

117TH CONGRESS
2D SESSION

H. R. 9393

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

DECEMBER 1, 2022

Mr. MOONEY 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 2022”.

4 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

5 (a) FINDINGS.—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-

neys engaged in the practice of law from the Consumer Financial Protection Bureau's regulatory and enforcement authority, while the Fair Debt Collection Practices Act of 1977 originally contained a complete exemption for attorneys engaged in the practice of law.

(6) Although Congress removed the complete attorney exemption from the Fair Debt Collection Practices Act in 1986 based in part on its belief that the revised Act would only apply to attorneys' non-litigation collection activities and that State courts would continue to regulate attorneys' litigation activities, the United States Supreme Court held in *Heintz v. Jenkins*, 514 U.S. 291 (1995), that attorneys could be subject to the Act even when they are engaged in litigation activities. As a result, many attorneys now are routinely sued for litigation activities in State court that are alleged to be technical violations of the Act, even when consumers suffer no harm.

(7) In each of its annual reports to Congress on the Fair Debt Collection Practices Act from 1998 through 2006, the Federal Trade Commission formally recommended that Congress reexamine and 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 (b) SENSE OF CONGRESS.—It is the sense of Con-
20 gress that attorneys engaged in litigation activities should
21 be regulated and disciplined exclusively by the courts and
22 other authorities of the State in which the attorney is li-
23 censed or admitted to practice, attorney disciplinary agen-
24 cies overseen by those courts, and other State and Federal
25 courts of competent jurisdiction pursuant to the applicable

1 statutes, rules of civil procedure, and rules of professional
2 conduct and disciplinary procedure duly adopted in those
3 jurisdictions.

4 **SEC. 3. COURT AUTHORITY OVER ATTORNEYS ENGAGED IN**
5 **LITIGATION ACTIVITIES.**

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

9 **“§ 1632. Preservation of State and Federal courts’ pri-**
10 **mary and inherent authority to regulate**
11 **and oversee attorneys engaged in litiga-**
12 **tion activities**

13 “(a) DEFINITIONS.—In this section:

14 “(1) FEDERAL AGENCY.—The term ‘Federal
15 agency’ means an agency as defined in section
16 551(1) of title 5.

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

21 “(A) serving, filing, or conveying formal
22 legal pleadings, discovery requests, or other
23 documents pursuant to the applicable statute or
24 rules of civil procedure;

1 “(B) communicating in, or at the direction
2 of, a court of law (including in depositions or
3 settlement conferences) or in the enforcement of
4 a judgment; and

5 “(C) any other activities engaged in as
6 part of the practice of law, under the laws of
7 a State in which the attorney is licensed or ad-
8 mitted to practice, that relate to the legal ac-
9 tion.

10 “(3) STATE.—The term ‘State’ means the 50
11 States, the District of Columbia, the Commonwealth
12 of Puerto Rico, the Commonwealth of the Northern
13 Mariana Islands, American Samoa, Guam, and the
14 United States Virgin Islands.

15 “(b) LIMITATION ON FEDERAL AGENCY AUTHOR-
16 ITY.—Notwithstanding any other provision of law, a Fed-
17 eral agency does not have any supervisory, enforcement,
18 or regulatory authority over litigation activities of attor-
19 neys or law firms.

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

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

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

5 **SEC. 4. CONFORMING AMENDMENTS.**

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

9 (1) by redesignating subparagraph (F) as sub-
 10 paragraph (G); and

11 (2) by inserting after subparagraph (E) the fol-
 12 lowing:

13 “(F) any licensed attorney or any law firm,
 14 to the extent that such attorney or firm is en-
 15 gaged in litigation activities (as such term is
 16 defined in section 1632 of title 28, United
 17 States Code) to collect a debt on behalf of a cli-
 18 ent; and”.

19 (b) CONSUMER FINANCIAL PROTECTION ACT OF
 20 2010.—Section 1027(e) of the Consumer Financial Pro-
 21 tection Act of 2010 (12 U.S.C. 5517(e)) is amended—

22 (1) by redesignating paragraph (3) as para-
 23 graph (4); and

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

3 “(3) RULE OF CONSTRUCTION LIMITATION
4 WITH RESPECT TO DEBT COLLECTION.—Paragraph
5 (2) shall not apply to a licensed attorney engaging
6 in litigation activities to collect a debt on behalf of
7 a client if the attorney is excluded from the term
8 ‘debt collector’ under section 803 of the Fair Debt
9 Collection Practices Act by reason of section
10 803(6)(F) of such Act.”.

○