

118TH CONGRESS
2D SESSION

H. R. 7947

To protect State and Federal courts' primary and inherent authority to regulate and oversee the legal profession by prohibiting Federal agencies from regulating licensed attorneys and law firms engaged in litigation activities, prohibiting opposing parties in legal actions from bringing private rights of action against such attorneys and law firms for their litigation activities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 2024

Mr. FITZGERALD (for himself, Mr. MOONEY, and Mr. BIGGS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To protect State and Federal courts' primary and inherent authority to regulate and oversee the legal profession by prohibiting Federal agencies from regulating licensed attorneys and law firms engaged in litigation activities, prohibiting opposing parties in legal actions from bringing private rights of action against such attorneys and law firms for their litigation activities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Restoring Court Au-
3 thority Over Litigation Act of 2024”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) For many decades, attorneys engaged in the
7 practice of law have been regulated and disciplined
8 primarily by the highest court of the State in which
9 the attorney is licensed or admitted to practice, at-
10 torney disciplinary agencies overseen by those
11 courts, and other State and Federal courts of com-
12 petent jurisdiction pursuant to the applicable stat-
13 utes, rules of civil procedure, and rules of profes-
14 sional conduct and disciplinary procedure duly
15 adopted in those jurisdictions, and not by Congress,
16 Federal agencies, or private litigants.

17 (2) State supreme courts have promulgated and
18 enforced extensive and effective regulations gov-
19 erning all aspects of the practice of law, including
20 admission requirements, strict attorney rules of pro-
21 fessional conduct, disciplinary rules, and litigation
22 procedural rules. In addition, Federal courts have
23 adopted local rules governing the conduct of attor-
24 neys appearing before them. As a result, State and
25 Federal courts have extensive authority and tools to
26 address attorney misconduct that occurs during the

1 course of litigation before them, including monetary
2 sanctions, striking offending pleadings or other pa-
3 pers, or referring the matter to disciplinary authori-
4 ties, which could lead to a reprimand, censure, li-
5 cense suspension, disbarment, or other available dis-
6 ciplinary sanctions.

7 (3) Consistent with the longstanding principle
8 of judicial regulation and oversight of attorneys and
9 the legal profession, numerous Federal agencies have
10 included broad practice of law exclusions in major
11 rules, including the Federal Trade Commission’s
12 “Mortgage Assistance Relief Services” Rule issued
13 in November 2010 and the Department of Housing
14 and Urban Development’s “Secure and Fair En-
15 forcement for Mortgage Licensing Act” Rule issued
16 in June 2011.

17 (4) Also consistent with the principle of judicial
18 regulation of attorneys and the legal profession,
19 Congress has generally declined to enact legislation
20 regulating the practice of law, including litigation
21 activities of attorneys.

22 (5) Congress has also incorporated broad prac-
23 tice of law exclusions into certain Federal statutes.
24 For example, section 1027(e) of the Consumer Fi-
25 nancial Protection Act of 2010 excludes most attor-

1 neys engaged in the practice of law from the Con-
2 sumer Financial Protection Bureau’s regulatory and
3 enforcement authority, while the Fair Debt Collec-
4 tion Practices Act of 1977 originally contained a
5 complete exemption for attorneys engaged in the
6 practice of law.

7 (6) Although Congress removed the complete
8 attorney exemption from the Fair Debt Collection
9 Practices Act in 1986 based in part on its belief that
10 the revised Act would only apply to attorneys’ non-
11 litigation collection activities and that State courts
12 would continue to regulate attorneys’ litigation ac-
13 tivities, the United States Supreme Court held in
14 Heintz v. Jenkins, 514 U.S. 291 (1995), that attor-
15 neys could be subject to the Act even when they are
16 engaged in litigation activities. As a result, many at-
17 torneys now are routinely sued for litigation activi-
18 ties in State court that are alleged to be technical
19 violations of the Act, even when consumers suffer no
20 harm.

21 (7) In each of its annual reports to Congress on
22 the Fair Debt Collection Practices Act from 1998
23 through 2006, the Federal Trade Commission for-
24 mally recommended that Congress reexamine and
25 amend the definition of “debt collector” in the Act

1 to exempt “attorneys who pursue debtors solely
2 through litigation (or similar ‘legal’ practices).”

3 (8) In recent years, the Consumer Financial
4 Protection Bureau has also aggressively sought to
5 regulate attorneys’ collection activities, including
6 their litigation activities, despite the broad practice
7 of law exclusion in section 1027(e) of the Consumer
8 Financial Protection Act. The Bureau’s aggressive
9 actions could also lead to other Federal agencies
10 adopting rules or practices regulating attorneys’ liti-
11 gation activities in other types of court cases.

12 (9) These developments have undermined State
13 and Federal courts’ primary and inherent authority
14 to regulate and oversee attorneys engaged in the
15 practice of law by creating multiple conflicting sets
16 of rules and standards for attorneys, resulting in un-
17 fair lawsuits against attorneys pursuing valid legal
18 claims for clients in court, increased attorney mal-
19 practice insurance rates, difficulty in obtaining legal
20 representation, and reduced access to justice.

21 (10) On January 26, 2011, the Conference of
22 Chief Justices adopted Resolution 1 (“In Support of
23 Preserving Traditional State Court Regulation of
24 Lawyers and Opposing Expanded Federal Agency
25 Regulation of Lawyers and the Practice of Law”),

1 affirming that primary regulation and oversight of
2 attorneys and the legal profession should continue to
3 be vested in the State courts, not Federal agencies
4 or Congress, and that the courts are in the best po-
5 sition to fulfill that important function. The Resolu-
6 tion also expressed support for Congress and Fed-
7 eral agencies' decisions to include broad practice of
8 law exclusions in certain Federal statutes and agen-
9 cy rules, and opposition to Federal legislation or
10 rules intended to establish or expand the Federal
11 regulatory jurisdiction of attorneys engaged in the
12 practice of law.

13 (11) While the activities constituting the prac-
14 tice of law are determined by the State in which an
15 attorney is licensed or admitted to practice, litiga-
16 tion activities in connection with a legal action in
17 State or Federal court are considered to be part of
18 the practice of law in every State.

19 (12) To protect and restore State and Federal
20 courts' primary and inherent authority to regulate
21 and oversee attorneys and the legal profession, Fed-
22 eral legislation is needed to clarify that—

23 (A) attorneys engaged in litigation should
24 be regulated and disciplined exclusively by State
25 supreme courts, their attorney disciplinary

1 agencies, and other State and Federal courts of
2 competent jurisdiction;

3 (B) Federal agencies shall have no regu-
4 latory authority over litigation activities of at-
5 torneys; and

6 (C) no party in a legal action shall have a
7 Federal private right of action against the op-
8 posing attorney for the attorney's litigation ac-
9 tivities.

10 (13) On February 5, 2020, the Conference of
11 Chief Justices also adopted a second Resolution 1,
12 entitled “In Support of Preserving the Courts’ Au-
13 thority to Regulate and Oversee Lawyers Engaged
14 in Litigation and Opposing Federal Agency Regula-
15 tion of Lawyers’ Litigation Activities”, which ex-
16 pressed support for Federal legislation that would
17 implement the three proposed reforms described in
18 paragraph (12).

19 (14) On April 12, 2023, the Consumer Finan-
20 cial Protection Bureau published its Statement of
21 Policy Regarding Prohibition on Abusive Acts or
22 Practices that explains its interpretation of those
23 prohibitions contained in the Consumer Financial
24 Protection Act of 2010 and the actions that pro-
25 viders of consumer financial products or services, in-

1 including attorneys engaged in debt collection, must
2 take or avoid in order to comply with the Act. How-
3 ever, by requiring attorneys representing creditors in
4 debt collection litigation to act in the interests of
5 consumers instead of the interests of their own cli-
6 ents, and by requiring attorneys to take other steps
7 inconsistent with their ethical duties, the Consumer
8 Financial Protection Bureau Statement of Policy di-
9 rectly conflicts with the courts' well-established at-
10 torney rules of professional conduct, attorney dis-
11 ciplinary rules, and litigation procedural rules, thus
12 further undermining the courts' primary and inher-
13 ent authority to regulate and oversee attorneys en-
14 gaged in the practice of law.

15 **SEC. 3. COURT AUTHORITY OVER ATTORNEYS ENGAGED IN**
16 **LITIGATION ACTIVITIES.**

17 (a) IN GENERAL.—Chapter 99 of title 28, United
18 States Code, is amended by inserting after section 1631
19 the following:

20 **“§ 1632. Preservation of State and Federal courts’ pri-**
21 **mary and inherent authority to regulate**
22 **and oversee attorneys engaged in litiga-**
23 **tion activities**

24 “(a) DEFINITIONS.—In this section:

1 “(1) FEDERAL AGENCY.—The term ‘Federal
2 agency’ means an agency as defined in section
3 551(1) of title 5.

4 “(2) LITIGATION ACTIVITIES.—The term ‘litiga-
5 tion activities’ means any actions by a licensed attor-
6 ney or a law firm in connection with a legal action
7 in a court of law on behalf of a client, including—

8 “(A) serving, filing, or conveying formal
9 legal pleadings, discovery requests, or other
10 documents pursuant to the applicable statute or
11 rules of civil procedure;

12 “(B) communicating in, or at the direction
13 of, a court of law (including in depositions or
14 settlement conferences) or in the enforcement of
15 a judgment; and

16 “(C) any other activities engaged in as
17 part of the practice of law, under the laws of
18 a State in which the attorney is licensed or ad-
19 mitted to practice, that relate to the legal ac-
20 tion.

21 “(3) STATE.—The term ‘State’ means the 50
22 States, the District of Columbia, the Commonwealth
23 of Puerto Rico, the Commonwealth of the Northern
24 Mariana Islands, American Samoa, Guam, and the
25 United States Virgin Islands.

1 “(b) LIMITATION ON FEDERAL AGENCY AUTHOR-
2 ITY.—Notwithstanding any other provision of law, a Fed-
3 eral agency does not have any supervisory, enforcement,
4 or regulatory authority over litigation activities of attor-
5 neys or law firms.

6 “(c) NO PRIVATE RIGHT OF ACTION.—Notwith-
7 standing any other provision of law, a person may not
8 bring a civil action in a court of the United States seeking
9 relief for harm arising out of alleged misconduct related
10 to the litigation activities of an opposing attorney or law
11 firm.”.

12 (b) CLERICAL AMENDMENT.—The table of sections
13 for chapter 99 of title 28, United States Code, is amended
14 by inserting after the item related to section 1631 the fol-
15 lowing:

 “1632. Preservation of State and Federal courts’ primary and inherent author-
 ity to regulate and oversee attorneys engaged in litigation ac-
 tivities.”.

16 **SEC. 4. CONFORMING AMENDMENTS.**

17 (a) FAIR DEBT COLLECTION PRACTICES ACT.—Sec-
18 tion 803(6) of the Fair Debt Collection Practices Act (15
19 U.S.C. 1692a(6)) is amended—

20 (1) by redesignating subparagraph (F) as sub-
21 paragraph (G); and

22 (2) by inserting after subparagraph (E) the fol-
23 lowing:

1 “(F) any licensed attorney or any law firm,
2 to the extent that such attorney or firm is en-
3 gaged in litigation activities (as such term is
4 defined in section 1632 of title 28, United
5 States Code) to collect a debt on behalf of a cli-
6 ent; and”.

7 (b) CONSUMER FINANCIAL PROTECTION ACT OF
8 2010.—Section 1027(e) of the Consumer Financial Pro-
9 tection Act of 2010 (12 U.S.C. 5517(e)) is amended—

10 (1) by redesignating paragraph (3) as para-
11 graph (4); and

12 (2) by inserting after paragraph (2) the fol-
13 lowing:

14 “(3) RULE OF CONSTRUCTION LIMITATION
15 WITH RESPECT TO DEBT COLLECTION.—Paragraph
16 (2) shall not apply to a licensed attorney engaging
17 in litigation activities to collect a debt on behalf of
18 a client if the attorney is excluded from the term
19 ‘debt collector’ under section 803 of the Fair Debt
20 Collection Practices Act by reason of section
21 803(6)(F) of such Act.”.

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