



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

STEVE MARSHALL
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
ALABAMAAG.GOV

April 12, 2023

The Honorable Charles Grassley
135 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Darrell Issa
2108 Rayburn House Office Building
Washington, D.C. 20515

Dear Senator Grassley and Representative Issa:

We write to express our concerns about S. 840/H.R. 2025, the “Litigation Finance Transparency Act” (LFTA), introduced last Congress, and similar forced disclosure proposals. Although the legislation’s intended goal of transparency is laudable, we believe that mandating automatic forced disclosure of a private litigant’s financial resources will open the door to threats, intimidation, harassment, and ultimately the chilling of donor support for charitable causes and public interest organizations.

We know from experience that forced disclosure laws like that proposed by the LFTA and similar forced disclosure bills—which would mandate that parties in litigation, without a discovery request or a ruling on relevancy or privilege, disclose the details about their private financial arrangements—can easily become political weapons and bureaucratic tools for delay and harassment, restricting freedom of speech and association and eroding attorney-client privilege and other important confidentiality rules. While we support efforts to thwart abuses of our court system by bad actors, including foreign adversaries, we are concerned that the LFTA as written could too easily be used to frustrate causes that we support. It was not so long ago that IRS regulations were weaponized to stonewall, target, and discriminate against Tea Party groups, and government officials in Wisconsin used the state’s “John Doe” laws in a stunning abuse of power to muzzle political opponents.

As you well know, the threat of forced disclosure chills the associational and speech rights guaranteed by the First Amendment. In recent years, we have seen an onslaught of free speech-chilling proposals, such as H.R. 1, the AMICUS Act, and the DISCLOSE Act, which would give the government unprecedented power to surveil the giving and beliefs of American citizens and the organizations with which they support and associate. In fact, two years ago, the Supreme Court struck down an attempt by California to force nonprofit organizations to disclose their donor lists because doing so violated the First Amendment. Unfortunately, we believe the proponents of this dangerous agenda would use the LFTA or similar forced

disclosure provisions, if enacted, as one step down a dangerous road to silencing those with certain viewpoints – primarily conservative viewpoints.

The left and their allies would not hesitate to expand the reach of a forced disclosure law like the LFTA to attack the causes they oppose by exposing the funders of litigation brought to advance those causes. It is not hard to imagine a case where an activist judge mandates the disclosure of the identity of the funding source for a public interest lawyer challenging a college’s race-based admissions policy, a discriminatory law forcing a Christian baker to participate in ceremonies that go against his religious beliefs, or a citizen challenge to government infringement of Second Amendment rights. Organizations like Citizen Power Initiatives, which is an American organization that advocates for a peaceful transition to democracy in China, already operate under the threat of reprisal by the Chinese Communist Party, and laws like LFTA would only increase those threats to not only their organization, but their personal safety.

There are many reasons why someone who donates to an organization that litigates in defense of a particular cause may wish to remain anonymous—including religious reasons, privacy, or because the cause they are supporting is considered controversial by some. LFTA’s and other similar forced disclosure requirements would cause donors who might otherwise anonymously contribute to a preferred organization to not donate at all. Every American has the right to freedom of expression and association, and that includes the right to support causes in which they believe. As Attorneys General, we take seriously our duty to protect the privacy of our citizens and their right to give to charitable causes anonymously. Without this important right to association and speech, we all know that conservative causes will be the ones most targeted.

We strongly urge you to reconsider your support for the LFTA or any other form of forced disclosure. We welcome the opportunity to work with your offices to find alternative ways to improve our civil justice system while protecting the privacy of litigants.

Regards,



Steve Marshall
Alabama Attorney General



Treg Taylor
Alaska Attorney General



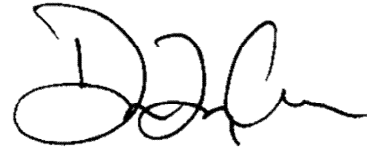
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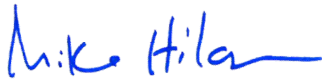
Daniel Cameron
Kentucky Attorney General



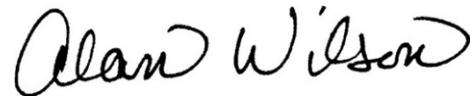
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