



Will Lawsuit Funding Regulation Limit Access to Justice?

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By: John Wright

Some Missouri lawmakers are considering [legislation](#) to [regulate](#) lawsuit funding companies. This regulation is pitched as consumer protection, or even tort reform, but it falls short on both accounts.

For background, a civil litigation funding company helps a person pay for the costs of a lawsuit before a reward is obtained. In return, the company gets a portion of the reward if the litigant is successful. Critics say that civil litigation funding companies often take an unreasonably large portion of the eventual reward. Critics are also hopeful that regulation will reduce the number of lawsuits brought against businesses, saving businesses money.

Defenders of civil litigation funding say that without these funding arrangements, many people with legitimate claims wouldn't be able to access our justice system. In many instances people who've been injured or wronged would be forced to settle with an insurance company for a fraction of the compensation necessary to make them whole again. If you make it harder for people to fund lawsuits, you won't necessarily decrease the number of frivolous claims—but you will limit access to justice for people who can't afford to wait for resolution of their claim.

I'm most interested in whether regulating lawsuit funding companies is consistent with a free market. Shouldn't a plaintiff be able to sell a portion of a legal claim at any freely agreed upon price? What business does the state have in regulating how people pay for a lawyer?

Professor Jeremy Kidd, a law professor at Mercer University, [addressed the Alabama State Senate Judiciary Committee](#) opposing a bill that would regulate lawsuit funding in Alabama. In doing so, he helped answer this question:

"This issue—and so many others—requires acknowledgement of a simple truth, that there is a fundamental difference between being pro-business and being pro-market. Free markets enable tremendous human flourishing, and protecting markets is essential to growth. Importantly, however, while protecting markets protects consumers and businesses, protecting businesses typically improves the businesses' bottom line at the expense of markets and, by extension, every consumer. Senate Bill 67 is pro-business, rather than pro-market, because it is designed to protect businesses against lawsuits without inquiring as to whether those businesses are actually at fault."

I see a great deal of truth in this statement. Real tort reform will address the problematic aspects of our tort system. Regulation of civil litigation funding appears to ignore the merits of individual lawsuits, making it even more difficult for poor Missourians to pursue legitimate legal claims.

About the Author



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John Wright was a policy analyst focusing on government transparency and labor relations.

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