



Update from AAJ Linda A. Lipsen

CEO, AMERICAN ASSOCIATION FOR JUSTICE

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Forced Arbitration Injustice Repeal Act (FAIR) make progress in Congress

ALSO: FRE72 EXPERT-WITNESS RULEMAKING BY FEDERAL JUDGES

WASHINGTON UPDATE

I am pleased to report that the U.S. Senate voted 53-47 on April 7 to confirm Judge Ketanji Brown Jackson to be the next Supreme Court Justice. Three Republican senators joined to confirm her: Senators Susan Collins (R-Maine), Lisa Murkowski (R-Alaska) and Mitt Romney (R-Utah).

This historic confirmation means that not only will Judge Brown Jackson be the first Black female justice on the court, but also the first former public defender to serve. AAJ appreciates that the administration put forth a nominee that will bring professional diversity to the bench.

Now, four of the justices will be women, two will be moms, and three will be persons of color. The Supreme Court of the United States is a step closer to looking more like America. AAJ celebrates this historic moment with you.

U.S. House passes the FAIR Act

I am excited to inform you that the U.S. House recently voted (222-209) to pass the Forced Arbitration Injustice Repeal (FAIR) Act that would restore your clients' rights by ending all forced arbitration.

Just before the vote, AAJ held a media event featuring Coach Brian Flores, who is seeking justice against the NFL and some NFL teams for discriminatory hiring practices. The Dolphins are trying to force his case into arbitration, and the NFL seems unwilling to intervene. He gave us great momentum heading into the U.S. House vote, and the resulting media coverage was outstanding.

This vote came less than two weeks after President Biden enacted a law (overwhelmingly approved by Congress) that restores the rights of sexual assault and sexual harassment survivors to seek justice in court instead of being forced into arbitration.

And the House vote on the FAIR Act is one more step forward in AAJ's quest to restore the rights of workers, consumers, survivors, and patients in America by ending all forced arbitration. We will continue to keep you informed as this legislation progresses.

EPA moves to ban chrysotile asbestos

After many years of hard work by AAJ and others, the EPA has started the process of banning chrysotile asbestos – the only type of asbestos currently used in the United States. Most assume that asbestos is already banned because it's been known to be a deadly carcinogen for decades. Thousands of people still die every year from exposure, so when finalized, this rule will truly save lives. We applaud this development and will keep you updated.

Victory in Georgia distracted-driving case

On March 15, 2022, the Georgia Supreme Court issued a victory for victims of distracted driving in *Maynard v. Snapchat, Inc.* (Ga. S21G0555), a case dealing with whether Snapchat owed a duty to design its Speed Filter – which allowed a user to take a selfie indicating their traveling speed – to remove the foreseeable, serious risk of related traffic injuries and fatalities. The Georgia Supreme Court found that the Plaintiff adequately alleged that Snapchat could reasonably foresee the risk of harm from the Speed Filter and explained that “a manufacturer has a duty under [Georgia] decisional law to use reasonable care in selecting from alternative designs to reduce reasonably foreseeable risks of harm posed by its products.”

AAJ signed on to a joint amicus brief in the case authored by the Georgia Trial Lawyers Association. Congratulations to AAJ members Naveen Ramachandrapa of Bondurant, Mixson & Elmore and Michael Neff of Neff Injury Law, two of the attorneys who represented Plaintiff.

Recent amicus brief

In re Zofran Prods. Liab. Litig. (1st Cir. 21-1517) (filed Mar. 23, 2022) – A case dealing with FDA preemption of pharmaceutical manufacturer liability for failure to warn of newly discovered risks, AAJ filed an amicus brief pushing back against drug manufacturers' attempts to expand federal preemption in a way that would limit consumers' state-law rights. The brief was authored by AAJ member Matt Wessler of Gupta Wessler, PLLC and filed jointly with Public Justice.

Cothron v. White Castle Sys., Inc. (Ill. 128004) (filed Apr. 7, 2022) – At the urging of AAJ in a joint amicus brief, the Seventh Circuit certified a question to the Illinois Supreme Court asking it to determine whether certain Illinois Biometric Privacy Act claims accrue each time a private entity scans a person's biometric identifier and each time a private entity transmits such a scan to a third party. AAJ has signed on to a joint amicus brief authored by the University of Chicago's Employment Law Clinic explaining why it is appropriate for the court to use a “continuing violation” analysis to determine when a cause of action accrues and the statute of limitations begins to run in order to protect the rights of workers from having their biometric data captured without their consent.

AAJ amicus briefs are available at www.justice.org/legalaffairs.

Recap on FRE 702 (Expert Witness gatekeeping by judges)

Thank you to our state presidents and trial lawyer association partners and to members who submitted comments! All 50 states plus D.C. and Los Angeles submitted a joint comment on the FRE 702 (expert witnesses) rulemaking. As previously reported, the proposed rule would enhance the gatekeeping function of federal judges and make it more difficult for juries to hear expert testimony. The state letter urged the Advisory Committee to consider the impact the rulemaking would have on state courts, especially those that follow FRE 702 and those that may not have a committee note to explain the reason for the textual change.

The public comment period ended with 531 comments on the docket with a majority of filers expressing concerns with the rule change. AAJ submitted a lengthy comment documenting concerns with the proposed rule and offering suggestions to revise the language. In January 2022, AAJ's President Navan Ward and eight other AAJ members testified at the public hearing held on the rule.

The Evidence Rules Committee will meet next on May 6, 2022, to discuss their response to the public comments and consider potential revisions to the draft. Even with the opposition to the draft, there are indications that a rule change is likely to move forward. Stay tuned for an update from AAJ and next steps.

Fighting for you and your clients

Thank you for your continued support. AAJ remains committed to fighting for access to justice for your clients. We will keep you informed about important developments and welcome your input. You can reach me at advocacy@justice.org.