



# American Tort Reform Association

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**Submitted via regulations.gov**

Docket Clerk, Office of Legal Policy  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

**Re: Request for Information on State Laws Having Significant Adverse Effects  
on the National Economy or Significant Adverse Effects on Interstate Commerce  
Docket No. OLP182 / DOJ-OLP-2025-0169**

Dear Mr. Schilling:

I am writing on behalf of the American Tort Reform Association (ATRA) in response to the Department of Justice's request for information on state laws that have significant adverse effects on the national economy or interstate commerce. Our organization is a broad-based coalition of businesses, associations, and professional firms that share the goal of ensuring fairness, balance, and predictability in civil litigation. In course of that mission, ATRA frequently identifies state laws – primarily statutes and causes of action – that result in unduly burdensome regulation for businesses, undermine federalism by projecting the regulatory preferences of a few states into all states, hurt innovation, and unnecessarily raise costs for consumers. This letter highlights just a sample of areas of concern for your consideration.

***Product liability litigation involving federally-approved products.*** Congress has charged government agencies with ensuring that certain products are safe for public use and properly labeled to warn consumers of known risks. Nevertheless, even the most closely regulated businesses face lawsuits advancing theories of liability that are in tension with the reasoned decisions of federal regulators. Lawsuits have imposed liability, and sometimes even punitive damages, on businesses that comply with federal law. Examples include litigation targeting Food and Drug Administration-approved medications and medical devices that improve lives,<sup>1</sup> Environmental Protection Agency-registered pesticides that are vital to agriculture and our nation's food supply,<sup>2</sup> and National Institute for Occupational Safety and Health-certified

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<sup>1</sup> See generally Victor E. Schwartz & Cary Silverman, *Preemption of State Common Law by Federal Agency Action: Striking the Appropriate Balance that Protects Public Safety*, 84 Tulane L. Rev. 1203 (2010).

<sup>2</sup> See, e.g., *In re: Roundup Prods. Liab. Litig.*, MDL No. 2741 (N.D. Cal.); see also Bobby Kaufmann, Op-ed, *Global Regulators Agree: Glyphosate Does Not Cause Cancer*, Des Moines Register, Feb. 17, 2025.

respirators that protect worker safety.<sup>3</sup> The Administration should take the position, in appropriate cases, that federal safety standards and product approvals preempt state product liability lawsuits. It should also support federal legislation that promotes congruity between federal regulatory compliance and state tort liability.

***Public nuisance claims targeting manufacturers.*** In recent years, certain states and municipalities, typically through private contingency-fee lawyers, have engaged in thinly veiled attempts to impose their policy preferences nationally through state tort litigation.<sup>4</sup> They often try to do so by inviting courts to expand public nuisance law or other state tort claims.<sup>5</sup> In most instances, courts have rejected these creative attempts to hit disfavored industries that make lawful products with massive liability—from plastic bottles to firearms.<sup>6</sup> However, there are more than two dozen pending climate change lawsuits filed by state and local governments.<sup>7</sup> As ATRA has indicated in several *amicus* briefs urging the U.S. Supreme Court to grant certiorari of these cases,<sup>8</sup> litigation over whether changes in global climate patterns caused property damage or led to other economic costs in a particular state bears no resemblance to a traditional state common law “tort.” Rather, addressing global climate change, including through setting emissions standards, can be determined only through federal environmental laws. The Administration should weigh in to support dismissal of such lawsuits, as it did in a case in which Boulder, Colorado seeks to pin costs ranging from those associated with more frequent wildfires to drought on certain energy producers.<sup>9</sup> As that brief recognizes, these types of lawsuits impermissibly attempt to use state tort law to regulate nationwide and worldwide conduct.

***Consent to jurisdiction through registration laws.*** Trial lawyers subject businesses to massive costs, which are passed onto consumers, by suing them in state courts that are known for pro-plaintiff rulings, anti-corporate bias, and massive verdicts. At ATRA, we call these jurisdictions “Judicial Hellholes.”<sup>10</sup> In recent years, the U.S. Supreme Court had tightened the ability of state courts to exercise jurisdiction over lawsuits that lack a connection to the state, such as in places where the plaintiffs do not live and were not harmed.<sup>11</sup> In *Malloy v. Norfolk Southern Railway*

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<sup>3</sup> See Victor E. Schwartz et al., *Respirators to the Rescue: Why Tort Law Should Encourage, Not Deter, the Manufacture of Products that Make Us Safer*, 33 Am. J. Trial Adv. 13 (2009); see also Victor E. Schwartz & Cary Silverman, *Preemption: Department of Labor Reversal and Ruling By Washington Supreme Court Could Impact Respirator Availability*, 40:44 Prod. Safety & Liab. Rep. (Bloomberg BNA) 1274 (Nov. 5, 2012).

<sup>4</sup> Victor E. Schwartz et al., *Can Governments Impose a New Tort Duty to Prevent External Risks? The “No-Fault” Theories Behind Today’s High-Stakes Government Recoupment Suits*, 44 Wake Forest L. Rev. 923 (2009).

<sup>5</sup> See generally American Tort Reform Ass’n, *The Plaintiffs’ Lawyer Quest for the Holy Grail: The Public Nuisance “Super Tort”* (Mar. 2025).

<sup>6</sup> See, e.g., *People v. PepsiCo., Inc.*, 222 N.Y.S.3d 907, 916 (N.Y. Sup. Ct., Erie County, Oct. 31, 2024) (costs to address a “plastics pollution crisis”); *State ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719 (Okla. 2021) (costs associated with opioid abuse); *In re Lead Paint Litig.*, 924 A.2d 484, 494 (N.J. 2007) (lead paint remediation); *City of Chicago v. Beretta U.S.A. Corp.*, 821 N.E.2d 1088, 1116 (Ill. 2004) (costs associated with gun violence).

<sup>7</sup> See Karen Zraick, *Supreme Court Clears a Path for Climate Lawsuits to Proceed*, N.Y. Times, Jan. 13, 2025.

<sup>8</sup> Cases in which ATRA filed an *amicus* brief include *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, No. 25-170 (filed Sept. 12, 2025); *Sunoco LP v. City and County of Honolulu, Hawaii*, Nos. 29-947, 23-952 (filed Apr. 1, 2024); *American Petroleum Inst. v. Minnesota*, No. 23-168 (filed Sept. 21, 2023).

<sup>9</sup> See Brief of the United States Supporting Petitioners, *Suncor Energy (U.S.A.) Inc. v. County Commissioners of Boulder County*, No. 25-170 (filed Sept. 11, 2025).

<sup>10</sup> ATRA’s annual Judicial Hellhole report is available at [www.judicialhellholes.org](http://www.judicialhellholes.org).

<sup>11</sup> See *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (holding that state courts only have “general” (all purpose) jurisdiction over corporations that are “at home” in that state, meaning that the corporation is either incorporated or headquartered there).

*Co.*, 600 U.S. 122 (2023), however, a 5-4 Court, based on a century-old decision, ruled that states can require out-of-state corporations that register to do business in the state to “consent” to being sued for any purpose there. As a result, state legislators have introduced “consent through registration” laws. Illinois Governor JB Pritzker was the first to sign such a bill into law this August.<sup>12</sup> The New York legislature has also passed such legislation. Governor Kathy Hochul vetoed a prior version of that law,<sup>13</sup> though the latest version, which is scaled back, has not yet been presented to her.<sup>14</sup> The constitutionality of these laws, which burden interstate commerce, remains dubious.<sup>15</sup> The Administration should support future constitutional challenges.

***Third party litigation funding.*** There is a proliferation of litigation finance firms, hedge funds, institutional investors, and others providing money primarily to law firms to fund litigation-related expenses. They sometimes invest in a particular case, but more often the trend is to invest in a “portfolio” of litigation.<sup>16</sup> In return, much like an attorney operating on a contingency-fee basis, the investor is entitled to a portion of the recovery. Funders back law firms behind a wide range of litigation—personal injury mass tort cases, intellectual property, antitrust, and other cases.<sup>17</sup> This has quickly become a multibillion dollar industry<sup>18</sup> and its size is projected to double by the end of the decade.<sup>19</sup> This outside investment facilitates speculative litigation, leads to conflicts of interest, unnecessarily prolongs litigation, and leads to higher settlement demands.<sup>20</sup> In addition, foreign adversaries may misuse TPLF to undermine the competitiveness of U.S. businesses,<sup>21</sup> attempt to obtain access to trade secrets exchanged in discovery,<sup>22</sup> or even to evade international sanctions.<sup>23</sup> The Administration should support efforts in Congress<sup>24</sup> and in the federal judiciary<sup>25</sup> to take a first critical step: transparency. Parties and law firms should be

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<sup>12</sup> Illinois S.B. 328 (signed Aug. 15, 2025) (Public Act 104-0352) (amending 735 ILCS § 5/2-209 and 805 ILCS § 5/13.20).

<sup>13</sup> N.Y. S. 7476 (vetoed Dec. 22, 2023).

<sup>14</sup> N.Y. S. 8186 (passed June 10, 2025).

<sup>15</sup> Justice Alito noted that while the consent-through-registration statute did not violate the Due Process Clause, which was the only issue before the Court, “A State’s assertion of jurisdiction over lawsuits with no real connection to the State may violate fundamental principles that are protected by one or more constitutional provisions or by the very structure of the federal system that the Constitution created” and may violate the dormant Commerce Clause. *Malloy*, 600 U.S. at 150 (Alito, J. concurring). In addition, the Illinois law not only subjects companies that register to do business in the state to general personal jurisdiction, corporations that have *not* registered are “deemed to have consented” if they engaged in business in the state, which goes beyond what *Malloy* found permissible.

<sup>16</sup> Westfleet Advisors, *The Westfleet Insider: 2024 Litigation Finance Market Report*, at 6 (2025).

<sup>17</sup> Emily R. Siegel, *Fortress’ Billions Quietly Power America’s Biggest Legal Fights*, Bloomberg Law, Oct. 16, 2024.

<sup>18</sup> U.S. Gov’t Accountability Office, GAO-23-105210, *Third-Party Litigation Financing: Market Characteristics, Data, and Trends*, at 11-12 (Dec. 2022).

<sup>19</sup> Experts predict TPLF investment could reach \$31 billion by 2028. Thomas Holzheu et al., *U.S. Litigation Funding and Social Inflation: The Rising Costs of Legal Liability*, at 8 (Swiss Re Inst. Dec. 2021).

<sup>20</sup> See, e.g., Emily R. Siegel, *Mass Tort Marketer Hires Ex-LexShares CEO to Lead Funding Program*, Bloomberg Law, Aug. 20, 2024; Editorial, *The Litigation Finance Snare*, Wall St. J., Mar. 21, 2023; Hannah Albarazi, *When a Litigation Funder is Accused of Taking Over the Case*, Law360, Mar. 15, 2023.

<sup>21</sup> Donald J. Kochan, Editorial, *Keep Foreign Cash Out of U.S. Courts*, Wall St. J., Nov. 24, 2022, at A13.

<sup>22</sup> Emily R. Siegel, *Litigation Finance Trade Group Shrugs Off Disclosure Push*, Bloomberg L., Nov. 15, 2023.

<sup>23</sup> Emily R. Siegel & John Holland, *Putin’s Billionaires Dodge Sanctions by Financing Lawsuits*, Bloomberg Law, Mar. 28, 2024.

<sup>24</sup> Litigation Transparency Act of 2025, H.R. 1109; Protecting Our Courts from Foreign Manipulation Act of 2025, H.R. 2675; see also Tackling Predatory Litigation Funding Act, S. 1821/H.R. 3512.

<sup>25</sup> In 2024, the federal Advisory Committee on Civil Rules established a subcommittee to consider the need for a rule mandating TPLF disclosure in federal courts.

required to disclose litigation funding agreements to the court and parties so that entities cannot secretly influence litigation or settlement and so that conflicts of interest or other ethics issues can be addressed.

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Thank you for considering this important issue and the potential to address the adverse impact of these state laws through federal legislative, regulatory, or other action.

Sincerely,



Sherman Joyce  
President