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ACS Issue Brief Examines Increased Barriers to Courts, Decreased Accountability of Defendants

*Author Suggests that Anti-Litigation Stance Might Be
Explained by Lack of Background Diversity on Supreme Court*

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Washington, D.C. – The Supreme Court’s recent rulings limiting access to justice “for workers, consumers, and other individuals trying to use litigation to protect their rights,” may be explained in part by the Justices’ lack of professional diversity, writes the author of a new ACS Issue Brief, who urges diversifying experience on the bench.

Since the 1990s, the Supreme Court has moved away from treating litigation “as an important tool for redressing grievances, deterring wrongdoing, and spurring social reform,” toward a negative view of litigation that emphasizes its burden on defendants, reports Scott A. Moss, Associate Professor at the University of Colorado Law School.

This increased hostility to litigation may be explained in part by the homogeneity in the current Justices’ backgrounds “of civil litigation defense, of policy work rather than litigation, of serving institutional rather than individual clients, and of not working on affirmative public interest civil litigation,” Moss asserts.

In “Judicial Hostility to Litigation and How It Impairs Legal Accountability for Corporations and Other Defendants,” Moss cites numerous examples of the Supreme Court limiting access to justice. In the past 20 years, Moss writes, the high court has changed longstanding dismissal standards, raised burdens of proof, created a broad role for federal courts to reverse state court damages awards, and allowed corporations and employers to force consumers and employees to waive their rights to judicial relief. Moss suggests that these changes come at a price to plaintiffs seeking judicial remedies against corporations and other institutions.

At one time, writes Moss, the high court included greater professional diversity. For instance, some of the prior Justices replaced by the current members of the Court included a union-side labor lawyer, a lifelong practitioner with no judicial experience, a

civil rights lawyer, and a medical nonprofit lawyer. In contrast, he says, today's Court is composed largely of former attorneys for corporate clients and government who then served considerable terms as appellate judges, "making their practice experience, already of limited breadth, relatively distant."

"[T]here is troubling uniformity of perspective on the Court when Justices all arrive from the federal appellate bench and, before the bench, mainly represented corporations or served in policymaking, rather than litigation, posts," Moss concludes. "That uniformity of perspective risks privileging the portion of the legal profession from which the Justices came (*i.e.*, lawyers for corporate clients and for the government), to the disadvantage of those who use the law to serve different interests—such as lawyers challenging malfeasance by the sort of corporations and governmental entities almost all of the current Justices represented as lawyers."

Moss' ACS Issue Brief is [available here](#). Please contact the ACS Communications Department to arrange interviews with the author.

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