

Congress of the United States
Washington, DC 20515

May 3, 2021

VIA ELECTRONIC TRANSMISSION

Honorable John D. Bates
Chairman
Committee on Rules of Practice and Procedure of the
Judicial Conference of the United States
Washington, DC 20544

Dear Judge Bates,

I write to inform you of the recent bicameral reintroduction of the Litigation Funding Transparency Act (“LFTA”). As you may be aware, the bill would bring much needed transparency to third-party litigation funding (“TPLF”) by requiring plaintiffs’ lawyers to disclose outside funding agreements in class action lawsuits and federal multi-district litigation. The bill has the support of several of my Senate Judiciary Committee colleagues and was introduced in the House by Representative Darrell Issa.

The practice of TPLF cannot be allowed to proceed in its current form. Under present law, virtually all TPLF activity occurs in secrecy because there is no procedural or evidentiary rule requiring disclosure of the use and terms of such funding. Moreover, to the extent defendants seek this information through ordinary discovery, plaintiffs generally object to providing it, and courts often do not compel production of the requested information.

Transparency brings accountability. It is true of Congress, the Executive, and our courts. A healthy dose of transparency is necessary to ensure that profiteers are not distorting our civil justice system for their own benefit. Our legislation would take one simple step towards bringing TPLF activity into the daylight.

I understand the Advisory Committee on Civil Rules has, for several years, been considering the adoption of such a disclosure requirement as a federal court procedural rule. In my view this is a commonsense matter and critical to the integrity of our federal court system. Opposing parties should be made aware of who is financing the litigation and whether there are any conflicts of interest, champerty concerns or other ethical issues, such as undue control, posed by the arrangement. I would therefore appreciate being advised of the status of the Committee’s consideration of this issue, including when the next meeting on rule consideration will be held.

Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley".

Charles E. Grassley
Ranking Member
Committee on the Judiciary
U.S. Senate

A handwritten signature in black ink that reads "Darrell Issa".

Darrell Issa
Ranking Member
Subcommittee on Courts, Intellectual
Property and the Internet
Committee on the Judiciary
U.S. House of Representatives