October __, 2018

The Honorable [name of Representative]
U. S. House of Representatives
Washington, D.C. 20515

Re: Support for H.R. 5082, the “Practice of Law Technical Clarification Act of 2018”

Dear Representative ____________:

On behalf of the [name of bar association] and its more than __________ members, I write to express our strong support for H.R. 5082, the “Practice of Law Technical Clarification Act of 2018,” which was approved by the House Financial Services Committee earlier this year and will soon be considered by the full House. We urge you to vote for this important legislation.

This bipartisan bill, sponsored by Reps. Alex Mooney (R-WV) and Vicente Gonzalez (D-TX), would protect the ability of small, main street businesses and their local attorneys to recover valid debts by curbing abusive lawsuits and burdensome regulations against those attorneys that relate to their litigation activities. The bill would also restore traditional state court regulation and oversight of the legal profession while preserving essential consumer protections. To achieve these aims, the bill would clarify that the Fair Debt Collection Practices Act (FDCPA) and the regulatory authority of the Consumer Financial Protection Bureau (CFPB) do not apply to attorneys when they are engaged in debt collection litigation and thus are under the direct supervision of the trial judge.1

This legislation is needed because in recent years, many creditor attorneys who file lawsuits to collect legitimate debts owed to their local business clients have been unfairly sued for their court-related actions that are alleged to be technical violations of the FDCPA. For example, if a creditor attorney accidently files an otherwise valid collection suit in the wrong county, files a lawsuit seeking a portion of the debt or fees that are in dispute, takes a pretrial deposition of a third party witness without the express permission of the consumer or the court, or engages in certain other ordinary litigation activities in a good faith effort to collect a debt, the attorney can be sued personally under the Act for statutory damages and substantial attorneys’ fees even when the consumer suffered no actual harm. The CFPB has also recently become much more aggressive in seeking to regulate creditor attorneys’ litigation or court-related activities in various ways.

Unfortunately, these technical lawsuits and burdensome new CFPB regulations have made it more difficult for main street businesses that provide consumers with credit to hire the local counsel they need to help them collect their valid debts, pay their employees, stay in business, and provide future credit to other consumers.

1 For more information regarding H.R. 5082, see the American Bar Association’s March 19, 2018 letter to the House Financial Services Committee expressing support for the bill and other background materials on the ABA’s FDCPA Reform web page.
H.R. 5082 would curb these abusive lawsuits against creditor attorneys and prevent the CFPB from usurping the court’s proper role overseeing the litigation process and punishing attorney misconduct. If passed, H.R. 5082 would clarify that creditor attorneys engaged in litigation are not subject to technical lawsuits under the FDCPA or to the CFPB’s regulatory and enforcement authority. These reforms are appropriate, as the judge presiding over the case—not the CFPB or debtor attorneys—is in the best position to discipline any attorney who engages in misconduct, impose the appropriate sanctions based on the circumstances, and protect all the parties in the lawsuit.

For many years, attorneys have been regulated and disciplined primarily by the state supreme courts that license them and their state bar agencies, not Congress or federal agencies. These state courts and bars have extensive authority and tools to stop and punish attorney misconduct in debt collection lawsuits that harm consumers. For example, state court and bar rules prohibit attorneys from filing frivolous lawsuits that are not supported by law and fact, taking legal actions to harass or intimidate defendants, or making false or deceptive claims during a court case. Any creditor attorney that violates these or other court or bar rules can be severely punished, including monetary sanctions, dismissal of the lawsuit, or even suspension or revocation of the attorney’s law license. By restoring the state court’s proper role as the primary authority overseeing attorneys engaged in collection litigation, H.R. 5082 will ensure that consumers’ rights are protected during these lawsuits.

Some consumer groups have claimed that H.R. 5082 would weaken existing consumer protections, but this is untrue because the bill is narrowly tailored and would only exempt the litigation activities of creditor attorneys that are conducted under the watchful eye of the trial judge. The bill would not exempt any of the attorneys’ other collection-related activities that occur before suit is filed or that are not related to the court case, such as improper demand letters and phone calls. Therefore, consumers would still be fully protected at all stages of the collection process.

For all these reasons, the [name of bar association] urges you to support prompt passage of H.R. 5082. Thank you for considering our views on this issue, which is of critical importance to many local attorneys and law firms throughout [name of state] and around the country.

Sincerely,

[name of bar president or other bar leader]