

NEW HAMPSHIRE UNION LEADER

Op-eds

Neil Nicholson: COVID immunity strips your rights

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IN THE WAKE of one of the most difficult years that any of us have ever faced, there are many priorities facing legislators in 2021: balancing our state budget, addressing

relief to New Hampshire's citizens, and ensuring we are doing everything we can to continue strengthening our economy and keep it moving forward.

I am an attorney who has represented both small businesses and injured individuals in my work. I am also a Republican and small business owner who believes in limited government, appreciates the liberties and privileges we enjoy under our state constitution, and deeply values the importance of small business to our economy. With this in mind, I know that a proposal allowing the government to broadly grant legal immunity to bad actors will endanger our communities while doing nothing to stimulate our economy.

Since the beginning of the COVID pandemic, to my knowledge, not one single lawsuit has been filed in our state against a business because someone claimed they contracted COVID there. That may surprise you, but it should not, because the law favors a business that acts reasonably.

Such a claim would be extremely difficult to prove given the level of community spread and lack of contact tracing. Further, someone would have to sustain a serious, prolonged injury make it worth their time attempting to bring a case. Moreover, medical experts would need to be hired to opine on the person's alleged injury and liability experts would need to be hired to prove the person contracted the disease because the establishment was not acting as a reasonable person would under the same circumstances. These necessary expert witnesses would cost thousands of dollars.

Despite the lack of lawsuits and the real challenges to pursue a COVID liability case, a so-called "legal safe harbor" proposal currently before our legislators would make bringing any COVID-related claim nearly impossible. Make no mistake. What is being proposed eliminates one of your constitutional rights — a trial by jury.

If passed, businesses will be granted complete legal immunity from a failure to follow basic COVID safety standards, meaning many probably won't. This is dangerous. As COVID transmission remains prevalent and our friends, neighbors and relatives get sick

or die from COVID, now is not the time to incentivize bad behavior. The current system provides accountability for those who refuse to follow basic safety protocols and cause proven harm to a person. Granting immunity, even on a limited basis, strips away one of your constitutional rights.

The standards these national business organizations urge legislators to pass have nothing to do with their mildly termed “legal safe harbor.” Instead, they seek to grant businesses a free pass when it comes to COVID.

The proposed changes to current law specific to a COVID-related injury claim turn New Hampshire personal injury law upside down. Among other drastic changes to current law, the immunity proposal imposes a higher standard on a claimant to prove his or her claim with a more stringent “clear and convincing evidence” burden of proof. This is the standard typically applied when someone’s personal liberties are at stake. Before we even know if any business has acted unsafely, these “safe harbor” proposals stack the deck in favor of businesses to effectively say it doesn’t matter if they act unreasonably. That is not how we do things in New Hampshire and it shouldn’t change because of COVID.

When any person or entity fails to act reasonably and someone is injured as a result, our system — in place since the founding of our country and state — holds them accountable for those actions through your right to a jury trial.

Under the immunity legislation being pushed, the government decides for you that when it comes to COVID, your constitutional right to a jury trial is no longer valued. As difficult as the COVID pandemic has been, many believe that it has provided opportunities for governmental overreach and elimination of constitutional privileges.

This is one more example. The overreaching proposal to grant businesses immunity in most situations involving COVID would endanger our communities, embolden bad actors, and eliminate one of your fundamental constitutional rights. It’s bad policy and unnecessary for our businesses to reopen and for people to get back to work.

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