

FOR IMMEDIATE RELEASE:
April 19, 2018

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AG Balderas to Congress: Protect Elderly, Disabled & Impoverished New Mexicans from Abusive Debt Collection Practices by Lawyers

Albuquerque, NM - Attorney General Hector Balderas and a bi-partisan coalition of 20 state attorneys general submitted a letter today urging Congress to oppose the Practice of Law Technical Clarification Act of 2018, which would strip away protections against debt collection attorneys who take unfair advantage of state courts to intimidate, harass and deceive consumers.

“I am urging Congress to protect New Mexico’s elderly, disabled and impoverished populations from abusive and predatory debt collection practices,” said Attorney General Hector Balderas. “Congress should reject this dangerous legislation so New Mexicans can work to pay off their bills without being subjected to harassment, dishonesty, and insurmountable odds against them.”

If enacted, the Practice of Law Technical Clarification Act would amend the federal Fair Debt Collection Practices Act (FDCPA) to exclude law firms and licensed attorneys engaged in “litigation activities,” shielding them from liability for abusive practices and preventing state attorneys general from using the FDCPA to bring enforcement actions against them. The amendment would also bar individuals from suing debt collection lawyers for damages and reasonable attorneys’ fees. Such lawsuits supplement the work of attorney general offices across the country.

The attorneys general argue that “certain debt collection attorneys and law firms routinely misuse their access to the judicial system to take improper advantage of unsophisticated consumers.” These debt collectors’ use of litigation to collect debts disproportionately affects the most vulnerable consumers, who often lack the resources to hire lawyers, including the elderly, disabled and poor.

State attorneys general and the Consumer Financial Protection Bureau have brought numerous actions against the practices of abusive debt collection law firms, which include falsely threatening to garnish the income and social security benefits of elderly and disabled consumers, threatening consumers with arrest and imprisonment for failure to pay debts, improperly suing consumers in courthouses miles from their homes, and filing lawsuits without meaningfully reviewing pleadings and without proof that consumers owe the debt at issue.

Today’s letter comes in response to the House Financial Services Committee’s decision to vote the Practice of Law Technical Clarification Act out of committee.

Joining Attorney General Balderas in signing this letter today are attorneys general from California, Delaware, Hawaii, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia, Washington and Washington D.C.

Please see attached for a copy of the letter to Congress.

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ATTORNEY GENERAL

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The Honorable Paul D. Ryan
Speaker
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Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
233 Cannon House Office Building
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Charles E. Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

Via Electronic & Certified Mail

Re: Practice of Law Technical Clarification Act of 2018 (H.R. 5082)

Dear Speaker Ryan, Leader Pelosi, Leader McConnell and Leader Schumer:

We, the undersigned State Attorneys General write to express our opposition to the entirety of H.R. 5082, the Practice of Law Technical Clarification Act of 2018 ("H.R. 5082"), which was recently voted out of the House Financial Services Committee. H.R. 5082 would amend the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.* ("FDCPA"), which currently prohibits debt collectors, including attorney debt collectors, from engaging in unfair



and deceptive practices. If enacted, H.R. 5082 would exclude law firms and licensed attorneys from the scope of the FDCPA to the extent they are engaged in “litigation activities.” For the reasons set forth below, we believe that H.R. 5082 would wrongly strip away safeguards against unscrupulous debt collection attorneys who abuse state court litigation to intimidate, harass and deceive consumers. Accordingly, we urge you to vote against the Act.

Today, creditors and debt buyers are ever more frequently turning to litigation to collect debts allegedly owed by consumers. Indeed, debt collection lawsuits comprise the majority of many state-court dockets. These lawsuits disproportionately affect the most financially vulnerable Americans, including the elderly, disabled, and poor. Consumers rarely have the resources to hire counsel or the time and knowledge necessary to represent themselves.

Our offices are responsible for enforcing the consumer protection laws of our respective states, including laws that require debt collectors to treat debtors with simple fairness and honesty. Unfortunately, we have found that there are a significant number of law firms and attorneys who do not abide by this basic requirement.

State Attorneys General, along with the Consumer Financial Protection Bureau,¹ have brought numerous enforcement actions against debt collection law firms and attorneys precisely because they have abused state judicial systems. Debt collection attorneys have wrongfully exploited both their ability to obtain judgments against consumers with little or no judicial oversight, and the powerful collection tools available to judgment creditors. Our enforcement actions have alleged that debt collection attorneys falsely threaten elderly and disabled consumers with the garnishment of social security benefits and other income exempt from judicial collection; threaten consumers with arrest and imprisonment for failure to pay debts; improperly sue consumers in courthouses that are hundreds of miles away from their homes; sue consumers without any proof that the consumer owes the debt at issue; and regularly file lawsuits without meaningfully reviewing their own pleadings. In sum, it is the experience of our offices that certain debt collection attorneys and law firms routinely misuse their access to the judicial system to take improper advantage of unsophisticated consumers. *See e.g.*, Final Judgment by Consent, *Commonwealth v. Lustig, Glaser & Wilson, P.C., et. al.*, No. 15-3852 (Mass. Super. Ct. July 20, 2017); Final Judgment and Permanent Injunction, *State of Texas v. Samara Portfolio Management, LLC, Law Office of Joshua Onwuteaka, P.C., and Joshua O. Onwuteaka*, No. 2013-35721 (80th District Ct. of Harris County July 11, 2017); Consent Order, *In the Matter of Works & Lentz, Inc.; Works & Lentz of Tulsa, Inc., and Harry A. Lentz, Jr.* (File No. 2017-CFPB-0003) (Jan. 9, 2017); Consent Order, *In the Matter of Pressler & Pressler, LLP, Sheldon H. Pressler, and Gerald J. Felt* (File No. 2016-CFPB- 0009) (Apr. 25, 2016); Stipulated Final Judgment and Order, *Consumer Fin. Protection Bureau v. Frederick J. Hanna & Assoc.*, 14-cv-02211-AT (D.Ga. 2015); Press Release, *A.G. Schneiderman Announces \$4 Million Settlement With New York Foreclosure Law Firm Steven J. Baum P.C. And Pillar Processing LLC*, Mar. 22,

¹ H.R. 5082 would curtail the CFPB’s authority to bring enforcement actions against debt collection attorneys in the future, despite recent statements that debt collection is a top enforcement priority for the CFPB. *See* Yuka Hayashi, *CFPB to Work With FTC on Policing Debt Collectors*, Wall St. Journal, Mar. 20, 2018, available at <https://www.wsj.com/articles/cfpb-to-work-with-ftc-on-policing-debt-collectors-1521584982>

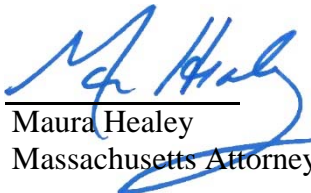
2012, available at <https://ag.ny.gov/press-release/ag-schneiderman-announces-4-million-settlement-new-york-foreclosure-law-firm-steven-j>.

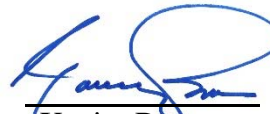
H.R. 5082 would likely immunize debt collection law firms and attorneys from liability under the FDCPA for such abusive practices. It would preclude State Attorneys General from using the FDCPA to pursue unscrupulous debt collection attorneys.² Crucially, the FDCPA is the only consumer protection tool available to State Attorneys General in a significant number of jurisdictions where state consumer protection law does not govern the conduct of attorneys. Finally, the FDCPA, unlike the Federal Trade Commission Act, gives consumers a private right of action to obtain actual damages, statutory damages up to \$1,000, and reasonable attorneys' fees and costs. These lawsuits – in which the injured plaintiffs act as “private attorneys general” – both supplement and complement the work of our offices. *See Jacobson v. Healthcare Fin. Servs., Inc.*, 516 F.3d 85, 91 (2d Cir. 2008). H.R. 5082 would bar any such suits under the FDCPA by private consumers for the abuse of the state courts by debt collection attorneys.


While legitimate creditors and their agents have every right to use the judicial process, no one should tolerate unethical attorneys abusing our courts for their own profit.³ Debt collection attorneys must be held accountable when they use litigation for improper purposes. Accordingly, now is not the time for Congress to exempt debt collection attorneys from consumer protection laws.


For all these reasons, we urge you to vote against the Act. If we can provide any further information or assistance, please do not hesitate to contact us.

Sincerely,


Maura Healey
Massachusetts Attorney General


Xavier Becerra
California Attorney General


Matthew P. Denn
Delaware Attorney General

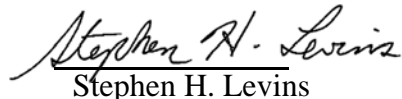

Karl A. Racine
Attorney General for the District of
Columbia

² Congress has given State Attorneys General the authority to enforce the FDCPA by means of the Consumer Financial Protection Act.

³ The rules of professional conduct for attorneys do not, by themselves, provide a sufficient deterrent to abuses by debt collection attorneys. Congress extended the FDCPA to cover collection attorneys precisely because it found that bar associations and other disciplinary boards did not have the ability to police these attorneys effectively.



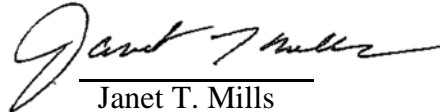
Russell A. Suzuki
Hawaii Attorney General



Stephen H. Levins
Executive Director
State of Hawaii Office of
Consumer Protection



Tom Miller
Iowa Attorney General



Janet T. Mills
Maine Attorney General



Brian E. Frosh
Maryland Attorney General



Bill Schuette
Michigan Attorney General



Lori Swanson
Minnesota Attorney General



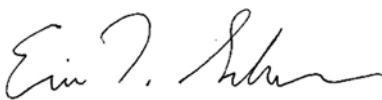
Douglas Peterson
Nebraska Attorney General



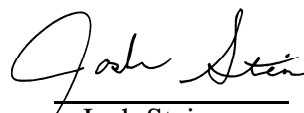
Gurbir S. Grewal
New Jersey Attorney General



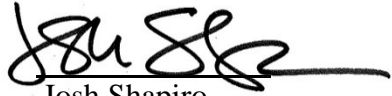
Hector Balderas
New Mexico Attorney General



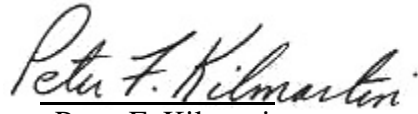
Eric T. Schneiderman
New York Attorney General



Josh Stein
North Carolina Attorney General



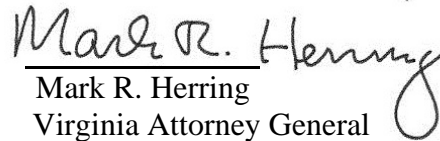
Josh Shapiro
Pennsylvania Attorney General



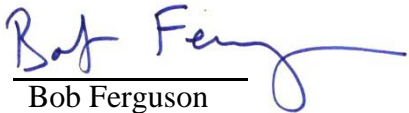
Peter F. Kilmartin
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Thomas J. Donovan, Jr.
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Mark R. Herring
Virginia Attorney General



Bob Ferguson
Washington State Attorney General