The Litigation Transparency Act Hurts "The Little Guy"

The Litigation Transparency Act would make our economy less dynamic and impede innovation by favoring deep-pocketed corporate Goliaths in civil lawsuits over startups, entrepreneurs, and small businesses.

The Act restricts individuals' and small businesses' access to courts of justice.

- The legislation would make it harder for small inventors and entrepreneurs to secure funding, whether that be "litigation funding" or any form of equity funding from third parties.

- The bill implicitly assumes that seeking outside funding for a lawsuit is unusual or unethical, despite plaintiffs relying on alternative funding sources, like contingent fee arrangements with attorneys, for centuries.

- Litigation funding empowers individuals and smaller entities to have their day in court against big corporations, which don't need outside funding because they have large cash reserves, robust in-house counsel, and attorneys on retainer. Litigation funding is often used in mass torts and product liability actions. For example, third parties funded Afghanistan and Iraq veterans' lawsuit against 3M for defective combat earplugs.

The Act would further tilt the legal system in favor of large businesses.

- The Act would require litigation funding recipients to disclose confidential information about their financial resources and legal strategies — giving their opponents the opportunity to develop tailored defense strategies focused on exhausting the smaller company's resources. It could also force plaintiffs to disclose their confidential business relationships and plans to their opponents, who are often industry competitors.

- The Act's disclosure requirement applies only to parties who stand to gain materially from successful litigation. That means it would affect small companies suing for patent infringement, trade secret misappropriation, or breach of contract (just to name a few) for damages — but wouldn't affect the accused, some of whom are bad actors, who fights to preserve the status quo.

The Act's mandatory disclosure requirements will disincentivize venture, pension, and private equity investing.

- Venture and private equity funds are often structured as limited partnerships. One individual or entity serves as a general partner, with sole discretion over investment decisions. Outside investors are limited partners, often passive blind pool investors, whose sole decision-making authority is whether to invest in a fund from the outset. The identities of limited partners are often confidential and individuals within the LPs (for example all pensioners in a pension fund) are often not known by the fund managers.

- Mandatory disclosure of all limited partners, owners, shareholders, and investors in organizations involved in litigation funding could dissuade individuals and entities from investing due to concerns over identification, scrutiny, retribution from corporations or the government, and association with lawsuits that may attract negative media attention.

Compliance with the Act is virtually impossible.

- The Act requires the identity of "any person" who could receive any "thing of value" from a lawsuit to be disclosed. This could include, among others:
  - *Shareholders,* of which there can be enormous numbers
  - *Investors* who have equity stakes in a venture
  - *Limited Partners*, which are often pension funds or family foundations

- The Act's language suggests that every individual beneficiary, such as a pension fund member, must be identified. How is that reasonable?

- A party bringing civil action will need to sift through nearly all its business records to determine whether there could be a third-party beneficiary that would receive a "thing of value."

- Identifying all possible third-party beneficiaries is often entirely unfeasible and will increase the duration and cost of litigation.

The Act's "any payment or thing of value" language discriminates against one side of a civil litigation — the plaintiff.

- Only the plaintiff is likely to receive a "payment or thing of value" if successful in litigation. A successful defendant receives nothing, aside from maintaining the status quo.

- The Act is one-sided because it imposes disclosure burdens on plaintiffs but not defendants. This discrimination is particularly egregious because the plaintiff is the one bringing the action in the first place because it has allegedly been harmed by the defendant, who presumably received a "payment or thing of value" in causing the harm.

- The Act could force the disclosure of confidential business relationships from plaintiffs only. Adverse parties in a civil action are often competitors. Disclosure of business relationships by the plaintiff but not defendant may enable a defendant-competitor to gain advantage by gleaning information about the business operations and plans of a plaintiff-competitor.