



**COUNCIL OF THE DISTRICT OF COLUMBIA  
THE JOHN A. WILSON BUILDING  
1350 PENNSYLVANIA AVENUE, NW  
WASHINGTON, DC 20004**

**Charles Allen**  
Councilmember, Ward 6  
Chairperson  
Committee on Transportation and the Environment

**Committee Member**  
Business and Economic Development  
Health  
The Judiciary & Public Safety

July 13, 2023

Nyasha Smith, Secretary  
Council of the District of Columbia  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

Dear Secretary Smith:

Today, along with Chairman Phil Mendelson and Councilmembers Anita Bonds, Vincent C. Gray, Christina Henderson, Janeese Lewis George, and Robert C. White, Jr., I am introducing the **"Sunshine in Litigation Act of 2023."** Please find enclosed a signed copy of the legislation.

Over the years, big business and corporate lawyers have been successful at using sealed settlement agreements or protective orders to hide evidence that they compromised consumer health and safety. Beginning after the mass asbestos settlements of the 1970s, the corporate defense bar turned to protective orders, which are orders from a judge that prevent the disclosure of sensitive information except to certain individuals under certain circumstances, as a method to conceal and prevent evidence that a company sacrificed its customers' health and safety to maximize corporate profits from getting into the hands of consumers. These protective orders have required judges to seal evidence relevant to protecting public health and safety in dozens of the biggest defective product cases in federal court over the past 20 years.

These legal maneuvers have allowed drug makers and pharmaceutical companies to market opioids and other painkillers as safe during the opioid epidemic, car manufacturers to continue to sell cars that were lethal in crashes and rollovers, and gunmakers to knowingly sell firearms with defects that have injured, maimed, or killed people. While companies do have an interest in making sure that certain information is not released to the public, such as trade secrets and intellectual property, hiding information that can inform the public about risks to health and safety runs contrary to our principles of open courtrooms and equal justice.

This legislation would protect the public from potential health and safety risks that could be concealed by court orders. It would prohibit parties and courts from keeping information related to a defective product or environmental condition hidden through the use of sealed settlement

agreements or protective orders. It would, however, preserve courts' ability to protect important business records that are not relevant to the public interest, like personal, medical, and financial information or a company's trade secrets.

Several other states, including Virginia, Arkansas, Florida, Louisiana, and Washington, have already adopted similar laws, and California has legislation pending. Congress is also considering a bill on the topic. Notably, according to the consumer advocacy organization Public Justice, there is no evidence that these anti-secrecy laws have discouraged settlements, exposed proprietary interests or trade secrets, increased litigation costs for parties, or imposed burdens on the courts.

Please feel free to reach out to me or my Legislative Director, Antonio Nunes, with any questions or for additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles Allen", with a stylized flourish at the end.

Charles Allen, Ward 6 Councilmember  
Chairperson, Committee on Transportation & the Environment  
Vice Chair, Metropolitan Washington Council of Governments

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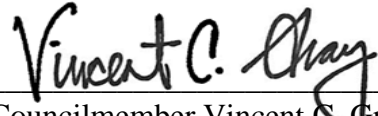
2 Chairman Phil Mendelson



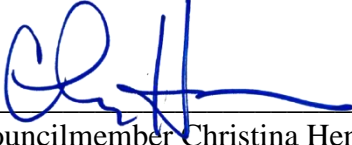
Councilmember Charles Allen

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6 Councilmember Anita Bonds



Councilmember Vincent C. Gray

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10 Councilmember Christina Henderson



Councilmember Janeese Lewis George

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14 Councilmember Robert C. White, Jr.

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18 A BILL

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23 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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28 To prohibit confidentiality agreements and protective orders in civil actions involving defective  
29 products or environmental conditions that are likely to cause significant harm, and to  
30 allow members of the public to challenge agreements and orders that violate this act.

31  
32 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
33 act may be cited as the “Sunshine in Litigation Act of 2023”.

34 Sec. 2. Prohibition on confidentiality agreements and protective orders in civil actions  
35 involving defective products or environmental conditions that are likely to cause significant  
36 harm.

37 (a) For agreements made after the effective date of this act, except as authorized by  
38 subsection (c) of this section, a provision within, or an agreement made in connection with, a

39 settlement agreement in a covered civil action that purports to restrict the disclosure of factual  
40 information related to the action is against public policy, is void, and shall not be enforced.

41 (b) Following the effective date of this act, the court shall not enter any order, by  
42 stipulation or otherwise, that has the effect of restricting the public disclosure of a public hazard  
43 at issue in a covered civil action.

44 (c) Subsections (a) and (b) of this section shall not preclude the court from restricting the  
45 public disclosure of any of the following information; provided, that the court shall restrict the  
46 disclosure of no more records than necessary:

47 (1) Personal medical information, personal financial information, or other  
48 personally identifiable information commonly treated as confidential by the court;

49 (2) The amount of a settlement; or

50 (3) Trade secrets.

51 (d)(1) Any person shall have standing to challenge a provision, agreement, or order that  
52 violates subsections (a) or (b) of this section by bringing a motion to intervene as of right in the  
53 Superior Court at any time before or after judgment. Such individual need not prove any injury  
54 separate and apart from injury to the rights of the general public to access court records.

55 (2) In an action under this subsection, the court shall have discretion to award to a  
56 prevailing intervenor costs and reasonable attorneys' fees.

57 (e) For the purposes of this section, the term:

58 (1) "Covered civil action" means a civil action the factual foundation for which  
59 involves, or during the pendency of which discoverable information identifies, a public hazard.

60 (2) "Public hazard" means a defective product, or an environmental condition,  
61 that has caused or is likely to cause significant or substantial bodily injury, illness, or death.

62 (3) “Trade secret” has the same meaning as set forth in D.C. Official Code § 36-  
63 401(4).

64 (f) There shall be a presumption in favor of the public disclosure of a public hazard  
65 identified in a covered civil action except as identified in subsection (c) of this section.

66 Sec. 3. Fiscal impact statement.

67 The Council adopts the fiscal impact statement in the committee report as the fiscal  
68 impact statement required by section 4a of the General Legislative Procedures Act of 1975,  
69 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

70 Sec. 4. Effective date.

71 This act shall take effect following approval by the Mayor (or in the event of veto by the  
72 Mayor, action by the Council to override the veto), a 30-day period of congressional review as  
73 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
74 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
75 Columbia Register.