



U.S. Chamber of Commerce
Institute for Legal Reform

March 3, 2025

Jennifer Kennedy Gellie
Chief, Counterintelligence and Export Control Section
National Security Division, FARA Unit
U.S. Department of Justice
175 N Street NE, Constitution Square, Building 3—Room 1.100
Washington, DC 20002

**Re: *Notice of Proposed Rulemaking, FARA Regulations, 28 CFR Part 5
Docket No. NSD 102; AG Order No. 6121-2024]*
*RIN 1124-AA00***

Dear Ms. Gellie:

I am writing on behalf of the U.S. Chamber of Commerce Institute for Legal Reform (“ILR”)¹ to offer comments on the U.S. Department of Justice (“DOJ”)’s Notice of Proposed Rulemaking (“NPRM”) to “update and clarify” the regulations under the Foreign Agents Registration Act (“FARA”).² For the reasons discussed below, ILR believes that any amendments to the FARA regulations should, in the interest of national security, take full account of the critical need for increased transparency regarding foreign-sourced third-party litigation funding (“TPLF”) in the United States.³

The alarm about the exigent need for such transparency has been sounded by many observers. As Professor Maya Steinitz of the Boston University School of Law warned over a decade ago, foreign sources, such as sovereign wealth funds (“SWFs”) like the China Investment Corporation, could file “suit against an American company in a sensitive industry such as military technology” and over the course of that litigation, receive “highly confidential documents containing proprietary information regarding sensitive technologies from the American defendant-corporation.”⁴ More recently, in 2023, Senator John Kennedy (R-LA)

¹ The ILR is a program of the U.S. Chamber of Commerce dedicated to championing a fair legal system that promotes economic growth and opportunity. The Chamber is the world’s largest business federation, representing the interests of more than three million businesses of all sizes, sectors and regions, as well as state and local chambers and industry associations, and it is dedicated to promoting, protecting and defending America’s free enterprise system.

² Amending and Clarifying Foreign Agents Registration Act Regulations, 90 Fed. Reg. 40 (Jan. 2, 2025).

³ The NPRM does not specifically reference litigation funding or offer any proposals aimed directly at such activity. However, the FARA Unit has issued at least one advisory opinion noting that foreign-sourced litigation funding is relevant to FARA registration determinations. *See* Letter from Evan N. Turgeon, Chief, FARA Unit (June 24, 2024), <https://www.justice.gov/nsd-fara/media/1376971/dl?inline> (under facts described, U.S. law firm using foreign-sourced litigation funding is required to register under FARA).

⁴ Maya Steinitz, *Whose Claim Is This Anyway? Third-Party Litigation Funding*, 95 Minn. L. Rev. 1268, 1270 (2011). Another early warning on this score came from an ILR publication: Michael E. Leiter, John H.

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highlighted similar concerns in a letter to Chief Justice John Roberts and former Attorney General Merrick Garland, warning that “by financing litigation in the United States against influential individuals, corporations, or highly sensitive sectors, a foreign actor can advance its strategic interests in the shadows since few disclosure requirements exist in jurisdictions across our country.”⁵ Senator Kennedy’s concerns are not limited to foreign-controlled litigation funders operating in the U.S., but also to *indirect* foreign financiers — that is, foreign government entities or government-controlled entities (e.g., sovereign wealth funds) that funnel cash through U.S.-based litigation funders and thereby potentially exercise behind-the-scenes direction as to certain lawsuits.⁶

Several other prominent federal legislators have also voiced concerns regarding the risks of foreign influence exerted through litigation funding activity, including Senators John Cornyn (R-TX) and Thom Tillis (R-NC). In a July 11, 2024 letter to the Committee on Rules of Practice and Procedure of the U.S. Judicial Conference, those Senators warned that “[I]tigation funding is an available weapon for foreign investors to attack domestic businesses” and that “[f]oreign adversaries could use litigation funding mechanisms to weaken critical industries or obtain confidential materials.”⁷

U.S. Senators Rick Scott (R-FL) and Marco Rubio (R-FL) (now U.S. Secretary of State) echoed these concerns in letters to the chief judges of Florida’s federal district courts in November 2023. In those letters, they “highlight[ed] the dangers of foreign [TPLF] and the need for more transparency in the federal judiciary as it relates to this matter.”⁸ They explained that

Beisner, Jordan M. Schwartz & James E. Perry, *A New Threat: The National Security Risk of Third Party Litigation Funding*, ILR Briefly (Nov. 2022), <https://instituteforlegalreform.com/wp-content/uploads/2022/11/TPLF-Briefly-Oct-2022-RBG-FINAL-1.pdf> (“[A] foreign adversary could encourage and exploit commercial disputes involving U.S. companies to advance their national interests in a variety of ways.”).

⁵ Press Release, U.S. Senator John Kennedy, *Kennedy Urges Roberts, Garland to Take Action to Protect National Security From Foreign Actors Meddling in U.S. Courts* (Jan. 9, 2023), <https://www.kennedy.senate.gov/public/press-releases?ID=1FBC312C-94B8-409B-B0A3-859A9F35B9F5>; Letter from Senator John Kennedy to Honorable Merrick Garland & Honorable John Roberts (Jan. 6, 2023), https://www.kennedy.senate.gov/public/_cache/files/0/7/077acc52-6622-453b-b9a5-bbecd358e136/32C50A661400A5B670DC1D48B8D75E73.letter-to-ag-garland-cheif-justice-roberts.pdf.

⁶ See Press Release, U.S. Senator John Kennedy, *Kennedy, Manchin introduce bipartisan Protecting Our Courts from Foreign Influence Act to end overseas meddling in U.S. litigation* (Sept. 14, 2023), <https://www.kennedy.senate.gov/public/2023/9/kennedy-manchin-introduce-bipartisan-protecting-our-courts-from-foreign-manipulation-act-to-end-overseas-meddling-in-u-s-litigation>. ILR respectfully submits that in assessing possible revisions to the FARA regulations, DOJ should consider this type of indirect foreign litigation funding.

⁷ Letter from Senators John Cornyn & Thom Tillis to H. Thomas Byron III (July 11, 2024), https://www.uscourts.gov/sites/default/files/24-cv-m_suggestion_from_senators_cornyn_tillis_-_rule_26_tplf.pdf.

⁸ Press Release, U.S. Senator Marco Rubio, *Rubio, Scott Push for Transparency for Foreign Third Party Litigation Funding in U.S. Courts* (Nov. 3, 2023), <https://web.archive.org/web/20250111011234/>

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litigation funding can originate from several foreign sources, including SWFs, and may influence both the nature and direction of a litigation through often undisclosed financial contributions. They further noted that the most concerning outcome would be that “these foreign funders have the potential to provide hostile foreign actors with sufficient sway to exert undisclosed influence on litigation moving through the federal judiciary.”⁹

These concerns were discussed in a December 2023 report by the House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party. In that report—*Reset, Prevent, Build: A Strategy to Win America’s Economic Competition with the Chinese Communist Party*—the Select Committee recommended that Congress “[d]etermine, and then establish, what guardrails are needed to address the possibility of foreign adversary entities obtaining sensitive IP [intellectual property] through funding third-party litigation in the United States.”¹⁰ The Select Committee also recommended “requir[ing] enhanced disclosures for foreign adversary entities and provid[ing] judges with the authority to require enhanced disclosures for certain entities under foreign adversary entity control regarding their funding, and, when appropriate, ownership and connection with the foreign adversary government and dominant political party.”¹¹

Executive branch personnel at both state and federal levels have also voiced growing concern about the risks spawned by foreign-sourced financing of U.S. litigation. For example, in December 2022, fourteen state attorneys general submitted a letter to the U.S. Department of Justice, bemoaning the secrecy surrounding TPLF and questioning what former U.S. Attorney General Merrick Garland and other top officials were doing to ensure that the practice is not threatening U.S. national security interests.¹²

During a December 2023 speaking engagement, FARA Unit Chief Evan Turgeon addressed this important topic in detail.¹³ Among other things, Mr. Turgeon discussed FARA’s

<https://www.rubio.senate.gov/rubio-scott-push-for-transparency-for-foreign-third-party-litigation-funding-in-u-s-courts/>.

⁹ *Id.*

¹⁰ House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party, *Reset, Prevent, Build: A Strategy to Win America’s Economic Competition with the Chinese Communist Party* (Dec. 12, 2023), at 21, <https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/reset-prevent-build-scc-report.pdf>.

¹¹ *Id.*

¹² *See generally* Letter from Honorable Christopher M. Carr (GA), Honorable Jason Miyares (VA) et al. to U.S. DOJ re: Threats Posed by Third-Party Litigation Funding (Dec. 22, 2022), <https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2022/pr22-55-letter.pdf>.

¹³ *See generally* Robert Kelner, Brian Smith & Alexandra Langton, *DOJ Officials’ Remarks Signal New Trends In FARA Activity*, Law360 (Dec. 14, 2023), <https://www.law360.com/articles/1776917/doj-officials-remarks-signal-new-trends-in-fara-activity>.



application to foreign-sourced funding of litigation in the U.S. And quite critically, he specifically identified three potential risks of “undisclosed and undiscoverable” foreign-sourced funding of U.S. litigation:

- ***Foreign entities doing business in the U.S. may seek to create a competitive advantage as compared to their U.S. competitors by tying up U.S. companies in lengthy and expensive court cases.***
- ***Foreign funders of U.S. litigation may gain access to proprietary and sensitive commercial information through litigation discovery.***
- ***Foreign adversaries may fund litigation on political issues that are divisive within the U.S. public.***¹⁴

While the secrecy typically surrounding TPLF makes it impossible to ascertain the precise extent and objectives of foreign-sourced litigation funding in the United States, recent examples make clear that such litigation investments are not only occurring, but that the influx of cash is creating precisely the sorts of national security concerns about which academics and public servants have warned.

A lawsuit against ExxonMobil, initiated recently by the California Attorney General and several nonprofit organizations, is the most recent example of how foreign interests can exploit the U.S. legal system to advance their own economic and political agendas. An Australian billionaire and owner of Fortescue Energy allegedly used his nonprofit subsidiary, the Intergenerational Environment Justice Fund (“IEJF”), to fund litigation against ExxonMobil to benefit his rival business ventures. That case accused ExxonMobil of misleading the public about its plastics recycling initiatives. In response, ExxonMobil filed a countersuit in the U.S. District Court for the Eastern District of Texas against the parties to the initial action, alleging defamation, business disparagement, tortious interference, and civil conspiracy.¹⁵ The countersuit alleges that the private domestic entities, whose lawsuits allegedly are funded and influenced by the IEJF, have engaged in a coordinated smear campaign against ExxonMobil to undermine its advanced recycling initiatives and harm its business reputation. It also accuses the IEJF, a subsidiary of the Australian billionaire’s Munderoo Foundation, of orchestrating this campaign to serve his own business interests. According to the complaint, the IEJF hired the California law firm Cotchett, Pitre & McCarthy to sue ExxonMobil and to recruit U.S.-based environmental nonprofits to serve as the named plaintiffs in the case and thus act as proxies for its agenda. Notably, the complaint further alleges that in an advisory opinion, the DOJ FARA Unit concluded that the Cotchett firm was required to register as a foreign agent under the

¹⁴ *Id.*

¹⁵ Complaint, *ExxonMobil Corp. v. Bonta*, No. 1:25-cv-00011, ECF No. 1 (E.D. Tex. filed Jan. 6, 2025), https://s3.amazonaws.com/jnswire/jns-media/09/bd/20843388/ExxonMobil_v_Bonta.pdf.



FARA, an action that ultimately revealed the foreign influence behind the lawsuit. Notably, IEJF's involvement would not have been known but for the transparency that was required by complying with the FARA.

In this case, the IEJF's funding of the suit against ExxonMobil raises significant concerns about the potential motivations underlying the litigation. As ExxonMobil's complaint alleges, the IEJF is closely tied to the Australia-based Fortescue Energy, a company that competes with ExxonMobil in the low carbon solutions and energy transition sector. By funding litigation that could harm ExxonMobil's business, the complaint alleges that IEJF is using the U.S. legal system as a tool for Fortescue Energy to gain a competitive advantage. In addition, this example highlights how foreign-sourced TPLF can have significant economic and national security implications. If successful, the litigation against ExxonMobil could force the company to scale back its advanced recycling operations, disrupting supply chains, harming American workers, and increasing costs for American consumers. Moreover, the case could set a dangerous precedent for other foreign entities to use TPLF to target U.S. companies in strategic industries, such as energy and technology.

In another example, Purplevine IP Operating Co., Ltd. ("Purplevine"), a China-based firm that markets itself as a one-stop IP service provider, is financing at least four intellectual property lawsuits in U.S. courts against Samsung Electronics Co. and a related subsidiary.¹⁶ Despite the absence of broadly applicable TPLF disclosure requirements, Purplevine's role in the Samsung litigation was involuntarily disclosed during litigation due to an unusual standing order that the judge overseeing the case—Chief Judge Colm Connolly of the U.S. District Court for the District of Delaware—had instituted, which required certain basic disclosures about TPLF usage.¹⁷ That required disclosure, plus follow-up inquiries and facts that emerged at trial, revealed a tangled relationship between Purplevine and the patent claims at issue and suggested that Purplevine may have received and relied upon privileged, confidential and highly sensitive information in bankrolling Staton Techiya, LLC's patent infringement claims against Samsung.¹⁸ Although the patent technology at issue related to sound systems and thus did not directly implicate national security concerns per se,¹⁹ the alleged misappropriation of discovery and other

¹⁶ Emily R. Siegel, *China Firm Funds US Suits Amid Push to Disclose Foreign Ties*, Bloomberg Law (Nov. 6, 2023), <https://news.bloomberglaw.com/business-and-practice/china-firm-funds-us-lawsuits-amid-push-to-disclose-foreign-ties>; <https://www.purplevineip.com/en/>.

¹⁷ See Plaintiff's Statement Regarding Third-Party Litigation Funding Arrangements, *Staton Techiya, LLC v. Harman Int'l Indus., Inc.*, No. 1:23-cv-00801-JCG, ECF No. 7 (D. Del. filed Aug. 24, 2023).

¹⁸ See Samsung's Motion for Leave to Amend Answer & Counterclaims to Join Purplevine & PV Law as Counterclaim Defendants at 5-6, 14-15, *Staton Techiya, LLC v. Samsung Elecs. Co.*, No. 2:23-cv-00319-JRG-RSP, ECF No. 65 (E.D. Tex. filed June 13, 2024).

¹⁹ See generally Complaint, *Staton Techiya, LLC v. Harman Int'l Indus., Inc.*, No. 1:23-cv-00801-JCG, ECF No. 1 (D. Del. filed July 25, 2023). An apparent relationship between Purplevine and Chinese consumer electronics giant TCL Corp. raises further questions about whether it or any other foreign actors are investing in U.S. litigation

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confidential litigation materials in the case illustrates the kind of misconduct that could unfold when a foreign entity chooses to fund litigation involving sensitive technology (e.g., semiconductors) critical to U.S. national security.

Finally, the *New York Post* recently reported that members of the international gang MS-13 have been working with Russian gangsters to orchestrate fraudulent personal-injury lawsuits in U.S. courts.²⁰ According to that article, MS-13 members have been recruiting plaintiffs—often undocumented Hispanic migrants—to fake workplace injuries. Reportedly, some of these plaintiffs come to the United States for the sole purpose of serving as plaintiffs in these lawsuits. Those plaintiffs are then subjected to unnecessary surgeries performed by surgeons involved in the conspiracy, all to create damages and place settlement pressure on defendants. Russian gangsters are suspected of running litigation lending firms that finance those fraudulent lawsuits. The lawsuits have generated lucrative settlements, often over \$1 million each, the bulk of which ends up in the hands of the MS-13 operatives and Russian gangsters, who presumably use those funds to advance various nefarious activities across the U.S. Such activity thus creates unprecedented and extraordinary threats to national security and the U.S. economy.²¹

for questionable purposes—i.e., to undermine competitors, including in sensitive industries. See Emily R. Siegel, *China Firm Funds US Suits Amid Push to Disclose Foreign Ties*, Bloomberg Law (Nov. 6, 2023), <https://news.bloomberglaw.com/business-and-practice/china-firm-funds-us-lawsuits-amid-push-to-disclose-foreign-ties>.

²⁰ Brad Hamilton & Georgia Worrell, *MS-13, Russian Mobsters Use Migrants in Elaborate Injury Scam — Even Getting Spinal Surgery to Pull it Off*, N.Y. Post (June 16, 2024), <https://nypost.com/2024/06/16/us-news/ms-13-russian-mobsters-use-migrants-in-elaborate-injury-scam-even-getting-spinal-surgery-to-pull-it-off-sources>.

²¹ Published reports also indicate that certain Russian billionaires have financed lawsuits through their investment firms to evade international sanctions. According to a Bloomberg Law investigation, a company named A1, a subsidiary of a Russian investment company called Alfa Group, has spent about \$20 million in ongoing bankruptcy cases in New York and London on behalf of a Russian agency seeking to recover assets that were embezzled from a Moscow bank. In fact, after three A1 directors were sanctioned in the UK, they sold A1 for about \$900 to another A1 director who had not been sanctioned. The director who purchased A1, Alexander Fain, admitted in a bankruptcy proceeding that he purchased A1 because of a “‘complicated geopolitical situation’ potentially affecting the litigation.” Emily R. Siegel & John Holland, *Putin’s Billionaires Dodge Sanctions by Financing Lawsuits*, Bloomberg Law (Mar. 28, 2024), <https://news.bloomberglaw.com/litigation-finance/putins-billionaires-sidestep-sanctions-by-financing-lawsuits>; see also Emily R. Siegel, *Russian Use of Litigation Finance Needs Scrutiny, Treasury Says*, Bloomberg Law (Apr. 10, 2024), <https://news.bloomberglaw.com/business-and-practice/russian-use-of-litigation-finance-needs-scrutiny-treasury-says>.



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As these examples illustrate, foreign-sourced TPLF activity creates grave national security concerns that must be addressed. Accordingly, in considering any amendments to the existing FARA regulations, we respectfully submit that careful examination should be given to any measures that would facilitate shedding light on instances in which foreign-sourced TPLF is being used in U.S. litigation matters.

Sincerely,

Stephen Waguespack
President, Institute for Legal Reform and
Senior Vice President, U.S. Chamber Federation, State and
Local Advocacy