July 2, 2015

The Honorable Robert W. Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Re: Support for H.R. 2329, the Ensuring Access to Justice for Claims Against the United States Act

Dear Chairman Goodlatte and Ranking Member Conyers:

On behalf of the American Bar Association, which has nearly 400,000 members, I write to express our strong support for H.R. 2329, the Ensuring Access to Justice for Claims Against the United States Act. This bipartisan bill, cosponsored by Representatives Ron DeSantis and David Cicilline, would apply much needed reforms to 28 U.S.C. § 1500 to enable companies, property owners, Indian tribes, and other parties with meritorious claims against the Federal Government to obtain complete relief in the U.S. courts. We urge you and your Committee colleagues to support this important legislation during the upcoming markup scheduled for July 8.

H.R. 2329 is a carefully crafted measure designed to correct the serious flaws in Section 1500, an antiquated, Civil War-era statute that interferes with the efficient and orderly administration of justice by the federal courts, resulting in non-merit based dismissals of valid claims. The full extent of these flaws, and the need for reform, was recently brought to light by the U.S. Supreme Court’s landmark decision in United States v. Tohono O’odham Nation, 131 S. Ct. 1723 (2011).

Under well-established federal law, most contract and other monetary claims against the Federal Government must be filed in the U.S. Court of Federal Claims (“CFC”), while most other legal claims, including tort claims and requests for equitable relief, must be brought in the U.S. District Court. Although Section 1500 states that the CFC shall have no jurisdiction over a lawsuit if another suit “for or in respect to” the same claim is pending in another court, the CFC had long interpreted the statute to permit separate suits to proceed in the CFC and the district court if the suits are seeking different remedies. Unfortunately, the Supreme Court rejected the CFC’s approach in the Tohono case and held that the CFC has no jurisdiction over a claim if another suit based on the same operative facts is pending in any other court, regardless of the relief sought in each case. Therefore, the Tohono decision has created serious procedural roadblocks to a claimant’s ability to obtain complete relief.

Now that the Supreme Court has prohibited parties from pursuing simultaneous claims involving the same operative facts in both the CFC and the district court, many parties will be forced to elect which of their valid claims to pursue and may be foreclosed from prosecuting their remaining claims. Therefore, if a party pursues its monetary claims in the CFC but the case is not completed until after the statute of limitations has run on its other valid claims, it may be forever precluded...
from pursuing those claims in the district court. Conversely, if the party first brings its valid non-monetary claims in district court but the case is not resolved before the six year limitations have run on the party’s CFC claims, those claims could be precluded. Either way, many parties with valid claims against the Federal Government will not be able to receive complete relief.

H.R. 2329 would effectively eliminate these procedural roadblocks in Section 1500 by implementing the basic technical reforms proposed by the Administrative Conference of the United States (ACUS) in its 2012 formal recommendation. In particular, the bill would repeal the archaic language of Section 1500 and replace it with new, much clearer language allowing claimants to simultaneously pursue their different claims in the CFC and the district court with a presumptive stay of the latter-filed action. As a result, parties with meritorious claims against the Federal Government would be able to pursue and obtain complete relief.

The bill would advance the interests of justice and the efficient administration of the federal courts in three principal respects. First, repealing Section 1500 and replacing it with a presumptive stay would protect the United States from potentially duplicative litigation without denying claimants the opportunity to pursue a decision on the merits. Second, the bill would allow claimants to determine which of their legal claims will be stayed, as they would know that the first-filed claim would be litigated first. Therefore, claimants seeking both money damages in the CFC and emergency injunctive relief in federal district court can ensure that their equitable claims are resolved first by initially filing in district court. Third, when the government consents to both the CFC and the district court claims proceeding simultaneously—or if the court determines that termination or modification of the stay is needed to preserve material evidence or prevent irreparable prejudice to a party—the presumptive stay would not apply and the two complementary cases could proceed at the same time.

H.R. 2329 would correct the serious defects in Section 1500 and allow all parties—including businesses, property owners, and Indian tribes—to seek both monetary and equitable relief in the appropriate federal courts without fear that their valid claims will be dismissed for non-merit based, procedural reasons. The legislation also enjoys broad bipartisan support, and similar legislation, H.R. 5683, was approved by the Committee at the end of the 113th Congress. In addition, the current version of the legislation includes several technical refinements suggested by the Justice Department that effectively address the Department’s previous concerns. For all these reasons, the ABA urges you to support prompt passage of the legislation.

Thank you for considering the views of the American Bar Association on this important issue. If you have any questions regarding the ABA’s position, please contact me at (202) 662-1765 or ABA Associate Governmental Affairs Director Larson Frisby at (202) 662-1098.

Sincerely,

Thomas M. Susman

cc: Members of the House Judiciary Committee