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## TRUMP'S CIVIL JUSTICE SCORECARD

**Tracking everything the Trump Administration has said or done to diminish your rights (and legal accountability for corporate misconduct).**

(March 1, 2018)

In little more than a year, the Trump Administration has already quietly destroyed many of your legal rights. Who asked for that? No one. No one sent Mr. Trump to Washington to rig the civil courts against everyday Americans. (And needless to say, no one likes a hypocrite.<sup>1</sup>)

Unfortunately, this Administration has been on a relentless push to do just that. The examples below are among the many “under the radar” ways the Trump Administration has been harming the public’s health, safety and economic security.<sup>2</sup>

Here are the top civil justice attacks so far – both actions and statements. They are listed chronologically (most recent first). Those most targeted or endangered are highlighted. Workers and injured patients lead (5 actions each), followed by consumers (4), investors (3), farmers, students and #MeToo survivors (1 each). And two actions threaten just about everyone.

We’re sure this is only the beginning, so we promise to keep a running count. Stay tuned.

### 2018

#### **22. Patients** (February 12)

Trump’s Fiscal Year 2019 budget recommends that the federal government strip injured patients of their legal rights, radically preempt state laws and restrict the power and authority of local courts to compensate victims in medical malpractice cases.<sup>3</sup>

#### **21. Everyone** (January 25)

The U.S. Justice Department issued a new policy limiting use of agency “guidance,” which will help insulate reckless corporations from government lawsuits over violations of health, safety, civil rights or environmental laws.<sup>4</sup>

**20. Everyone** (February 15)

The Associate Attorney General – who was former Chief Counsel for Regulatory Litigation at the U.S. Chamber of Commerce (a major class action opponent) – announced that the U.S. Justice Department was “looking to get involved” in or undermine private class action settlements.<sup>5</sup>

**2017**

**19. Workers** (December 14)

After Trump appointed anti-worker members to the National Labor Relations Board, the Board severely narrowed workers’ abilities to sue companies for labor violations committed by those companies’ franchisees or contractors.<sup>6</sup> Less than three months later, the ruling was vacated when it was discovered that one of Trump’s new members improperly participated in the case.<sup>7</sup>

**18. Consumers** (November 1)

Trump signed into law a repeal of the Consumer Financial Protection Bureau rule that had allowed defrauded consumers to join with others to bring class action lawsuits against banks over financial products and services.<sup>8</sup>

**17. Consumers** (October 23)

The U.S. Treasury Department issued a report attacking the legal rights of consumers cheated by financial institutions to sue in court or join with other consumers in class action lawsuits against banks and financial companies.<sup>9</sup>

**16. Farmers** (October 19)

The U.S. Department of Agriculture made it more difficult for independent farmers, such as poultry growers, to file lawsuits against big agricultural companies over unfair, deceptive and retaliatory practices.<sup>10</sup>

**15. Investors** (October 7)

The U.S. Treasury Department recommended that the U.S. Securities and Exchange Commission consider preventing cheated investors who have been misled or deceived from going to court, forcing investors into private, rigged arbitration systems and barring them from joining with others in class action lawsuits.<sup>11</sup>

**14. Retirement Investors** (August 30)

The U.S. Department of Labor allowed negligent financial services advisors and companies to force retirement investors into secret, rigged arbitration systems to resolve disputes while preventing them from joining other ripped-off investors in class action lawsuits.<sup>12</sup>

**13. Consumers** (July 24)

The White House issued a “Statement of Administration Policy” supporting a bill to overturn a Consumer Financial Protection Bureau rule that allowed defrauded consumers to join with others in class action lawsuits against banks over financial products and services.<sup>13</sup>

## **12. Consumers (July 17)**

Acting Comptroller of the Currency and Trump appointee Keith Noreika sent a letter pressuring the Consumer Financial Protection Bureau to delay a rule allowing consumers cheated by financial institutions to join with other consumers in class action lawsuits against banks and financial companies.<sup>14</sup>

## **11. Investors (July 17)**

U.S. Securities and Exchange Commission member Michael Piwowar, in a major policy reversal, encouraged companies to approach the SEC about allowing them to place forced arbitration clauses into company charters, preventing cheated investors from suing in court.<sup>15</sup>

## **10. Students (June 16)**

The U.S. Department of Education moved to prevent students defrauded by for-profit colleges, like Trump University, from suing in court or joining with other defrauded students in class action lawsuits.<sup>16</sup>

## **9. Workers (June 16)**

In a major policy change, the U.S. Justice Department's Office of the Solicitor General switched sides before the U.S. Supreme Court. The Solicitor General filed a new brief arguing that employees, as a condition of employment, could be required to sign contracts waiving their legal rights to go to court or to join with other harmed workers in class action lawsuits. (The prior Administration had sided with workers in the same case.)<sup>17</sup>

## **8. Patients (June 14)**

The White House issued a "Statement of Administration Policy" supporting a bill to strip injured patients of their legal rights, radically preempt state laws and restrict the power and authority of local courts to compensate victims in medical malpractice, nursing home and drug injury cases.<sup>18</sup>

## **7. Workers (June 7)**

The U.S. Department of Labor withdrew an Obama-era guidance document that had allowed workers to hold big companies as well as their franchisees or subcontractors liable for wage and hour infractions.<sup>19</sup>

## **6. Workers (June 7)**

The U.S. Department of Labor withdrew an Obama-era guidance document that had "made it easier for employees or federal and state governments to sue companies for misclassifying workers as contractors rather than employees."<sup>20</sup>

## **5. Nursing Home Patients (June 5)**

The Centers for Medicare and Medicaid Services moved to strip legal rights from abused and neglected nursing home patients, forcing them into secret, rigged arbitration systems controlled by the negligent nursing home.<sup>21</sup>

#### 4. #MeToo Survivors (March 27)

Trump moved to take away the legal rights of many sexual harassment, sexual assault and discrimination survivors, preventing them from suing federal contractors in court and forcing survivors into secretive, rigged arbitration systems to get justice.<sup>22</sup>

#### 3. Patients (March 8)

The U.S. Justice Department's Solicitor General filed a U.S. Supreme Court brief arguing that the court should slam the courthouse door on many victims of product injuries by dramatically changing the law of personal jurisdiction (which the court agreed to do).<sup>23</sup>

#### 2. Workers (March 6)

The U.S. Justice Department's Solicitor General filed a U.S. Supreme Court brief arguing against a Montana Supreme Court decision that had allowed railroad workers to sue out-of-state railroads for on-the-job injuries.<sup>24</sup>

#### 1. Patients (February 28)

In his first State of the Union address, Trump called for laws that strip injured patients of their legal rights and restrict the power and authority of local courts to compensate victims in medical malpractice cases.<sup>25</sup>

## NOTES

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<sup>1</sup> "Mr. Trump will see you in court," *Bloomberg*, April 25, 2016, <https://www.bloomberg.com/graphics/2016-trump-lawsuits/>

<sup>2</sup> This compilation is conservative, only representing the most direct attacks on civil justice system rights and legal corporate accountability. This includes laws, policies, reports, statements (except those made at press briefings that merely confirm actions taken), and notable court briefs. It does not include many other actions the Administration has undertaken to harm people's access to justice, such as closing the U.S. Justice Department's Office for Access to Justice, (Katie Benner, "Justice Dept. Office to Make Legal Aid More Accessible Is Quietly Closed," *New York Times*, February 1, 2018, <https://www.nytimes.com/2018/02/01/us/politics/office-of-access-to-justice-department-closed.html>); "gutting of anti-discrimination measures across the financial services, including mortgages, car loans, payday loans, and more" (Hannah Levintova, "Trump and Congress Are Making It Easier for Banks and Companies to Rip Off Black People," *Mother Jones*, February 25, 2018, <https://www.motherjones.com/politics/2018/02/trump-and-congress-are-making-it-easier-for-banks-and-companies-to-rip-off-black-people/>); or remaking the federal courts in ways that will harm everyday Americans (Kate Harloe, "How Donald Trump Is Remaking the Federal Courts in His Own Image," *Mother Jones*, November 9, 2017, <https://www.motherjones.com/politics/2017/11/how-donald-trump-is-remaking-the-federal-courts-in-his-own-image/>).

<sup>3</sup> "The Budget proposal includes: a cap on non-economic damage awards of \$250,000 (increasing with inflation over time); a three-year statute of limitations; allowing courts to modify attorney's fee arrangements; allowing evidence of a claimant's payments from other sources (e.g., workers' compensation, auto insurance) to be introduced at trial; creating a safe harbor for clinicians following evidence-based clinical practice guidelines; and authorizing the Secretary to provide guidance to States to create expert panels and administrative health care tribunals to review medical liability cases." White House, *An American Budget: Major Savings and Reforms* (February 2018), <https://www.whitehouse.gov/wp-content/uploads/2018/02/msar-fy2019.pdf>. See also, Center for Justice & Democracy, "A 'Retort' To The White House Budget's Medical Malpractice Proposals," February 15, 2018, <https://centerjd.org/content/retort-white-house-budgets-medical-malpractice-proposals>

<sup>4</sup> Memorandum from U.S. Associate Attorney General Rachel L. Brand, "Limiting Use of Agency Guidance Documents In Affirmative Civil Enforcement Cases," January 25, 2018,

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<sup>5</sup> Cogan Schneider, “Rachel Brand Says DOJ Looking to Get Involved in More Class Actions,” *National Law Journal*, February 15, 2018, <https://www.law.com/nationallawjournal/sites/nationallawjournal/2018/02/15/doj-wants-more-regular-voice-in-reviewing-class-action-fairness-rachel-brand-says/>. For full remarks, see U.S. Department of Justice, “Associate Attorney General Brand Delivers Remarks to the Washington, D.C. Lawyers Chapter of the Federalist Society Washington, DC ~ Thursday, February 15, 2018,”

<https://www.justice.gov/opa/speech/associate-attorney-general-brand-delivers-remarks-washington-dc-lawyers-chapter>

<sup>6</sup> Jessica Corbett, “Fast Food-Loving Trump’s Labor Board ‘Pulls Rug Out’ From Under Fast Food Workers,” *Common Dreams*, December 15, 2017, <https://www.commondreams.org/news/2017/12/15/fast-food-loving-trumps-labor-board-pulls-rug-out-under-fast-food-workers>; Daniel Wiessner, “U.S. labor board overturns Obama-era ‘joint employment’ ruling,” *Reuters*, December 4, 2017, <https://www.reuters.com/article/us-usa-labor-jointemployers/u-s-labor-board-overturns-obama-era-joint-employment-ruling-idUSKBN1E838B>

<sup>7</sup> Josh Eidelson, “NLRB Throws Out Ruling in Conflict-of-Interest Controversy,” *Bloomberg*, February 26, 2018, <https://www.bloomberg.com/news/articles/2018-02-26/nlr-throws-out-ruling-in-conflict-of-interest-controversy>; Noam Scheiber, “Labor Board’s Do-Over Leaves an Obama-Era Rule Intact,” *New York Times*, February 26, 2018, <https://www.nytimes.com/2018/02/26/business/economy/labor-board.html>

<sup>8</sup> “37 Ways Donald Trump Has Remade the Rules for Business,” *Wall Street Journal*, January 17, 2018, <https://www.wsj.com/articles/how-donald-trump-has-remade-the-rules-for-business-1516190400>; Lisa Lambert, “Trump kills class-action rule against banks, lightening Wall Street regulation,” *Reuters*, November 1, 2017, <https://www.reuters.com/article/us-usa-consumers-trump/trump-kills-class-action-rule-against-banks-lightening-wall-street-regulation-idUSKBN1D15WX>; Sylvan Lane, “Trump repeals consumer arbitration rule, wins banker praise,” *The Hill*, November 1, 2017, <http://thehill.com/policy/finance/358297-trump-repeals-consumer-bureau-arbitration-rule-joined-by-heads-of-banking>; Bob Bryan, “Congress just killed a rule that would have made it easier for consumers to sue banks – here’s why people are so upset,” *Business Insider*, October 25, 2017, <http://www.businessinsider.com/gop-trump-bill-kill-obama-cfpb-arbitration-lawsuit-rule-2017-10>

<sup>9</sup> U.S. Department of the Treasury, *Limiting Consumer Choice, Expanding Costly Litigation; An Analysis of the CFPB Arbitration Rule*, October 23, 2017, <https://www.treasury.gov/press-center/press-releases/Documents/10-23-17%20Analysis%20of%20CFPB%20arbitration%20rule.pdf>; James Rufus Koren, “Treasury report slams consumer bureau in latest salvo over arbitration rule,” *Los Angeles Times*, October 23, 2017, <http://www.latimes.com/business/la-fi-treasury-arbitration-20171023-story.html>

<sup>10</sup> Federal Register, “Unfair Practices and Undue Preferences in Violation of the Packers and Stockyards Act,” October 18, 2017, <https://www.federalregister.gov/documents/2017/10/18/2017-22588/unfair-practices-and-undue-preferences-in-violation-of-the-packers-and-stockyards-act>. Reports *Bloomberg*, “The American chicken farmer largely exists at the whim of mass producers that, under a contract, give them feed and chicks to raise in exchange for pay. Under current law, if one of those farmers has a gripe because, for example, he or she believes unhealthy chicks were sent as retaliation for a complaint about the contract, courts require a showing that the whole market – and not just the lone farmer – was hurt by the company’s actions. Under the Obama-era rule, which had yet to take effect, that standard would have changed to require only a showing of harm to the farmer claiming it.” Deena Shanker, “Farmers Sue to Reinstate Obama Lawsuit Rule Trump Killed,” *Bloomberg*, December 19, 2017, <https://www.bloomberg.com/news/articles/2017-12-19/farmers-sue-to-reinstate-obama-lawsuit-rule-trump-killed>; See also, Deena Shanker, “Trump Chooses Big Meat Over Little Farmers,” *Bloomberg*, October 25, 2017, <https://www.bloomberg.com/news/articles/2017-10-25/the-trump-administration-chooses-big-meat-withdraws-gipsa-rule>; Lydia Wheeler, “Trump officials quash litigation rule for farms,” *The Hill*, October 24, 2017, <http://thehill.com/regulation/356802-trump-officials-quash-litigation-rule-for-farms>; North American Meat Institute, “Meat Institute Welcomes USDA Rescission of GIPSA Rule,” October 17, 2017, <https://www.meatinstitute.org/index.php?ht=display/ReleaseDetails/i/139766>; Deena Shanker, “Trump Must Choose Between Farmers and ‘Big Meat,’” *Bloomberg*, January 31, 2017, <https://www.bloomberg.com/news/articles/2017-01-31/trump-must-choose-between-farmers-and-big-meat>

<sup>11</sup> U.S. Department of the Treasury, *A Financial System That Creates Economic Opportunities: Capital Markets* (October 2017), <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>. See also, Benjamin Bain, “SEC Weighs a Big Gift to Companies: Blocking Investor Lawsuits,” *Bloomberg*, January 26, 2018, <https://www.bloomberg.com/news/articles/2018-01-26/trump-s-sec-mulls-big-gift-to-companies-blocking-investor-suits>

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<sup>23</sup> See *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, <http://www.scotusblog.com/case-files/cases/bristol-myers-squibb-co-v-superior-court-of-california-san-francisco-county/>; Amicus brief supporting petitioners (March 2017), <https://www.justice.gov/sites/default/files/briefs/2017/03/14/16-466tsacunitedstates.pdf>. See also, Erwin Chemerinsky, “Chemerinsky: Two end-of-term decisions close the courthouse doors to those who have been injured,” *ABA Journal*, July 6, 2017, [http://www.abajournal.com/news/article/chemerinsky\\_again\\_closing\\_the\\_courthouse\\_doors](http://www.abajournal.com/news/article/chemerinsky_again_closing_the_courthouse_doors); Steven Trader, “GSK, Others Back Bristol-Myers In Plavix Jurisdiction Row,” *Law360*, November 18, 2016, <https://www.law360.com/articles/864366>

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<sup>25</sup> White House, “Remarks by President Trump in Joint Address to Congress,” February 28, 2017, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-joint-address-congress/>