Testimony to the Senate Judiciary Committee
Opposition to HB2510
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My name is Dai Wai Chin Feman and I am a managing director of Parabellum Capital, a litigation funding firm. I would like to thank the members of this committee for allowing me to provide remarks regarding our opposition to this bill.

Parabellum's core business is in the commercial legal finance industry, which is entirely separate and distinct from consumer litigation funding.

Unlike consumer funding, the commercial legal finance industry focuses on providing non-recourse capital to businesses and law firms engaged in high value business-related disputes, such as breach of contract, antitrust, intellectual property and international arbitration.

These are passive outside investments, meaning that funders do not control the matters in which they invest, including questions of strategy and settlement.

Commercial legal finance is beneficial to businesses, from startups to Fortune 100 companies. It allows them to keep capital in their businesses, so they can continue to grow and innovate.
In many instances, commercial legal finance gives smaller companies the resources to pursue meritorious claims. Many funded commercial matters are "David vs. Goliath" in nature, in which a smaller company is engaged in litigation against a larger well-resourced company. Without access to this financing, many meritorious claims would not go forward.

To be clear, we are talking about meritorious cases—cases we would all want the legal system to address. Because these are non-recourse investments, commercial legal finance providers do not get anything if the case is not successful. Therefore, business necessity dictates that commercial legal finance firms fund only those cases that have a high likelihood of success—in other words, those with meritorious claims.

Furthermore, these contracts are highly specific, heavily negotiated, and involve an in-depth due diligence process. The result is an agreement that often includes sensitive and privileged information as well as a budgetary roadmap for the litigation.

It's important to note that this is the client's information – the sensitive and privileged information of companies that are unfortunately in litigation. Increasing the risk that this information will be turned over to the opposing party in litigation will significantly disincentivize future companies from using legal finance—at a potentially great cost to their business and at a detriment to access to justice.

Courts consistently hold that the details of legal finance agreements are protected by work-product, as well as other legal protections, and should not be turned over to opposing parties in litigation.

In addition, unlike insurance agreements, in the vast majority of cases, the funding agreement is not relevant to the underlying merits.

Here as well, courts consistently find that legal finance agreements are not relevant to pending cases. And when they are relevant, courts already have the ability to disclose some, or all, of the agreement, depending on the facts of a particular case.
We have heard entirely baseless allegations that the financing of litigation has become a threat to national security. We believe national security is a very serious matter. Those who engage in fearmongering by spreading reckless and baseless accusations without any evidence or facts in order to obtain a long-sought policy agenda are actually subverting our national security interests by diverting resources from the real and critically important security challenges facing the country today.

This argument was manufactured out of whole-cloth by the US Chamber of Commerce which published a report rife with speculation and completely lacking in real-world examples of this happening in practice. And the Chamber of Commerce has not been able to cite a single example since this paper was published more than two years ago.

The reason they cannot is because their claims contravene how litigation works and the role of investors.

Foreign investors, or any investor for that matter, cannot direct what matters to invest in, cannot control any aspect of an investment, and cannot control what provisions are in a financing agreement. I would also note that the legal finance industry adheres to the same laws, rules and regulations as everyone else, including any economic sanctions put in place by the government.

Additionally, courts have significant experience in protecting sensitive and confidential information. While it would be a very serious concern if certain trade secrets or other proprietary information were obtained by a foreign adversary, it would also be very concerning for such information to be obtained by an adversary in litigation. We all have confidence in the system to safeguard information as to the latter. I submit that courts are capable of safeguarding against the former as well.

And, as I mentioned earlier, courts already have the inherent authority to order disclosure of funding agreements, and parties have the ability to make requests, when relevant, during the course of discovery.

There is no need for a special rule for the legal finance industry and no basis for one litigant to have to disclose their confidential financial arrangements to an opposing party in litigation.

Automatic forced disclosure allows opposing parties to weaponize the financing agreement to their advantage, which disadvantages a much larger group of businesses that would like to use commercial legal finance.

Commercial legal finance enables parties with meritorious claims to access our justice system, which in turn ensures courts will hear the best legal arguments and arrive at the right legal conclusions.

The result is a fairer and more just legal system. Thank you again for the time and for allowing me to participate today.

Please consider me, and the International Legal Finance Association, as resources, if you have any further questions as you continue to discuss this legislation.