

June 20, 2025

The Honorable John Thune
United States Senate
511 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Chuck Schumer
United State Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators Thune and Schumer:

We write as a coalition of organizations who rely on the federal judiciary to uphold constitutionally protected rights and serve as a check on unlawful government action. We are gravely concerned about a proposed provision in the Senate Judiciary Committee's language of the reconciliation package (Subtitle B, Section 203 of H.R. 1, the One Big Beautiful Bill Act) that, if enacted, would mandate that courts require security in order to issue a temporary restraining order or preliminary injunction against the federal government, effectively shutting down access to justice for most Americans.

As it stands today, this provision would require a bond that covers the "costs and damages" sustained by the government if it were to ultimately prevail in the case. We're talking upwards of millions, if not billions, of dollars that could be required upfront, effectively shutting off people's ability to enjoin the federal government from causing irreparable harm.

As Arizona Supreme Court Justice Clint Bolick put it in a recent article: "Requiring potentially massive bonds to enjoin government action could prevent many or even most such lawsuits from being filed in the first place, because few would have the means to pay upfront. That is especially true in cases involving sweeping policies where the government could claim 'costs' in the billions." The result? "This means that many parties would have no choice but accept violations of their rights rather than seek legal redress, severely undermining the Constitution."

This is not a partisan issue—it's a direct threat to constitutional accountability. If enacted, this provision could seriously impair meritorious public interest litigation across the board, no matter the issue or ideology. The substance of a claim wouldn't matter. What would matter is whether the plaintiff can afford to pay. Access to justice would hinge on wealth, not merit, leaving Americans of all political stripes without recourse when their rights are violated.

The courts use temporary restraining orders and preliminary injunctions to prevent unconstitutional or illegal policies from taking effect while a case is being litigated. This is often the only way to avoid immediate and irreversible harm, censorship of protected speech, illegal regulations that destroy livelihoods, or restrictions that prevent the peaceable exercise of constitutionally protected freedoms. These injunctions are only granted when a court determines the plaintiff is likely to prevail and that the harm without relief would be serious.

But under this provision, a plaintiff's ability to obtain that critical protection would depend not on the merits of their case, but on their ability to pay a potentially astronomical bond up front.

A nonprofit challenging a sweeping and likely unconstitutional federal search and seizure operation could be priced out of court.

A religious school trying to stop enforcement of a burdensome federal mandate could have to pay the federal government's alleged "costs" just to preserve the status quo.

A small business facing economic ruin from an illegal regulation could be told to come up with a sum that could cripple it before its case is even considered.

A person challenging a constitutional violation could be blocked from relief without first posting a multimillion-dollar bond.

This is not legal reform. This is a financial blockade on constitutional accountability. It rigs the system in favor of unchecked federal power, and it sends a chilling message: unless you're wealthy, don't bother trying to protect your rights.

If this provision is enacted, it won't matter what political party is in power: its impact will be felt by everyone. Whether the issue is freedom of speech, religious liberty, due process, or any other fundamental freedom, this kind of legal barrier puts them all at risk in a "heads I win, tails you lose" framework—with the federal government on top.

No government should be allowed to insulate itself from judicial review by making it prohibitively expensive for Americans to petition the government for redress and seek to protect their rights through restraining orders and preliminary injunctions, often the last line of defense before suffering irreparable harm.

Thank you for your attention to this critical matter.

Sincerely,



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