May 12, 2020

The Honorable Lindsey Graham  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Dianne Feinstein  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Graham, Ranking Member Feinstein and Members of the Committee on the Judiciary:

On behalf of the undersigned organizations representing America’s hospitality, travel, restaurant, retail, gaming, attractions, and entertainment industries, we thank you for holding today’s hearing entitled, “Examining Liability During the COVID-19 Pandemic.” As customer-centric industries whose employees interact with the general public in physical locations on a constant basis, we write in support of Congressional efforts to create a targeted and limited safe harbor from liability for companies that implement federal public health guidelines related to the transmission of COVID-19.

Many of our member companies are providing necessary goods, services and opportunities for Americans to return to work, and have taken extraordinary measures to protect the safety and well-being of our guests and employees while following government health guidelines in good faith. As you know, even with extraordinary protective measure, our employees or customers could still contract COVID-19 due to the extremely contagious nature of the virus. We fear that without Congressional action, the threat of litigation - even for those companies that faithfully follow federal public guidelines - will mire our recovery and negatively impact the economy writ large.

While some of our members have continued to operate throughout the COVID-19 health crisis to provide food, goods and services to the public, others are taking steps to prepare their businesses to safely reopen and create opportunities for Americans to return to work when restrictions are lifted. In all cases, the top priority has been the safety of our guests and employees, and our member companies are doing all that they can to safely and responsibly keep their doors open. That is why our associations have been working with member companies, government officials, health experts, and others to devise industry-specific protocols to mitigate the transmission of COVID-19 and address future public health emergencies.¹

Evolving information about COVID-19 and differences in federal, state, and local guidelines, however, have created legal uncertainty. As a result, companies that diligently implement safety protocols and rely in good faith on public health recommendations and guidelines nonetheless face the prospect of substantial litigation based on virus transmission. Such lawsuits do nothing to reduce transmission of COVID-19 but do threaten the ability of companies to provide much-needed services and opportunities for Americans to return to work. Consumer-facing businesses should be able to rely on the safety guidelines and reopening parameters issued by experts without the threat of liability for implementing that

¹ See, e.g., American Hotel and Lodging Association’s Industry-Wide Cleaning Standards and “Safe Stay” Initiative; U.S. Travel Association’s Industry Guidance for Promoting Health and Safety of All Travelers; National Restaurant Association’s ServSafe Guidance for restaurant reopening; National Retail Federation’s “Operation Open Doors”; Retail Industry Leaders Association’s Blue Print for Shopping Safe;
guidance. Such businesses should instead be permitted to focus their strained resources on revitalizing operations and growing jobs for American workers.

Historically, Congress has acted to provide limited safe harbors from liability in the face of a public crisis. We ask that you do so again.

Again, we thank the Committee on the Judiciary for their attention to this critical issue. The undersigned national and state associations, which represent industries that interact with the general public on a daily basis, stand ready to work with you in this moment to help stabilize our economy, ensure our businesses can return to normal operations and support our impacted employees.

Sincerely,

Airlines for America
American Gaming Association
American Hotel & Lodging Association
American Society of Travel Advisors
Asian American Hotel Owners Association
Coalition of Franchisee Associations
Global Business Travel Association
Home Care Association of America
International Association of Amusement Parks and Attractions
International Franchise Association
Job Creators Network
Latino Hotel Association
National Association of Black Hotel Owners, Operators and Developers
National Association of Theatre Owners
National Council of Chain Restaurants
National Restaurant Association
National Retail Federation
Small Business & Entrepreneurship Council
Retail Industry Leaders Association
U.S. Travel Association

Alabama Restaurant & Hospitality Association
Alabama Retail Association
Alaska Cabaret, Hotel, Restaurant and Retailers Association
Alaska Hotel & Lodging Association
Alliance of Wisconsin Retailers
Arizona Lodging & Tourism Association
Arizona Restaurant Association
Arizona Retailers Association
Arkansas Grocery and Retail Association
Arkansas Hospitality Association
Association of Lodging Professionals
California Hotel & Lodging Association
California Restaurant Association
California Retailers Association
Casino Association of Indiana
Cincinnati Hotel Association
Colorado Hotel & Lodging Association
Colorado Restaurant Association
Connecticut Lodging Association
Connecticut Restaurant Association
Connecticut Retail Merchants Association
Deadwood Casino Association
Delaware Hotel & Lodging Association
Delaware Restaurant Association
Elevanta
Florida Restaurant & Lodging Association
Florida Retail Federation
Franchise Business Services
Franchise Management Advisory Council
Georgia Hotel & Lodging Association
Georgia Restaurant Association
Hawaii Restaurant Association
Hospitality Maine
Hospitality Minnesota
Hotel Association of New York City
Hotel Association of Washington DC
Idaho Lodging & Restaurant Association
Idaho Retailers Association
Illinois Casino Gaming