AMERICAN CIVIL ACCOUNTABILITY ALLIANCE

The Protecting Third Party Litigation Funding From Abuse Act Restricts Access to Justice

The Protecting Third Party Litigation Funding From Abuse Act would deter the capital needed to bring legitimate claims to the courts and hold powerful defendants accountable. Despite its title, the Act is not meaningfully about litigation funding at all; by requiring disclosure of any person with a legal right to receive something of value contingent on a lawsuit's outcome, it raises the risk of filing suit itself, discouraging challenges to powerful corporate defendants and reducing access to justice before cases are ever brought.

Access to Justice Depends on Third-Party Capital

Litigation funding exists because access to justice is unequal. Corporations and institutions with deep pockets can afford prolonged litigation; individuals and small businesses often cannot. Third-party capital allows plaintiffs to bring legitimate claims, withstand delay and attrition tactics, and pursue accountability where wrongdoing would otherwise go unchecked.

Disclosure as Deterrence

Rather than promoting fairness, the Act turns civil lawsuits into mechanisms for exposing plaintiffs' financial supporters. That exposure is not limited to litigation funders, but extends to investors and institutions with indirect or pooled economic interests in the outcome of a case.

Modern investment structures frequently involve pooled capital, layered ownership, and commercially sensitive terms. As a result, the Act provides little guidance on who may be deemed subject to disclosure, inviting intrusive scrutiny of private agreements and creating particular risk for pension funds and other institutional investors -- including funds supporting retired teachers, police officers, and firefighters -- that are highly sensitive to disclosure and reputational harm. Forced disclosure risks exposing confidential financial information to defendants and competitors, deterring investment in meritorious claims.

In practice, this disclosure regime deters investors from making start-up or growth equity investments, increases litigation costs and delays, and encourages defendants to weaponize disclosure to chill investment and pressure plaintiffs.

Redundant Regulation of Already Heavily Regulated Entities

The Act imposes sweeping disclosure obligations without regard to existing regulatory oversight, unnecessarily burdening entities that are already subject to extensive federal regulation.

For example, the Act would require disclosure by Registered Investment Advisers (RIAs) and similar regulated entities of investors or beneficiaries with contingent economic interests in litigation. This is unnecessary and duplicative. RIAs are already subject to comprehensive oversight by the Securities and Exchange Commission, including strict requirements related to know-your-customer (KYC), anti-money-laundering (AML), custodian and banking controls, and Office of Foreign Assets Control (OFAC) compliance.

Congress has repeatedly recognized that layering new disclosure regimes on top of existing regulatory frameworks is counterproductive. That is why even the far broader Corporate Transparency Act expressly exempted already heavily regulated entities such as RIAs. The Act ignores that precedent, imposing additional disclosure burdens where robust oversight already exists.

The "Donor and Member" Limitation Offers Little Protection

Although the Act claims to protect donors, members, and associates, that protection disappears once an individual is deemed to have a contingent financial interest in the litigation. Because the Act offers little clarity about how contingent interests are defined or identified, parties may be forced to identify private investors who have no role in directing litigation and no connection to the underlying claims.

Weaponizing Disclosure Against Accountability

In today's environment, disclosure is not neutral. Public identification of individuals or entities associated with controversial litigation can invite retaliation and harassment, loss of banking or professional relationships, and political or economic pressure unrelated to the merits of the case.

The Protecting Third Party Litigation Funding From Abuse Act would make it harder to bring legitimate cases. By discouraging capital from supporting companies that may one day need to bring legitimate claims, it shields wrongdoing from scrutiny and shifts the balance of power further toward the largest corporate defendants.