Widespread opposition to giving corporations COVID-19 immunity

_Policy experts call proposal “one of the more appalling things I’ve heard”, “dangerous,” businesses need to “take responsibility”_

“So the Republican position is employers should get a waiver of liability if their workplace turns out to be unhealthy, but employees should lose unemployment benefits if they won't return to that unhealthy workplace. Will American capitalism survive the current Republican Party?” —Bill Kristol, founder of The Weekly Standard and director of Defending Democracy Together

“The claim from the Chamber of Commerce that liability will make people scared to do business is correct and that’s the point. We want businesses to take responsibility. All of tort law is about creating a strong incentive for people and companies to not act badly.” —University of Michigan economics and public policy professor Justin Wolfers

“The chamber’s proposals are all about shielding companies from liability, which is a particularly dangerous thing to do during the pandemic. Our laws should incentivize protecting workers and consumers, and the fact that companies could be held accountable for negligence is absolutely crucial to protecting people and public health.” —Terri Gerstein, Harvard Law School Labor and Worklife Program director

“[Policymakers] need to take seriously the safety of employees and customers, both because it is the right thing to do and because it is necessary to make people feel comfortable entering the economy again.” —Adam J. White, resident scholar at the American Enterprise Institute and Director of George Mason University’s C. Boyden Gray Center for the Study of the Administrative State.

“This is a discussion from corporations and employers that are shirking their employees on the front lines of the pandemic,” Ms. Henry said. “They’re now going to try, as they infect people, to shirk any legal responsibility for it?” —Mary Kay Henry, president of the Service Employees International Union

“Shielding companies from liability in the ways being discussed is one of the more appalling things I’ve heard in the context of this crisis. It’s particularly important that we hold employers liable for safe conditions given how easily Covid spreads, and how widespread the ramifications of workplace contamination could spread.” —Judy Conti, National Employment Law Project

“If, whether it's a private company or a private citizen, they’re operating something on their property and whatever they’re doing is unsafe and poses a danger to the entire community, then the public has a right to safety and health.” —Karla Gilbride, a lawyer with Public Justice

“It’s horrible,” Berkowitz said. “The idea companies can be held accountable is absolutely crucial to protecting workers ... This is one of the most appalling things I’ve heard in the context
of this crisis.” –Debbie Berkowitz, a former senior OSHA official and director of the worker safety and health program at the National Employment Law Project

“When have nursing home residents ever been more vulnerable than at this time? And it’s right at this time that we’ve taken away any mechanism of accountability. And this situation is just particularly outrageous to me.” –Richard Mollot, Executive Director of The Long Term Care Community Coalition (LTCCC)

“This looks to me more like, ’Let’s get rid of liability,” Verkerke said. And eliminating liability, he warned, could be “constitutionally suspect.” --J.H. (Rip) Verkerke, University of Virginia law professor.

“My research on the role of civil lawsuits in reducing foodborne illness outbreaks suggests that fears of excessive litigation are unwarranted. What’s more, the modest liability exposure that does exist is important to ensuring businesses take reasonable coronavirus precautions as they reopen their doors.” --Timothy D. Lytton, Distinguished University Professor and Professor of Law at Georgia State University in Atlanta.

_Lawmakers opposed, say many businesses “haven’t done enough to safeguard” workers_

“At the time of this coronavirus challenge, especially now, we have every reason to protect our workers and our patients in all of this,” she said. “So we would not be inclined to be supporting any immunity from liability.” –House Speaker Nancy Pelosi

“How does that make sense?” Senate Minority Leader Charles E. Schumer asked Tuesday on a call with reporters. “Instead of making sure businesses have PPE [personal protective equipment] for their employees, McConnell wants to make it harder for workers to show up at their jobs and to hold their employers accountable for providing safe working conditions.... Instead of fighting for more testing to help everyone working on the front lines, Sen. McConnell is fighting to protect corporate executives.”

“When Mitch McConnell says they should go bankrupt (states and local governments) and now he’s coming in with some little subterfuge, he says, ‘we don’t want to give the aid until we make sure there’s no liability?’ Well does that mean that if a boss tells a worker you got to work next to somebody who has no mask that that worker can’t protect him or herself and the boss is immune from liability?” –Minority Leader Chuck Schumer

“I don’t think we should be providing companies blanket safe harbors given that many current businesses, which are currently operational, haven’t done enough to safeguard their workers.” --Rep. Ro Khanna

“If you just want to immunize the business and stop there, that’s not much of a conversation.” - -Rep. Bobby Scott

_Even White House officials skeptical of idea, say it is not a “top priority” for small businesses_

Attorneys in the White House Counsel’s Office are reviewing the matter, but some
administration officials have raised objections to the idea, including whether it would expose the federal government to legal claims, according to two of the people, who spoke on the condition of anonymity to discuss internal deliberations.

Some small businesses have told White House advisers that the liability waiver is not a top priority for them and that they want the administration to instead focus on expanding the small-business loan program crucial to their survival. (via Washington Post)

*Despite massive lobbying effort, U.S. Chamber’s own polling shows COVID-19 immunity is not a priority for small businesses*

According to the Chamber’s poll of 500 small business owners, when given a list of six possible small business relief or programs from the federal government, “enacting liability protection legislation” was picked by the fewest number of respondents. Less than 10 percent of small business owners across all industries chose liability protection, versus 56 percent choosing “direct cash payment” as their top priority.” (Special Report on Coronavirus and Small Business, April 3, 2020)

*OSHA “won’t crack down on businesses that fail to follow COVID-19 guidelines”*

As more of the nation’s essential workers become ill with coronavirus, the federal agency responsible for employee safety is telling many of them that it won’t crack down on businesses that fail to follow COVID-19 guidelines. The U.S. Occupational Safety and Health Administration’s position has left some workers, unions and advocates scrambling to figure out how to protect employees.

Workers say employers aren’t cleaning worksites properly, providing protective equipment or telling them when coworkers became sick with the coronavirus. (via Milwaukee Journal Sentinel)

*“Mitch McConnell should not use this crisis to advance his ‘tort reform’ agenda”*

The Senate majority leader may have powerful business lobbies behind him, but he still risks violating what is, or should be, a cardinal rule for both parties during the crisis: Do not exploit it to pursue preexisting policy agendas. Curbing class-action and other lawsuits on behalf of workers and consumers — “tort reform” — has been on the GOP wish list for years, and Mr. McConnell apparently sees an opportunity to advance it, using critical state and local budget shortfalls as leverage.

Perhaps businesses, and Mr. McConnell, should be a bit less indignant about supposed plaintiff lawyer opportunism and a bit more worried by the possibility that the allegations in the lawsuit, or others like it, might be true.

Whatever Congress does should not help companies make excuses for potentially deadly failures, but strengthen their incentives to prevent such failures.

(Editorial Board of the Washington Post, May 3, 2020)