

May 28, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington D.C. 20510

Dear Majority Leader McConnell and Minority Leader Schumer:

On behalf of the 250 national, state, and local organizations below that advocate on behalf of our country's 1.3 million nursing home residents, we write to strongly oppose granting immunity to nursing homes during the Covid-19 pandemic. As you are aware, Covid-19 is raging through nursing homes across the country. According to data from 38 states compiled by the Kaiser Family Foundation, there have been over 35,000 deaths due to the virus in long-term care facilities, which is 42% of all deaths in those states.¹ Once the remaining states begin to publicly release their data, the total number of deaths will be far greater, and each day the numbers continue to rise. Stripping residents of their right to hold nursing homes accountable for substandard care will put more residents at risk and inevitably result in increased resident deaths. We implore you to keep this fundamental right in place and to consider other solutions to promote the safety and welfare of residents.

The needs of nursing home residents are significant. The increased prevalence of physical and cognitive impairments places residents at great risk of abuse, neglect, and poor care. As a society, we have always afforded nursing home residents access to the legal system because we understand how important it is to their health and well-being. Residents depend on the quality of care provided by nursing homes. Judicial recourse discourages current and future bad practices by nursing homes and helps bring about positive health outcomes for nursing home residents. By allowing nursing homes to operate without this important check, we sacrifice one of the most effective tools in ensuring our fellow citizens are not neglected and harmed.

Prior to Covid-19, nursing home residents were visited by their families and friends, who kept a watchful eye on the care their loved ones were receiving. Residents were assisted by the advocacy of long-term care Ombudsmen, protection and advocacy agencies, and licensing agencies conducted regular inspections and responded to complaints. Currently, none of these necessary protections are operating sufficiently to ensure resident safety. Due to lockdowns, residents are living and dying in nursing homes isolated from their families and absent any outside oversight. In truth, very few people, other than staff, know what is happening in nursing homes at this time. Essentially, the only mechanism available for a nursing home resident to hold facilities responsible for substandard care is judicial recourse. By removing this safety net, nursing homes will have little to no oversight.

As longtime advocates for nursing home residents, it is evident that this crisis in nursing homes was foreseeable. For years, nursing home owners and operators have cut corners and understaffed facilities to maximize profits. A recent New York Times article directly ties profit seeking in nursing homes to a

¹ <https://www.kff.org/coronavirus-policy-watch/this-week-in-coronavirus-may-14-to-21/>

steep decline in quality of care.² Infection control, disease prevention, and disaster planning are at the core of any quality nursing home's mission. We have always known how devastating illnesses like the flu can be to nursing home residents, who live in close quarters and have pre-existing conditions that make even the common cold deadly. Yet, year after year nursing homes have been cited for poor infection control procedures and substandard care. Unfortunately, Covid-19 has exposed just how deadly inadequate preparation, poor care, and striving for ever increasing profits can be to nursing home residents.

For instance:

- Life Care Center of Kirkland, Washington became the center of the state's coronavirus outbreak, with 35 patients eventually dying. The facility held a Mardi Gras party in late February, even though staff had noticed respiratory illnesses in residents weeks earlier. Two residents died that same day.³ The Centers for Medicare & Medicaid Services subsequently fined the nursing home for failing to report an outbreak of respiratory illness in a timely way; providing inadequate care; and failing to provide 24-hour emergency doctor services.⁴
- New Jersey police found 18 bodies stacked up in a "makeshift" facility at a New Jersey nursing home.⁵ The nursing home had a history of complaints and citations, receiving a one-star rating from CMS. The NJ Attorney General is investigating.⁶
- At least 35 residents died and at least 90 more residents and 25 health care providers tested positive in a Richmond, Virginia nursing home.⁷ Before the outbreak, the latest CMS inspection gave the facility two stars, citing "serious staffing shortages," "high rates of bed sores," and "nearly twice as many health deficiencies as the average Virginia nursing home."⁸

It would be perverse to ask facility residents to pay with their lives for the woefully insufficient emergency preparedness and substandard care of nursing homes, while allowing nursing homes themselves to face no repercussions for their egregious behavior.

Legal liability has always functioned as a safeguard for nursing home residents by incentivizing nursing homes to provide quality care and comply with laws and regulations. It has served as a silent overseer

² Roughly 70% of the 15,1400 nursing homes in the United State are owned by private investors. The Times article directly tied the purchase of nursing homes by private investment firms to declines in staffing hours and quality ratings. <https://www.nytimes.com/2020/05/07/business/coronavirus-nursing-homes.html>

³ The Coronavirus's Rampage Through a Suburban Nursing Home, New York Times, March 21, 2020, available at <https://www.nytimes.com/2020/03/21/us/coronavirus-nursing-home-kirkland-life-care.html>

⁴ Wash. nursing home faces \$611,000 fine over lapses during fatal coronavirus outbreak, Washington Post, April 2, 2020, available at https://www.washingtonpost.com/investigations/wash-nursing-home-faces-611000-fine-over-lapses-during-fatal-coronavirus-outbreak/2020/04/02/757cee76-7498-11ea-87da-77a8136c1a6d_story.html

⁵ Abbott Koloff, Susanne Cervenka, Jennifer Jean Miller, and Lori Comstock, New Jersey Nursing Home Where Bodies Found in Makeshift Facility has History of Citations, USA Today, April 17, 2020, available at <https://www.usatoday.com/story/news/nation/2020/04/17/new-jersey-nursing-home-where-bodies-found-in-makeshift-facility-has-history-of-citations/518136613614>

⁶ As the New York Times article points out, this particular home was owned by a Chicago based investor who purchased this home and now leases it to the operator for eight million dollars per year.

⁷ Richmond nursing home at center of Virginia coronavirus outbreak, MSNBC, April 9, 2020, available at <https://www.msnbc.com/hallie-jackson/watch/richmond-nursing-home-at-center-of-virginia-coronavirus-outbreak-81836613614>

⁸ Michael Martz and Bridget Balch, Inside the Covid-19 Spread at Henrico's Canterbury, Richmond Times, April 10, 2020, available at https://www.richmond.com/special-report/coronavirus/we-were-simply-ripe-for-a-spread-like-this-inside-the-covid-19-spread-at/article_2b265624-7fb6-5fe4-b080-9becb003fadb.html

of nursing homes who know that individuals in this country will not stand for neglect and inadequate care. By providing immunity, Congress would be placing nursing home residents in jeopardy at a time when they are the Americans suffering most from the Covid-19 outbreaks. As a nation, we cannot tolerate rewarding nursing homes for years of cost cutting and profit maximizing by relieving them of responsibility.

We urge you to reject immunity, and instead send a message that our country will not tolerate negligent care of our parents, grandparents, friends, and neighbors. They deserve better.

Sincerely,

National Organizations

American Association for Justice Nursing Home Litigation Group
American Association on Health and Disability
American Civil Liberties Union
Center for Medicare Advocacy
Coalition for Disability Health Equity
CommunicationFIRST
Disability Rights Education and Defense Fund (DREDF)
Family Caregiver Alliance
Justice in Aging
Medicare Rights Center
National Association of Local Long Term Care Ombudsman
National Academy of Elder Law Attorneys
National Association of Social Workers (NASW)
National Association of State Long Term Care Ombudsman Programs
National Consumer Voice for Quality Long-Term Care
National Disability Rights Network
National Organization for Women
Service Employees International Union
United Spinal Association

State Organizations

Area Agency on Aging Southwest Arkansas
Access Concepts & Training, Inc.
accessABILITY Center for Independent Living, Indiana
ADA 25 Advancing Leadership, Illinois
Area Agency on Aging, Western Montana
Aging Best, Missouri
Aging Care Advocates, Inc., Florida
Aging Partners, Nebraska

Alameda Commission on Aging, California
Alpine Area Agency on Aging, Colorado
Area 1 Agency on Aging, California
Area Agency on Aging of East Texas
Area Agency on Aging of North Idaho
Area Agency on Aging of Tarrant County, Texas
Area Agency on Aging, Northeast Oklahoma
Area Agency on Aging, District 7 Ohio
Area Agency on Aging, Southwest Idaho
Arkansas Office of the State Long Term Care Ombudsman
Ashford Senior Center, Connecticut
Associated Governments of NW Colorado
Avery's Hope, Pennsylvania
Barlowe and Associates, Aging Life Care Experts, Florida
Bedford County Department of Social Services, Virginia
Bet Tzedek Legal Services, California
Black Alliance for Just Immigration
Board on Aging and Long Term Care, Wisconsin
Brandon Woods of Dartmouth Family Council, Massachusetts
Brighton Gardens Friendship Heights Reminiscence Family Council, Maryland
Brunstrom Law Office, P.C., Missouri
BSST Area Agency on Aging, Pennsylvania
CA Association of Public Authorities for IHSS
CADRE, Inc. (Communities Aligned for Deeply Rooted Elderhood), Georgia
California Advocates for Nursing Home Reform
California Council of the Blind
California Elder Justice Coalition
California IHSS Consumer Alliance
California Office of the State Long-Term Care Ombudsman
Camilla O. McRory Attorney at Law, Maryland
Capital Area Agency on Aging, Louisiana
CAPLP-Lawes & Prairies Community Action Partnership, Minnesota
Care Like A Daughter, California
CareWorks of Lane County, Oregon
Casa Santa Maria, California
Catholic Charities of Louisville, Kentucky
Catholic Charities of the Diocese of Stockton, California
Center for Accessible Living, Kentucky
Center for Advocacy for the Rights and Interests of the Elderly (CARIE),
Pennsylvania
Center for Elder Law & Justice, New York
Center for Independence, Washington
Center for Independence of the Disabled, New York
Center For The Prevention Of Abuse, Illinois
Chair, Montgomery County Commission on Aging, Maryland
Choice In Aging, California

CIDNY-Center for Independence of the Disabled, New York
City Councilman, City of Madison Heights, Michigan
COASC-Council on Aging-South California
Coastal Bend Center for Independent Living, Texas
Coastal Connected Care, Inc., Georgia
Community Access Center of Riverside County, California
Community Legal Aid Society, Disabilities Law Program, Delaware
Community Legal Services of Philadelphia, Pennsylvania
Community Partners, New Hampshire
Community Partners' Network, Nashville
Conejo Valley Village, California
Connecticut Long Term Care Ombudsman Program
Connection CORE
Consumer Advocates for RCFE Reform (CARR), California
Council on Aging Southern California
County of Kauai Agency on Elderly Affairs, Hawaii
County of San Bernardino, California
Delaware Long Term Care Ombudsman Program
Denver Regional Council of Governments, Colorado
Direction Home Akron Canton, Ohio
Disability Action Center - NW, Inc., Idaho
Disability Law Center of Utah
Disability Law Colorado
Disability Rights Iowa
Disability Rights New Jersey
Disability Rights North Carolina
Disability Rights Pennsylvania
Disability Rights Wisconsin
Eastern Carolina Council, North Carolina
Elder Justice, Rochester, New York
Elder Justice Committee of Metro Justice, New York
Elder Law and Advocacy, California
employU, Inc., Florida
End of Life Explorers, California
Equality North Carolina
Ethos, Massachusetts
Family & Children's Service, Tennessee
FL Department of Elder Affairs
Foundation Aiding The Elderly (FATE), California
Friends of Residents in Long Term Care, North Carolina
Georgia Division of Aging Services
Gail Camhi Media Services, California
Georgia Office of the State Long-Term Care Ombudsman
Great Lakes Legal Mediation Division, Michigan
Greater Lynn Senior Services, Massachusetts

Greenwich Department of Human Services, Connecticut
Harbor Supported Living Services, Inc., California
Hawaii State Long-Term Care Ombudsman Program
HomeAvenue, Inc. dba Home Avenue Adult Day Health Care, California
ICARE, Illinois
Idaho Access Project
Idaho Commission on Aging
Illinois State Long Term Care Ombudsman
#Impact
Imperial County IHSS Advisory Committee, California
Imperial County Public Administrator/Area Agency on Aging, California
In Service to Our Own, Texas
Independent Living Resource Center of the Tri-Counties, California
Indiana Disability Rights
Indiana State Long Term Care Ombudsman Program
Indiana Statewide Independent Living Council
Inner City Law Center, California
Institute on Aging, California
Iowa Mental Health Planning Council
Iowa Office of the State Long-Term Care Ombudsman
Johnston Senior Center, Rhode Island
JT Disability Consulting Services LLC, Pennsylvania
Kansas Office of the State Long-Term Care Ombudsman
Kathleen Herr, Attorney at Law, PLLC, North Carolina
Kiebler And Associates, Inc. Indiana
Kentucky Equal Justice Center
Kentucky Long-Term Care Ombudsman Program
Key Management Co.-Pioneer House, Missouri
Kokua Council, Hawaii
Law Firm of D. F. Truhowsky, New York
Law NY-Legal Assistance of Western New York, Inc.
Law Office of Gretchen J. Kenney, California
Law Offices of James Scott Farrin, PC, North Carolina
Law Offices of Susan B. Geffen, California
Lebanon County Area Agency on Aging, Pennsylvania
Legal Aid Center of Southern Nevada
Legal Aid Society of NYC, New York
Legal Aid Society of San Mateo County, California
Legal Council for Health Justice, Illinois
Life With Dignity, Illinois
LifeSTEPS, California
Little Tokyo Service Center, California
Long Term Care Community Coalition
LSCOG-Lower Savannah Council of Governments, South Carolina
Maryland Long-Term Care Ombudsman Program

Massachusetts Advocates for Nursing Home Reform
Massachusetts Long Term Care Ombudsman
Meals on Wheels Orange County, California
Mental Health Association of South Central, Kansas
Michigan Disability Rights Coalition
Michigan Elder Justice Initiative
Michigan Long Term Care Ombudsman Program
MidPenn Legal Services, Pennsylvania
Missouri Coalition for Quality Care
Missouri Long-Term Care Ombudsman Program
MJ Housing and Services
Minnesota State Long-Term Care Ombudsman
Mobilization for Justice, Inc., New York
Mountain Empire Older Citizens, Virginia
Multipurpose Senior Services Program Site Association, California
Neighbors to Save Rivington House
Network for Victim Recovery of DC
New York Association on Independent Living
NewBridge Madison, Wisconsin
NJ Foundation for Aging
North Carolina State Long-Term Care Ombudsman Program
North Central Texas Council of Governments
Northwest Bronx Indivisible, New York
Northwestern Illinois Area Agency on Aging
Nursing Home Victims Coalition, Inc, Texas
Washington D.C. Long-Term Care Ombudsman Program
Ohio Office of the State Long-Term Care Ombudsman
One Pennsylvania
Oregon Legal Guides
Oregon Long Term Care Ombudsman
OSSMC-Ombudsman Services of San Mateo County, California
Our Mother's Voice, South Carolina
PA Long Term Care Ombudsman
Partners In Care Foundation, California
PDAmerica NJ
PeopleUSA, New York
Personal Assistance Services Council, California
Personal Disability Consulting, Inc., Massachusetts
Pierce County Human Services, Washington
Pisgah Legal Services, North Carolina
Progress Center For Independent Living, Illinois
Putnam Independent Living Services, New York
Region 10/AAA/Community Living Services, Colorado
Rivera & Shackelford, P.C., California
San Juan Basin Area Agency on Aging, Colorado

Sarcoidosis of Long Island, New York
South Carolina Department of Aging
Senior Advocacy Services, California
Senior Advocates of the Desert, California
Senior Citizens' Law Office, Inc., New Mexico
SeniorCare Inc., Massachusetts
Service Link of Strafford County New Hampshire
Shorkend Care Management, California
Solomon, Steiner & Peck, Ltd., Ohio
Somerville-Cambridge Elder Services, California
South Western Oklahoma Development Authority
Southeast Center for Independent Living, Inc., Massachusetts
Southern Mississippi Planning & Development District
Southwest Area Agency on Aging, Meridian, CT
Southwest Idaho Area Agency on Aging
SW Idaho Area Agency on Aging
Tennessee Long-Term Care Ombudsman Program
Rhode Island Long-Term Care Ombudsman Program
The Arc Michigan
The Hale Group, Massachusetts
The WILL Center, Indiana
Top of Alabama Regional Council of Governments
Tri-County Independent Living, California
UDW/AFSCME Local 3930, California
Ann Marie Marciarille, University of Missouri at Kansas City School of Law
Upper Arkansas Area Council of Governments, Colorado
Urban Aging News, Detroit MI
Denise M. Nepveux, Ph.D. Utica College
Valley Caregiver Resource Center, California
Vermont Long-Term Care Ombudsman Program
Virginia Office of the State Long-Term Care Ombudsman
Voices for Quality Care (LTC), Inc., Maryland
Volunteer Attorneys For Rural Nevadans
VOYCE, Missouri
Wake County Nursing Home Comm Advisory Council, North Carolina
Washington Long-Term Care Ombudsman Program
Well Spouse Association, New Jersey
Western Illinois Area Agency on Aging
Westhampton Council on Aging, Massachusetts
White River Area on Aging, Arkansas
WISE & Healthy Aging, California
Yancey County Community Advisory Committee, North Carolina