PEOPLE UNITED *for* PRIVACY FOUNDATION

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THIRD-PARTY LITIGATION FUNDING DISCLOSURE AND NONPROFITS:

PRIVACY AND FREEDOM OF ASSOCIATION HAZARDS

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"Third-party litigation funding/financing" (TPLF) generally refers to the practice of an outside financier providing funds for a lawsuit in exchange for a portion of any settlement or judgement. Though legislation regulating this practice is typically intended to address concerns surrounding profit-seeking investors or foreign funding, broad TPLF disclosure mandates risk undermining well-established privacy protections for American nonprofits. Throughout American history, nonprofits – and their supporters – have won hard-fought legal victories establishing now-fundamental constitutional protections. As TPLF disclosure bills continue to be debated in Congress and state legislatures, lawmakers should carefully consider their impact on freedom of association and avoid destabilizing nonprofits' vital role in public interest litigation.

3 RISKS OF THIRD-PARTY LITIGATION FUNDING DISCLOSURE LEGISLATION

Violating Donor Privacy, Inviting Harassment. Recognizing the essential relationship between privacy and freedom of association, the U.S. Supreme Court has repeatedly protected nonprofits from government demands for private donor or member lists. Compelled donor disclosure chills association, especially for advocacy organizations engaged in controversial litigation impacting issues such as immigration, religious liberty, election reform, the Second Amendment, or abortion. Rather than appear on a "litigation-funders" list that can be accessed by extremists opposed to a polarizing court decision, some who would otherwise choose to associate with a nonprofit providing pro bono representation in important lawsuits will withhold their donations. Conversely, donors without any expectation of a threat to their privacy may suddenly find themselves on the receiving end of doxing, harassment, and intimidation campaigns. A nonprofit should not be forced to put the safety and well-being of its members on the line in order to participate in litigation central to its mission.

Deterring Public Interest Litigation. Just as donor disclosure mandates discourage association, they also disincentivize any activity that triggers such mandates. Nonprofits will avoid activity in order to protect the privacy of their donors, and current or would-be donors will choose not to give if the nonprofit's activities risk their privacy. A TPLF disclosure mandate exposing nonprofit donors may cause organizations to steer clear of public interest litigation entirely and will certainly make fundraising more difficult for organizations that wish to litigate in the public interest. In effect, fewer nonprofits will provide funding or pro bono representation in impactful cases, and those that persevere will have less resources to put towards such work. Intentional or not, sweeping TPLF disclosure rules for nonprofits will have a deleterious effect on Americans' willingness and ability to participate in an essential means of combating government overreach and injustice.

Creating New Avenues for Abuse. Efforts to regulate TPLF are largely motivated by a desire to curb practices viewed by some as abuse or manipulation of the U.S. judiciary. Yet some proposals risk opening up new mechanisms for exploitation by adversarial parties or through the enforcement process. For example, registration requirements for litigation funders or disclosure mandates aimed at foreign funding could easily become a pretext for targeted efforts to obtain a disfavored nonprofit's donor list.

Fortunately, lawmakers in states such as **Arizona**[1] and **North Carolina**[2] have responded to these concerns by including within laws regulating litigation funding **explicit exemptions for nonprofits engaged in or supporting pro bono public interest litigation**. These critical privacy protections safeguard nonprofits and their supporters while reducing the likelihood of misuse.

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[1] Ariz. Rev. Stat. § 12-3451(6)(e)–(f) (2025). Available at: https://www.azleg.gov/legtext/57leg/1R/laws/0226.pdf.

[2] N.C. Gen. Stat. § 66-512(3)(d)–(e) (2026). Available at: https://www.ncleg.gov/Sessions/2025/Bills/House/PDF/H315v6.pdf.