

# O U R C O U N T R Y O U R C O U R T S

A Project of **Earthjustice**, together with the **ACLU**, **The Leadership Conference on Civil and Human Rights**, and **Public Citizen**

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## Defending Public Access to Justice

### Court Access in the Crosshairs

The Trump administration, members of Congress and wealthy corporations are trying to block people's ability to access the justice system. Through legislation and actions by agencies, they are working to restrict people's legal rights in ways that would broadly impinge on people's ability to defend civil rights, civil liberties, consumer protections, environmental protection, and public health and safety.

Civil litigation has had a profoundly positive impact on our country, helping to define the contours of our modern democracy. Watershed moments in the advancement of civil rights and protection of civil liberties have come as the result of public interest litigation, exemplified by cases like *Brown v. Board of Education*, *Loving v. Virginia* and *Obergefell v. Hodges*. Lawsuits have also spurred and protected landmark environmental and consumer safeguards. Litigation has—among many other things—compelled federal agencies to adopt long overdue pollution standards that save thousands of lives every year, helped workers to secure fair wages, deterred harassment by debt collectors, and provided compensation for patients injured by unsafe drugs.

If the current efforts to restrict access succeed, our ability to hold government and powerful corporations accountable will suffer. This concern is not abstract. Our rights are at risk *right now*.

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With significant support from Wall Street, more than 50 pieces of legislation that include new obstacles to the public's access to the courts are now making their way through Congress. For example:

- **Forcing Individuals Into Arbitration:** Companies insert binding arbitration clauses in credit card agreements, cellphone contracts, employment contracts, nursing-home agreements and a slew of other "take-it-or-leave-it" agreements to force individuals to give up the right to go to court if a dispute with the company later arises. These clauses force people to forgo the court system to seek redress for wrongdoing by the company, forcing them instead into secretive and, often, expensive arbitration proceedings. When forced arbitration clauses are combined with class action bans, people lose the option of banding together to seek redress for harm. Because pursuing arbitration individually is often prohibitively expensive, forced arbitration can leave injured people with no option for seeking compensation—and leave corporations with no accountability for wrongdoing.

Despite overwhelming public support for banning forced arbitration clauses, both the administration and Congress support allowing corporations to continue blocking consumers and workers from the courts. On November 1, for example, President Donald Trump signed into a law a bill that allows banks, payday lenders and other financial service providers to force customers into binding arbitration.

- **Banning or Limiting Class Action Lawsuits:** In class actions lawsuits, many individuals join together to seek redress against unlawful conduct. Class actions are powerful tools for combating corporate and government wrongdoing because they enable individuals to bring claims that would not otherwise be economically feasible. Class actions help citizens combat race discrimination, environmental destruction and the sale of defective products, for example. One of the many legislative efforts to undermine class action lawsuits as a tool for seeking justice is H.R. 985, dubbed the "Fairness in Class Action Litigation Act." The bill—which already passed in the House—would have a devastating impact on the ability of wronged individuals to band together to hold wrongdoers accountable.

The Trump administration is also using executive actions to ease regulations that are designed to protect our families' health, safety and welfare. For example:

- **Demanding Unfair Limitations on Cases and Settlements:** Last month, EPA Administrator Scott Pruitt issued a directive instructing EPA staff, when the agency misses mandatory legal deadlines, to no longer settle lawsuits with public interest plaintiffs to put the agency on a schedule for action. Instead, before agreeing to a schedule for adopting overdue public protections, the agency must consult with industry and industry-friendly states and consider their requests for further unlawful delay. The directive also prohibits staff from reaching agreement with public interest plaintiffs on the payment of attorney's fees, even when the plaintiffs are legally entitled to recover such fees. The directive aims to deter individuals, communities and organizations from taking the agency to court when it is not complying with the law. The new policy will make litigation to hold the EPA accountable more difficult, more drawn out and more expensive, and will result in longer delays of important public health protections.

Shortly after Pruitt issued his directive, the House of Representatives passed H.R. 469, the so-called "Sunshine for Regulatory Decrees and Settlement Acts of 2017." This bill would apply provisions similar to those in the Pruitt directive across all federal agencies, and would impact cases involving environmental protection, consumer rights, anti-discrimination measures, public health and other important public protections.

Understanding these threats and the harmful impact of curtailing people's ability to seek justice is the first step in defending the constitutional right to seek redress of grievances in a court of law.

Our four organizations all work in the public interest. Although we focus on different topics, we stand united in opposition to these attempts to block access to the courts because we share a common value that is enshrined in the Constitution: Every person in America deserves access to justice.