

March 8, 2017

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

We write to express our support for H.R. 985, the Fairness in Class Action Litigation Act of 2017 (FICALA). H.R. 985 is designed to restore equity to our nation's litigation system by addressing multiple problems with overbroad and procedurally abusive class action proceedings. Several provisions of H.R. 985 will assist in providing partial relief for a particularly problematic area of class action litigation—the Telephone Consumer Protection Act (TCPA).

At its core, the TCPA is a consumer protection statute aimed at protecting consumers' privacy by restricting telemarketing calls, junk faxes and the use of automated telephone equipment. It allows consumers to sue companies for statutory damages of \$500-\$1,500 (depending on if the violation was willful) for each prerecorded call, specified autodialed call and unsolicited facsimile they did not consent to receive. At the time the TCPA was created, its sponsor, Senator Ernest "Fritz" Hollings (D-SC), explained that the law was intended to facilitate actions in state small claims courts. Unfortunately, today's TCPA cases are anything but small.

Trial lawyers have used the law to file large class action lawsuits. The defendants in these cases are no longer just abusive telemarketers; they are small and large businesses, forced to choose between settling the case or spending significant money defending an action where the alleged statutory damages may be in the millions or billions of dollars. Further, many of these companies are being sued for reasons outside of their control, such as dialing a number provided by a customer that was later reassigned to another party or because an unaffiliated third party mentioned their products via phone call or text in an advertisement sent to consumers. Several individuals have even started their own TCPA litigation "businesses," purchasing cell phone numbers from deprived areas and waiting for calls to the newly-reassigned phone numbers so they can file class action lawsuits.

This "gotcha game" does not even benefit the allegedly aggrieved class members who receive the communications. A 2014 study found that, on average, consumers received only \$4.12 from a TCPA settlement, while the plaintiffs' attorneys received \$2.4 million. This disparity has not gone unnoticed by the plaintiffs' bar, as the number of TCPA lawsuits filed around the country last year hit an all-time high at 4,860—with a 1,272 percent increase in TCPA case filings since 2010.

FICALA would help address problematic TCPA litigation in several ways. H.R. 985 would ensure class members can be identified and plaintiff's lawyers would have to demonstrate payment was actually delivered to a substantial majority of the class. Additionally, FICALA would help courts and eliminate the problems with overbroad classes that include persons who sustained injuries different from the representative plaintiff by establishing a consistent "type and scope of injury" rule for class membership.

H.R. 985 will help restore necessary balance to the judicial system in general and TCPA litigation specifically. We urge you to vote in favor of H.R. 985 and to oppose any weakening or hostile amendments.

Sincerely,

ACA International  
American Association of Healthcare Administrative Management  
American Financial Services Association  
American Insurance Association  
Consumer Mortgage Coalition  
Electronic Transactions Association  
Financial Services Roundtable  
National Association of Chain Drug Stores  
National Association of Mutual Insurance Companies  
News Media Alliance  
Professional Association for Customer Engagement  
Retail Industry Leaders Association  
U.S. Chamber of Commerce  
U.S. Chamber Institute for Legal Reform