

- **Background:** Under current law, those injured from a vaccine must first seek and either accept or reject compensation from the Vaccine Injury Compensation Fund (VICP), a program funded through the collection of a 75 cent excise tax on vaccine manufacturers for every dose of those vaccines that Congress includes in the program, before they are allowed to pursue a civil action for an amount greater than \$1,000.<sup>1</sup>
- However, for civil cases outside of the VICP, a plaintiff cannot earn compensation for certain “unavoidable” injuries, and a case that rests “solely” on a manufacturer’s “failure to provide direct warnings to the injured party” will be thrown out. Or the plaintiff must prove that the vaccine manufacturer either committed “fraud,” intentionally withheld “information relating to the safety or efficacy of vaccines,” or “failed to exercise due care” in following federal law regulating vaccines – and backed up “by clear and convincing evidence.” This language creates a very high bar that plaintiffs need to clear in order to find manufacturers liable.<sup>2</sup>
- There is an unfortunate lack of science regarding the safety of vaccines.
- The Institute of Medicine (IOM), renamed the National Academy of Medicine, a nonprofit composed of top medical and health professionals that was founded to assist the U.S. government, published a report in 2011 entitled “Adverse Effects of Vaccines: Evidence and Causality.”<sup>3</sup> Adverse events are injuries caused by vaccines.
- In the report, the IOM conducted an in-depth investigation of the scientific literature – spanning “12,000 peer-reviewed articles” – that documented the potential injury caused by eight vaccines. Of 158 injuries studied, “causality” was confirmed in only 19 – with vaccines confirmed to have caused 14 types of injuries and cleared of contributing to any harm for five injuries. There was a lack of evidence to either confirm or deny causation for 135 injuries.

### **End the Vaccine Carveout Act**

- The bill removes the language in the National Childhood Vaccine Injury Act (NCVIA) of 1986 (mentioned above) that forces the vaccine-injured to seek compensation from the VICP first before pursuing civil action – as well as language immunizing vaccine manufacturers from the liability stemming from any injuries caused by their products.
- Contrary to current law, which requires the vaccine injured to seek compensation from the VICP first, the vaccine-injured under the bill may choose to either pursue civil action against vaccine manufacturers or seek damages under the VICP, or to pursue both options. Once money is awarded in a civil action for a particular injury, then a person will no longer be able to seek compensation from the VICP. Conversely, if someone were to win compensation under the VICP, his or her civil action would be dismissed.
- Current law only allows those seeking compensation in the VICP for a vaccine-caused injury or death to do so within 2 to 3 years respectively of the death or injury. This bill

<sup>1</sup> Rogers, Hannah-Alise, Congressional Research Service, [The National Vaccine Injury Compensation Program and the Office of Special Masters \(crs.gov\)](#), September 14, 2022. [U.S.C. 300aa-11](#).

<sup>2</sup> [U.S.C. 300aa-22\(b\)\(1\)](#), [U.S.C. 300aa-22\(b\)\(2\)](#), [U.S.C. 300aa-22\(c\)](#), and [U.S.C. 300aa-23\(d\)\(2\)](#).

<sup>3</sup> The Institute of Medicine, [Adverse Effects of Vaccine](#), 2012.

will allow anyone injured by a vaccine since the effective date of the NCVIA in 1988 and covered by the VICP to seek compensation under the VICP.

- COVID-19 vaccines will no longer be considered “countermeasures” under the Public Readiness and Emergency Preparedness (PREP) Act, which provides countermeasures, a treatment or vaccine used to combat a disease that has a public health emergency associated with it,<sup>4</sup> a further liability shield – freeing them of the “countermeasures” liability shield and thereby giving those injured by a COVID-19 vaccine the ability to pursue civil damages in court. (In order for those injured by the COVID-19 vaccine to receive compensation from the VICP, Congress would need to enact a 75 cent per dose tax on COVID-19 vaccines.)<sup>5</sup>

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<sup>4</sup> Hickey, Kevin, Congressional Research Service, [The PREP Act and COVID-19, Part 1: Statutory Authority to Limit Liability for Medical Countermeasures](#), April 13, 2022.

<sup>5</sup> [Supra](#), Rogers.