorious the case may be, “loser pays” provisions are a way to virtually eliminate litigation by the average person and low-income communities, further ceding access to the courts to wealthy and corporate parties. This is, it appears, the very impact that H.R. 1179 (the so-called “Discouraging Frivolous Lawsuits Act”) intends.

IV. Limiting Judicial Discretion

Members of Congress have proposed a host of bills to interfere with judges’ exercise of discretion and the standards of judicial review. These bills aim to force judges to issue mandatory sanctions for cases deemed frivolous, impose caps on otherwise discretionary awards of monetary damages, and restrict the use of preliminary injunctions.

FORCING JUDGES TO ISSUE SANCTIONS

In 1983, responding to a misperception of pervasive and unjustified litigation, judicial rulemakers made a change to a federal procedural rule so as to require judges to sanction and fine attorneys who were found to have brought frivolous lawsuits.⁸² Prior to this change to Rule 11 of the Federal Rules of Civil Procedure – the rules that govern operation of the federal courts – judges had discretion whether to impose sanctions. The policy continued for a decade before being discarded and discredited for failing to deter frivolous lawsuits,⁸³ increasing litigation costs,⁸⁴ and chilling civil rights cases, which can rely on novel arguments.⁸⁵

Today, judges can again use their discretion to sanction attorneys who file unwarranted cases, and lawsuits that lack merit “are often abandoned soon after discovery,” as noted by Nora Freeman Engstrom, a professor at Stanford Law School and expert in tort law and ethics.⁸⁶

Members of Congress are now proposing to return to the failed policies of the 1980s.

The Threats

Members of Congress have introduced legislation that would limit judicial discretion regarding the imposition of sanctions:

- **Discouraging People from Seeking Legal Remedies:** H.R. 720 (and its companion bill S. 237), the so-called “Lawsuit Abuse Reduction Act” (LARA) sponsored by Rep. Lamar Smith (R-TX), would reinstate the long-abandoned Rule 11 policy of the 1980s that required that judges sanction attorneys for filing lawsuits that the judge finds frivolous.⁸⁷ However, the bill goes even further, requiring as well that the sanctioned party pay the defendant’s attorneys’ fees and litigation costs.⁸⁸

A BAD IDEA, REVISITED

“Indeed, there is a remarkable degree of agreement among judges, lawyers, legal scholars and litigants across the political spectrum that the 1983 amendment of Rule 11 was one of the most ill-advised procedural experiments ever tried.”

Prepared Statement of Lonny Hoffman, March 11, 2011

Returning to the 1983 requirement for sanctions and fines for “unwarranted” lawsuits is a solution in search of a problem. Judges already have ample discretion to deter abuse through sanctions and to award attorneys’ fees as appropriate to any party.

Moreover, if the past is any guide, this rule would disproportionately impact certain kinds of litigants. In testimony before the House Judiciary Committee in opposition to a similar bill introduced in 2011, Professor Lonny Hoffmann said about the discredited 1983 amendments to Rule 11: “Sanctions were sought and imposed against civil rights and employment discrimination plaintiffs ... more often than other litigants in the civil courts.”⁸⁹

The American Bar Association has opposed these latest efforts, concluding in a letter to members of Congress: “The 1983 version of Rule 11 was ill-conceived and created significant unintended adverse consequences that harmed litigants and impeded the administration of justice. We urge you to avoid making the same mistake and to oppose passage of H.R. 720.”⁹⁰ On March 10, 2017, the House passed the bill by a vote of 230-188.⁹¹ Senator Chuck Grassley (R-IA) introduced a similar bill, S.237, that has not yet been brought up for a vote.⁹²

LIMITING MEANINGFUL REMEDIES

Judges and juries are generally authorized to fully compensate a plaintiff for harm caused by a defendant’s negligence. Economic damages are intended to cover quantifiable losses such as out-of-pocket expenditures and lost earnings. Non-economic damages cover pain and suffering, which affect quality of life.⁹³ For example, in a case in which a medical error causes paralysis, non-economic damages could be awarded to compensate the plaintiff whose life and basic daily activities such as walking, driving, and caring for children have been drastically impaired.

Congress is considering bills that would, among other things, restrict the use of preliminary injunctions and place caps on non-economic damages in cases of medical malpractice.

The Threats

Members of Congress have introduced a number of bills that would limit the availability of meaningful remedies. For example:

- **Capping Financial Justice for the Injured:** H.R. 1215, the inaccurately named “Protecting Access to Care Act” sponsored by Rep. Steve King (R-IA), would have a devastating impact on the ability of individuals to recoup damages after sustaining injuries due to medical mistakes. The bill is designed to override some state laws and impose severe federal limits on the ability of medical malpractice victims to seek justice in court, by, for example, limiting noneconomic damages to a cap that “shall not exceed \$250,000, regardless of...” the number of parties or claims involved.⁹⁴ Arbitrary caps on a victim’s damages for harms such as loss of limb or sight, severe or permanent disfigurement, and pain and suffering due to the death of a child, benefits no one except the insurance industry. Instead, the real problem in the American health care industry is failure to prevent avoidable medical errors.⁹⁵ The bill passed the House in June 2017 in a near-party line vote.
- **Clear-cutting Forests While Trying to Save the Trees:** H.R. 2936,⁹⁶ the so-called “Resilient Federal Forest Act of 2017” sponsored by Rep. Bruce Westerman (R-AR) and previously mentioned in Section II because of its forced arbitration language, also would prohibit use of preliminary injunctions. For those challenges that weren’t funneled into binding

arbitration, the bill would prohibit court orders to stop irreparable harm during pending legal action.⁹⁷ Preliminary injunctions are critical, for example, to stop the clear-cutting of an old-growth forest (an action that cannot be undone) until the court can rule on the legality of the proposed timber project. Without this tool, a successful challenge to the legality of a Forest Service plan might come too late to actually save the irreplaceable natural resource. The bill passed the House in November 2017.⁹⁸

Making the Case Against Restricting Patients' Rights: Medical Malpractice & Caps on Damages

Adriana Plevniak was four months pregnant when she saw a doctor for swelling in her eye, a result of a diabetic condition that is normally addressed with injections.⁹⁹ To avoid complications with the pregnancy, her doctor recommended laser treatment. The doctor mistakenly used a high-powered laser, burning Adriana's retina and leaving her blind in her left eye.¹⁰⁰ "I began motherhood," Ms. Plevniak said, "unable to drive to take my newborn or myself to doctor appointments. What was supposed to be the happiest time in my life turned into a nightmare."¹⁰¹

While Ms. Plevniak was able to seek and ultimately receive adequate financial compensation, patients in similar situations may be denied that chance if a bill that narrowly passed the House in June becomes law.¹⁰² Among other things, H.R. 1215 would cap the amount of non-economic damages – like pain and suffering – that someone like Ms. Plevniak could receive.¹⁰³ Because economic damages are based on lost future earnings, caps on noneconomic damages have a disproportionate impact on the elderly and low-income earners.¹⁰⁴

"Thankfully," Ms. Plevniak said, "I could hold my doctor accountable for her carelessness, but I was only able to do so because I had certain legal rights."¹⁰⁵ If H.R. 1215 were to become law, it could prevent people from being fully compensated for the debilitating toll these mistakes have on their lives.

V. Blocking Timely and Meaningful Case Settlements

When a federal agency misses a statutory deadline or fails to take action required by law (such as, adopting safety standards for foods or pollution control requirements for power plants), the agency can be held accountable in court, and the judge can order the agency to act. Often in such cases, the parties, overseen by a federal judge, will negotiate a deadline for the agency to take the overdue action. From the public's perspective, the sooner a new deadline can be set, the sooner the benefits of the underlying statute can be achieved.

Similarly, when an agency enforces the law – by, for example, bringing an action against a company that has violated pollution standards – the agency often settles the case. In such settlements, agencies like the Environmental Protection Agency (EPA) have often encouraged violators to direct some kinds of payments or other benefits to communities or businesses that were injured as a result of the company's unlawful conduct, but that are not directly involved in the litigation – so-called "third parties."

Members of Congress and the Trump administration have sought to limit agencies' ability to enter into settlements, and agencies' discretion to direct certain benefits from enforcement of corporate wrongdoing to affected communities or others who are not parties to the lawsuit. These efforts will undermine the public value of the courts and erode the power of the judiciary to effectively and equitably deliver justice.

The Threats

Both the Trump administration and Congress have taken steps to try to limit the ability of individuals and public interest plaintiffs to obtain important legal relief through settlements.

- **Undermining the Effectiveness of Settlements Within the Executive Branch:**

Federal agency administrators threaten to undermine the value of the courts even without Congressional action. EPA Administrator Scott Pruitt and Attorney General Jeff Sessions have both acted to impose obstacles to effective settlements and to prevent resources from flowing to injured communities. In an October 16, 2017 directive, Administrator Pruitt instructed EPA staff not to proceed expeditiously to settle cases where the agency had missed mandatory legal deadlines.¹⁰⁶ The directive also prohibits staff from reaching agreement with public interest plaintiffs on the payment of attorneys' fees and aims to deter people, communities, and organizations from taking the agency to court when it is not complying with the law.¹⁰⁷ Similarly, in June 2017, Attorney General Sessions issued a memo instructing Department of Justice (DOJ) attorneys not to agree to settlements where such settlements would fund benefits for anyone not a party to the litigation.¹⁰⁸ Instead, any monetary penalties must go exclusively into the Federal Treasury. This new policy might, for example, prevent DOJ from requiring an oil company to fund community-based clean-up efforts or small business development in communities that have suffered as a result of a company's oil spill or other environmental disaster.

- **Preventing and Delaying Public Protections:** H.R. 469, the so-called "Congressional Article I Powers Strengthening Act" sponsored by Rep. Doug Collins (R-GA), like the Pruitt directive, would impose burdensome procedural hurdles that would delay any federal agency efforts to enter into settlements or prevent settlements from happening at all, even when the agency has clearly acted unlawfully.¹⁰⁹ As a result, prolonged litigation would be more likely, and the ultimate implementation of laws that protect public health and safety would be delayed. H.R. 469 would also make public interest litigation more burdensome and expensive for plaintiffs, ultimately making it more difficult for communities, individuals, and small businesses to pursue claims. Unlike the Pruitt directive (that applies only to the EPA), this bill would apply to all agencies with mandates to protect the public and the environment and thus would adversely affect cases involving environmental protection, consumer rights, civil rights, public health, and other important public interest concerns.¹¹⁰ This bill passed the House in October 2017.¹¹¹

A SETTLEMENT DOUBLE STANDARD

Notably, Administrator Pruitt's directive does not apply equally to settlements that the EPA might enter into with corporate polluters when the agency brings enforcement cases – in such cases the EPA remains free to make backroom deals unencumbered by additional procedure. This scenario played out just recently when the EPA struck a sweetheart deal with agrochemical giant Syngenta. The company was found to have violated pesticide regulations in two separate incidents on a Hawaii farm that exposed 61 workers to a dangerous chemical. The prior administration's EPA sought more than \$4.8 million in civil penalties, but Pruitt's agency settled with the company for just \$150,000, a sum unlikely to have any deterrent effect.

Amanda Reilly, "Pesticide company's penalty: From a proposed \$4.8M to \$150K," E&E News, February 14, 2018

- **Eliminating Settlement Benefits for Impacted Communities:** H.R. 732, the so-called “Stop Settlement Slush Funds Act of 2017” sponsored by Rep. Bob Goodlatte (R-VA), would cut off any payments to third parties other than individualized restitution and other forms of direct payment for “actual harm.”¹¹² Like the Sessions memorandum, this restriction would handcuff federal enforcement officials, removing an important tool for securing real-world relief for communities from the legal toolbox. For example, after the Deepwater Horizon oil rig exploded in the Gulf of Mexico, BP agreed as part of the settlement to pay hundreds of millions of dollars to the National Academy of Sciences and the National Fish and Wildlife Foundation – groups that were not party to the legal case but helped in local recovery.¹¹³ These nonprofits spent the money on oil spill prevention and natural resource restoration projects that benefitted the hardest hit coastal and fishing communities.¹¹⁴ H.R. 732 would prohibit settlement payments to organizations that help injured communities recover. The bill passed the House in October 2017.

Making the Case to Protect Settlements: Mercury & Air Toxics Standards Rule

It has been long known that mercury emissions pose a grave danger to human health and fetal development. In the early 1990s, Congress passed an overhaul of the Clean Air Act requiring the EPA to study mercury emissions and, if necessary, to issue standards to limit mercury and other toxins from power plants, the biggest sources of the chemical.¹¹⁵ Government studies from the early 2000s warned that pregnant women’s exposure to mercury could put one in six U.S.-born babies at risk of acquiring developmental disorders and that tribal and subsistence fishers might be at a higher risk of elevated mercury levels from fish consumption.¹¹⁶

Foot-dragging by the agency led to a series of delays to completing the required scientific study and consequently to enacting any public health protections against mercury. At each stage of delay, public health, community, and environmental groups sued.¹¹⁷ In response to nearly every lawsuit, the EPA, recognizing its abdication of its clear legal duty, settled with the plaintiffs and set new deadlines. In 2011, two decades and many lawsuits later, the EPA ultimately adopted critical protections and finalized the Mercury and Air Toxics Standard.¹¹⁸

The EPA estimates that the standard helps prevent up to 11,000 premature deaths, 130,000 asthma attacks, and 3 million missed work and school days each year.¹¹⁹ While it was a long journey to create this life-saving public health protection, it likely would have never been realized or would have been drawn out over many years if not for the ability of the agency to reach settlements with plaintiffs and commit to doing the work that it was legally required by Congress to do.

The Mercury and Air Toxics Standard is by no means an isolated case. It has become routine for the EPA miss its legal deadlines for issuing rules to control hazardous air pollutants, and for it to agree to do its job only after being sued.¹²⁰ Almost every federal regulation addressing hazardous air pollutants was adopted only after public interest organizations, public health groups and others sued the EPA for missing its statutory deadlines and the EPA agreed to new deadlines in a settlement or consent decree.

Taking away an agency’s ability to efficiently settle cases is bad for everyone. It means more money and resources focused on litigation rather than on the implementation of public protections. And it means more missed work and school days, more doctors’ visits, and more lost lives. This, in fact, would be the effect of the current efforts to limit settlements by Congress and the Trump administration.

Conclusion

With significant support from large corporations and other special interests, Congress and the Trump administration are trying to make it more difficult for people to access the courts to vindicate their rights and pursue justice in the face of wrongful and unlawful conduct.

If people can no longer effectively hold the government or corporate interests accountable, the federal laws that protect our civil and human rights, ensure public health and safety, safeguard workers and consumers, and protect the environment, are diminished to the detriment of us all.

So, what can we do to stop it? It will take a broad partnership to defend the right of people in this country to go to court. We need a united front of organizations and individuals, standing together and speaking together in opposition to this assault on a vital pillar of our democracy. This fight is not a partisan one. Rolling back access to justice runs counter to the fundamental principles upon which this nation was founded, and distances us from the American ideal of a self-governed people guided by the rule of law rather than by the desires of the powerful few.

Individuals should contact their elected officials in Congress and share this report about legislation that could restrict access to justice. The ability to safeguard our civil rights and liberties, and to defend consumer, health, safety, environmental protections and more, depends on it.

For more information on this campaign and how to get involved and take action, please visit [AccessToJusticeReport.org](https://www.AccessToJusticeReport.org).

Appendix: Congressional Threats (Updated April 6, 2018)

As of the release of this report, Senators and Representatives have introduced 58 bills in the current Congress that include provisions that would impede or eliminate individuals' ability to access justice through the courts.

Each of these bills contains provisions that present one or more threats to access to justice, as discussed in this report. The table below indicates which of the five categories each bill falls within:

- **No Judicial Review:** Making the courts off-limits with “no judicial review” clauses, eroding the role of courts to hear challenges to certain government actions;
- **Forcing Arbitration/Restricting Class Actions:** Expanding the use of forced arbitration and/or restricting people's ability to band together to bring class action lawsuits;
- **Too Risky/Expensive to Sue:** Making public interest litigation too risky or too expensive to pursue by eliminating attorneys' fees awards in cases against the government and implementing “loser pays” provisions;
- **Limiting Judicial Discretion:** Forcing judges to issue sanctions and limiting the power of courts to effectively redress injuries; and
- **Meddling with Settlements:** Undermining the government's ability to reach timely and meaningful case settlements.

BECAME LAW

	Bill Number	Bill Name	Sponsor	Threat Categories	Sector(s)
1	H.J. Res. 111	CFPB Arbitration	Rep. Keith J. Rothfus (R-PA)	No Judicial Review Forcing Arbitration/ Restricting Class Actions	Consumer

PASSED IN THE HOUSE

	Bill Number	Bill Name	Sponsor	Threat Categories	Sector(s)
2	H.R. 10	"Financial CHOICE Act" of 2017	Rep. Jeb Hensarling (R-TX)	Meddling with Settlements	Environment Civil Rights Health Consumer
3	H.R. 26	"Regulations from the Executive in Need of Scrutiny Act" of 2017	Rep. Doug Collins (R-GA)	No Judicial Review	Environment Civil Rights Health Consumer
4	H.R. 469	"Congressional Article I Powers Strengthening Act" of 2017	Rep. Doug Collins (R-GA)	Limiting Judicial Discretion Meddling with Settlements	Environment Civil Rights Health Consumer
5	H.R. 620	"ADA Education and Reform Act" of 2017	Rep. Ted Poe (R-TX)	Limiting Judicial Discretion	Civil Rights
6	H.R. 720	"The Lawsuit Abuse Reduction Act"	Rep. Lamar Smith (R-TX)	Limiting Judicial Discretion	Environment Civil Rights Health Consumer

7	H.R. 725	"The Innocent Party Protection Act"	Rep. Ken Buck (R-CO)	Forcing Arbitration/ Restricting Class Actions Limiting Judicial Discretion	Environment Civil Rights Health Consumer
8	H.R. 732	"Stop Settlement Slush Funds Act" of 2017	Rep. Bob Goodlatte (R-VA)	Meddling with Settlements	Environment Civil Rights Health Consumer
9	H.R. 985	"The Fairness in Class Action Litigation Act"	Rep. Bob Goodlatte (R-VA)	Forcing Arbitration/ Restricting Class Actions	Environment Civil Rights Health Consumer
10	H.R. 1215	"Protecting Access to Care Act"	Rep. Steve King (R-IA)	Limiting Judicial Discretion	Health Consumer
11	H.R. 1917	"Blocking Regulatory Interference from Closing Kilns Act" of 2017	Rep. Bill Johnson (R-OH)	Limiting Judicial Discretion	Environment Health
12	H.R. 2936	"Resilient Federal Forests Act" of 2017	Rep. Bruce Westerman (R-AR)	No Judicial Review Forcing Arbitration/ Restricting Class Actions Too Risky/ Expensive to Sue Limiting Judicial Discretion	Environment
13	H.R. 3219	FY18 Appropriations Bill	Rep. Kay Granger (R-TX)	Limiting Judicial Discretion	Environment
14	H.Amdt.367 to H.R. 3354	FY18 Omnibus Appropriations Bill	Rep. Jason Smith (R-MO)	Too Risky/ Expensive to Sue	Environment

PASSED AT LEAST ONE CONGRESSIONAL COMMITTEE

	Bill Number	Bill Name	Sponsor	Threat Categories	Sector(s)
15	H.R. 906	"The Furthering Asbestos Claim Transparency Act"	Rep. Blake Farenthold (R-TX)	Limiting Judicial Discretion Meddling with Settlements	Health Consumer
16	H.R. 3131	"Endangered Species Litigation Reasonableness Act"	Rep. Bill Huizenga (R-MI)	Too Risky/ Expensive to Sue	Environment
17	H.R. 3267	FY18 CJS Appropriations	Rep. John Abney Culberson (R-TX)	Meddling with Settlements	Environment Civil Rights Health Consumer
18	H.R. 3668	"Sportsmen's Heritage and Recreational Enhancement Act"	Rep. Jeff Duncan (R-SC)	No Judicial Review	Environment
19	S. 951	"Regulatory Accountability Act" of 2017	Sen. Rob Portman (R-OH)	No Judicial Review	Environment Civil Rights Health Consumer

INTRODUCED

	Bill Number	Bill Name	Sponsor	Threat Categories	Sector(s)
20	H.R. 210	"Native American Energy Act"	Rep. Don Young (R-AK)	Limiting Judicial Discretion Meddling with Settlements	Health Consumer
21	H.R. 232	"State Forest Management Act" of 2017	Rep. Don Young (R-AK)	Too Risky/ Expensive to Sue	Environment
22	H.R. 424	"Mexican Gray Wolf Recovery Plan Act"	Rep. Collin Peterson (D-MN)	Meddling with Settlements	Environment Civil Rights Health Consumer
23	H.R. 527	"Greater Sage-Grouse Protection and Recovery Act" of 2017	Rep. Rob Bishop (R-UT)	No Judicial Review	Environment
24	H.R. 641	"Better Agriculture Resources Now Act"	Rep. Rick W. Allen (R-GA)	No Judicial Review	Environment Civil Rights Health Consumer
25	H.R. 1179	"The Discouraging Frivolous Lawsuits Act"	Rep. Tom Rice (R-SC)	Too Risky/ Expensive to Sue	Environment
26	H.R. 1525	"Stop Taxpayer Funded Settlements Act"	Rep. Jason Smith (R-MO)	Too Risky/ Expensive to Sue Meddling with Settlements	Environment
27	H.R. 1682	"Energy Star Program Integrity Act"	Rep. Robert Latta (R-OH)	No Judicial Review Forcing Arbitration/ Restricting Class Actions	Environment Consumer
28	H.R. 1704	"ACCESS Act" of 2017	Rep. Richard Hudson (R-NC)	Limiting Judicial Discretion	Health Consumer

29	H.R. 2134	"Endangered Species Management Self-Determination Act"	Rep. Blaine Luetkemeyer (R-MO)	No Judicial Review	Environment
30	H.R. 2233	"American Jobs First Act" of 2017	Rep. Mo Brooks (R-AL)	No Judicial Review	Civil Rights
31	H.R. 2359	"FCRA Liability Harmonization Act"	Rep. Barry Loudermilk (R-GA)	Limiting Judicial Discretion	Consumer
32	H.R. 2437	"Back the Blue Act" of 2017	Rep. Ted Poe (R-TX)	Too Risky/ Expensive to Sue Limiting Judicial Discretion	Civil Rights
33	H.R. 2613	"FORESTS Act" of 2017	Rep. Cathy McMorris Rodgers (R-WA)	No Judicial Review Forcing Arbitration/ Restricting Class Actions	Environment
34	H.R. 2693	"A Bill to Amend the Clean Water Act"	Rep. Duncan Hunter (R-CA)	Too Risky/ Expensive to Sue	Environment
35	H.R. 3141	"Taxpayer Transparency Act" of 2017	Rep. Billy Long (R-MO)	No Judicial Review	Environment Civil Rights Health Consumer
36	H.R. 3257	"Promote Accountability & Government Efficiency Act"	Rep. Todd Rokita (R-IN)	Too Risky/ Expensive to Sue Limiting Judicial Discretion	Civil Rights
37	H.R. 3608	"Endangered Species Litigation Reasonableness Act"	Rep. Tom McClintock (R-CA)	Too Risky/ Expensive to Sue	Environment

38	H.R. 4423	"North Texas Water Supply Security Act" of 2017	Rep. Sam Johnson (R-TX)	No Judicial Review Forcing Arbitration/ Restricting Class Actions Too Risky/ Expensive to Sue Limiting Judicial Discretion	Environment
39	H.R. 4760	"Securing America's Future Act" of 2018	Rep. Bob Goodlatte (R-VA)	No Judicial Review Forcing Arbitration/ Restricting Class Actions	Civil Rights
40	S. 119	"Sunshine for Regulatory Decrees and Settlements Act" of 2017	Sen. Chuck Grassley (R-IA)	Limiting Judicial Discretion Meddling with Settlements	Environment Civil Rights Health Consumer
41	S. 164	"Mexican Gray Wolf Recovery Plan Act"	Sen. Ron Johnson (R-WI)	No Judicial Review	Environment
42	S. 237	"The Lawsuit Abuse Reduction Act"	Sen. Chuck Grassley (R-IA)	Limiting Judicial Discretion	Environment Civil Rights Health Consumer
43	S. 273	"Greater Sage-Grouse Protection and Recovery Act" of 2017	Sen. James Risch (R-ID)	No Judicial Review	Environment
44	S. 333	"Stop Settlement Slush Funds Act" of 2017	Sen. James Lankford (R-OK)	Meddling with Settlements	Environment Civil Rights Health Consumer
45	S. 368	"Mexican Gray Wolf Recovery Plan Act"	Sen. James Lankford (R-OK)	No Judicial Review	Environment

46	S. 375	"A Bill to Amend the Endangered Species Act"	Sen. John Cornyn (R-TX)	Too Risky/ Expensive to Sue Limiting Judicial Discretion Meddling with Settlements	Environment
47	S. 839	"Blocking Regulatory Interference from Closing Kilns Act" of 2017	Sen. Roger Wicker (R-MS)	Limiting Judicial Discretion	Environment Health
48	S. 879	"The National Forest Ecosystem Improvement Act" of 2017	Sen. John Barrasso (R-WY)	No Judicial Review Forcing Arbitration/ Restricting Class Actions Too Risky/ Expensive to Sue Limiting Judicial Discretion	Environment
49	S. 935	"Endangered Species Management Self-Determination Act"	Sen. Rand Paul (R-KY)	No Judicial Review	Environment
50	S. 1134	"Back the Blue Act" of 2017	Sen. John Cornyn (R-TX)	Too Risky/ Expensive to Sue Limiting Judicial Discretion	Civil Rights
51	S. 1514	"HELP for Wildlife Act"	Sen. John Barrasso (R-WY)	No Judicial Review	Environment
52	S. 1731	"Forest Management Improvement Act" of 2017	Sen. John Thune (R-SD)	No Judicial Review Forcing Arbitration/ Restricting Class Actions Too Risky/ Expensive to Sue	Environment

53	S. 1756	"Rebuild America Now Act"	Sen. Dan Sullivan (R-AK)	No Judicial Review Too Risky/ Expensive to Sue Limiting Judicial Discretion Meddling with Settlements	Environment
54	S. 1757	"Building America's Trust Act"	Sen. John Cornyn (R-TX)	Forcing Arbitration/ Restricting Class Actions Limiting Judicial Discretion Meddling with Settlements	Civil Rights
55	S. 2068	"The Wildfire Mitigation and Prevention Act" of 2017	Sen. John Barrasso (R-WY)	No Judicial Review Forcing Arbitration/ Restricting Class Actions	Environment
56	S. 2160	"Protect Collaboration for Healthier Forests Act"	Sen. Steve Daines (R-MT)	No Judicial Review Forcing Arbitration/ Restricting Class Actions Too Risky/ Expensive to Sue	Environment
57	S. 2461	"Blocking Regulatory Interference from Closing Kilns Act" of 2018	Sen. Roger Wicker (R-MS)	Limiting Judicial Discretion	Environment
58	S.J.Res. 47	CFPB Arbitration Rule CRA	Sen. Mike Crapo (R-ID)	No Judicial Review Forcing Arbitration/ Restricting Class Actions	Health Consumer

An updated list of bills for the 115th Congress is available online at [AccessToJusticeReport.com](https://www.access-to-justice.com).

Endnotes

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