THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
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MAURA HEALEY
ATTORNEY GENERAL

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April 19, 2018

The Honorable Paul D. Ryan
Speaker
U.S. House of Representatives
1233 Longworth House Office Building
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 enforcements 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

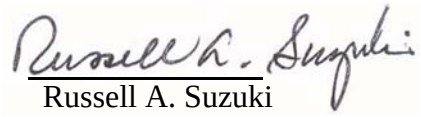
Xavier Becerra
California Attorney General

Matthew P. Denn
Delaware Attorney General

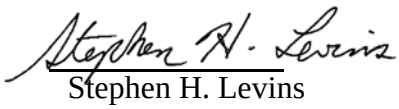
Karl A. Racine
Attorney General for the District of Columbia

[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.

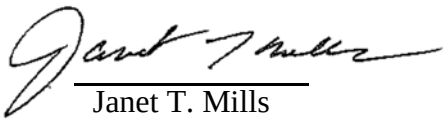


Russell A. Suzuki
Hawaii Attorney General

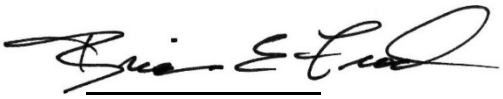


Stephen H. Levins
Executive Director
State of Hawaii Office of
Consumer Protection

Tom Miller
Iowa Attorney General



Janet T. Mills
Maine Attorney General

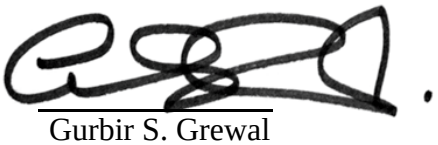


Brian E. Frosh
Maryland Attorney General

Bill Schuette
Michigan Attorney General

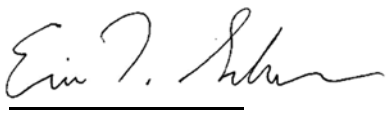
Lori Swanson
Minnesota Attorney General

Douglas Peterson
Nebraska Attorney General

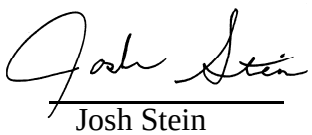


Gurbir S. Grewal
New Jersey Attorney General

Hector Balderas
New Mexico Attorney General

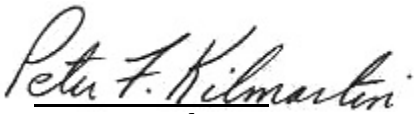


Eric T. Schneiderman
New York Attorney General

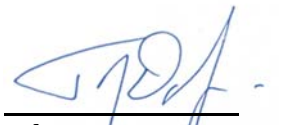


Josh Stein
North Carolina Attorney General

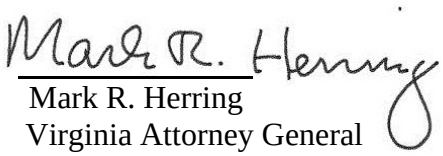
Josh Shapiro
Pennsylvania Attorney General



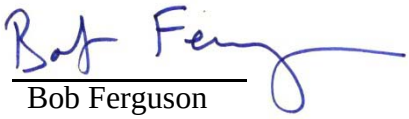
Peter F. Kilmartin
Rhode Island Attorney General



Thomas J. Donovan, Jr.
Vermont Attorney General



Mark R. Herring
Virginia Attorney General



Bob Ferguson
Washington State Attorney General