

Consumer Law Community to Convene for 30th CRLC This Fall

Join Hundreds of Colleagues for Dozens of Substantive Sessions & Networking in Seattle

After more than two years apart, NCLC is thrilled to announce that the 2022 Consumer Rights Litigation Conference (CRLC) and Class Action Symposium will be held in-person this November 10-13, in Seattle, Washington.

This year marks the 30th anniversary of the CRLC, which has grown into the largest and most comprehensive educational conference for consumer attorneys in the nation. Since the first conference in 1992, tens of thousands of attendees have been trained by the leading attorneys and experts in their fields on the best strategies and latest developments in substantive consumer law.

The CRLC has helped many novice attorneys get started in consumer law, and helped more experienced practitioners take their advocacy to the next level.

“I have been attending the CRLC for more than 20 years,” said Justin Baxter, founding partner of Baxter & Baxter, LLP and founding board member of the non-profit Oregon Consumer Justice. “When I was a young lawyer, the opportunity to engage with experienced attorneys who had litigated consumer cases for decades gave me the knowledge and

confidence to file my own cases. Now, two decades on, I look forward to seeing friends and colleagues every year, and also to getting updated on changes in the law and litigation. The value of the panels, the networking, and the community building is unparalleled in our field.”

“I can’t imagine practicing consumer law without NCLC’s treasure trove of guidance and thought leadership,” said John Roddy, partner at Bailey Glasser LLP. “The CRLC distills the encyclopedic information of the treatises into discrete and

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Unfinished Business: An Equity Agenda for Women, Workers, and Consumers of Color

By Odette Williamson, NCLC Staff Attorney and Director of NCLC’s Racial Justice and Equal Economic Opportunity Project



President Biden’s nomination of Ketanji Brown Jackson to serve as an associate justice on the U.S. Supreme Court represents a historic milestone in our nation’s history. As the first Black woman on the nation’s highest court, Judge Jackson joins Vice President Kamala Harris and other senior leaders in the federal government as powerful symbols of hope and progress for Black women.

Yet, despite the advancement of Judge Jackson and her peers, economic progress and social mobility have stalled for many Black women and their families. Women have borne a disproportionate share of job loss, wage decreases, and caregiving duties during the pandemic, and the economic recovery has bypassed many Black women and their families.

The U.S. unemployment rate declined steadily last year but remains persistently high for Black workers, particularly women. Other signs of continuing economic distress are evident among Black women and their peers: for instance, over 30% of Black women and nearly one in five Latinas (19.6%) were behind on rent at last count, despite the existence of Emergency Rental Assistance programs, and Black women, along with Asian women and Latinas, were more likely to fall behind on rent or mortgage payments last year than white men. Many women have used their Child Tax Credit (CTC) payments to pay down debt and to pay for basic essentials, like food, during the pandemic.

Systemic racism and sexism in employment, housing, and financial services have long stymied the economic advancement

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PAGES 4-5: New NCLC Reports

Consumer Impact

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A Note from the Executive Director

Dear friends and supporters,

The key word is right there in NCLC's tagline: fighting *together* for economic justice.

Being together — learning from one another, brainstorming, strategizing, sharing best practices, and even just providing moral support — is invaluable when you're a group of underdogs taking on some of the most powerful players in our economy: auto dealers, big banks, credit reporting agencies, debt collectors, financial services companies, predatory lenders, robocall telemarketers, and many more.

Togetherness is essential, but it has been hard to come by in the last two years, to the detriment of us all, individually and collectively. That's why I'm thrilled to report that 2022 is the year that our community is — finally — coming back together!

By the time this issue of *Consumer Impact* arrives in your mailbox, two in-person conferences will have already been completed: NCLC's Fair Debt Collections Conference in Orlando this April, and NACA's Spring Training in Phoenix earlier this month. Two more in-person NCLC conferences are planned for this year: the **Mortgage Conference from June 23-24 in St. Louis**, and then the return of the largest annual in-person gathering of the consumer law community, with learning and strategy sessions in every major area of consumer law: the **Consumer Rights Litigation Conference (CRLC) and Class Action Symposium, from November 10-13 in Seattle**.

Since our last in-person gathering in the fall of 2019, much has changed in the field of consumer law. Significant judicial and legislative developments have impacted the way practitioners can and should handle issues including standing and litigation strategy. Our conferences provide an important space where consumer attorneys and advocates can gather to learn from each other and share ideas about ways to approach difficult consumer law issues and the myriad other challenges faced by practitioners every day. If we haven't already reconnected, I very much hope to see you at one of our upcoming conferences!

In addition to conference coverage, in this edition of *Consumer Impact* you'll learn more about important recent developments in consumer law, including significant victories on overdraft fees, the protection of the Child Tax Credit (CTC) for low-income families, and interest rate caps combatting predatory lending. We'll also let you know about positive new developments at NCLC, including two new additions to our staff, updates in our Digital Library, and a plethora of new, essential NCLC reports on issues including the disparate impact of medical debt, credit repair abuses, criminal justice debt, rental debt as a barrier to housing, the use of alternative data in credit reporting, and more.

NCLC has continued firing on all cylinders throughout the pandemic, and I join our whole staff in saying that we look forward to talking with you about these and many other developments in person — or, if you can't make it to either of our upcoming conferences, through our listservs and other communication channels. Whether we're connecting virtually or in person, there's just no substitute for fighting for economic justice *together*.

With best wishes,



Rich Dubois
Executive Director

Executive Director
Rich Dubois



The Push to Reform Overdraft Fees

NCLC Advocates for Industry-Wide Changes in Abusive Overdraft Policies

An increasing number of major banks are reforming or entirely eliminating their use of overdraft and non-sufficient funds (NSF) fees, marking an encouraging trend for working families.

Overdraft services frequently function as a high-cost form of credit targeted at low- and moderate-income people, reaching or exceeding the cost of a triple-digit payday loan. These fees often hit vulnerable consumers hardest, pushing many struggling people and families out of the banking system altogether. The Consumer Financial Protection Bureau (CFPB) in 2017 found that overdrafters tend to have low end-of-day balances, low or moderate credit scores, and low or moderate monthly deposits – and that the 9% of consumer accounts that pay 10 or more overdrafts per year make up an astounding 79% of all overdraft revenue.

Many of the biggest banks have relied on revenue from these abusive fees. According to the CFPB, banks in 2019 received two-thirds of their reported fee revenue – approximately \$15.47 billion – from overdraft fees. Three institutions collected 44% of this total: Bank of America, Wells Fargo, and JPMorgan Chase.

NCLC proudly contributed to recent industry-wide reforms directed at better protecting vulnerable consumers from overdraft abuses. Last December, Capital One Bank announced that it would eliminate overdraft and NSF fees, recognizing **NCLC Associate Director Lauren Saunders** as a key voice for this reform on Capital One's Community Advisory Council. Five major banks, including Bank of America and Wells Fargo, announced reforms the following January – which, The Pew Charitable Trusts estimates, could save consumers over \$2 billion annually. In total, the CFPB has found that over half of the top 20 banks for overdraft revenue have committed to reforming their overdraft practices since last fall.

While these developments represent good progress, NCLC urges other banks who haven't yet done so to follow suit, and has called on Congress and the CFPB to pass strong rules across the industry protecting consumers from abusive overdraft practices, no matter where they bank. ■



“Capital One’s decision to eliminate consumer overdraft and non-sufficient funds fees was years in the making, and NCLC played a critical role in increasing our understanding of how overdraft fees impact working families.”

– Andy Navarrete, Vice President and Head of External Affairs at Capital One

CRLC *continued from page 1*

accessible packets of knowledge I can literally put into practice the following day. Even after 40+ years of practice, I always come away from the CRLC wiser, better prepared, and more inspired.”

The Seattle conference will be the first in-person CRLC since the community gathered in Boston for NCLC's 50th Anniversary Celebration in 2019. In the face of an unprecedented public health crisis, the CRLC and Symposium were transformed into well-attended and well-received virtual convenings for the last two years. But as the nation – and hopefully, the world – continues to heal and recover, our community has made it clear that we are ready to learn, teach, network, and celebrate our collective accomplishments once again – together.

Kristi Kelly of Kelly Guzzo, PLC said, “The field of consumer law is constantly changing, and those of us who practice in this area need to keep up with the changes to keep on challenging corporate wrongdoing. There’s no better way to learn than from each other, and no better place to do that than at the CRLC – so after two years in which COVID has kept us apart, I’m looking forward to this year’s conference more than ever.”

“Attending the CRLC in-person is critical for renewing and invigorating the consumer bar with the sense of community and shared purpose necessary for building vibrant and rewarding consumer practices,” said Michael Donovan, founding member of Donovan Litigation Group, LLC.

“80% of life is showing up.’ We’ve all heard variations of this bromide – but it turns out it is true. We’ve been struggling to survive and succeed on the other 20% (which is Zoom) – but it’s time to show up, and be there, for each other!” said Elizabeth Cabraser, a founding partner of Loeff Cabraser Heimann & Bernstein, LLP.

The world has changed a great deal in these two long years, and consumer law along with it, making it more crucial than ever that advocates have the knowledge, practical skills, and community support to stand up for working people. And we’re ready to do it together. See you in Seattle this November! ■

The High Cost of a Fresh Start

NCLC Report Examines “Court Debt” As a Barrier to Clearing a Criminal Record

Today, about 80 million people in the United States – almost one in three adults – have an arrest or conviction record. For many, this record is not just a part of their past, but a continuing condition that impacts nearly every aspect of their lives. In recent years, most states have provided millions of people with a path to clear their record, but this relief remains out of reach for far too many simply because of monetary barriers – including requirements in many jurisdictions that applicants pay off debt incurred as part of their underlying criminal cases.

NCLC, along with the Collateral Consequences Resource Center (CCRC), has released *The High Cost of a Fresh Start: A State-by-State Analysis of Court Debt as a Bar to Record Clearing*, an in-depth examination of whether outstanding criminal fines, fees, costs, and restitution (collectively known as “court debt”) prevent people from clearing their criminal records, and therefore, from securing a fresh start for themselves and their families. The report analyzes the degree to which court debt is a barrier to record clearing under the laws of each of the 50 states, the District of Columbia, and the federal system.

The report finds that, in all but one jurisdiction, outstanding court debt is a barrier to record clearing in at least some cases – with the burden falling especially heavily on Black and brown communities. The total amount of court debt that a person must pay off can run into the thousands of dollars, even for minor infractions. This debt can include numerous fees levied for everything from booking, to drug testing, to jail “room and board,” to monthly probation, and even representation by a public defender – by definition, a resource available only to those deemed too poor to afford their own representation.

Linking record clearing to payment of court debt creates a perverse cycle. Precisely because a record makes it so much harder to get a job and attain financial stability, having an open record makes it more difficult for a person to pay off their court debt – and therefore, to get their record cleared.



Linking criminal record clearing to payment of court debt creates a perverse cycle.

NCLC urges policymakers across the nation to ensure that:

- Court debt is never a barrier to record clearing;
- Costs related to applying for record clearing, such as filing fees, are never a barrier to record clearing;
- Jurisdictions collect and report data on monetary barriers to record clearing. ■

Read the full report at bit.ly/lp-high-cost-of-a-fresh-start-22

NCLC continues to use our consumer law expertise to advocate for fairness in the criminal justice system. Learn more about NCLC's advocacy on criminal justice debt at nclc.org/issues/criminal-justice.html

NCLC Report Round-Up

NCLC attorneys have been busy engaging with consumer advocates across the country, identifying the most pressing challenges faced by low-income clients, and producing a range of reports and issue briefs to document these problems and propose effective pro-consumer solutions.



- **No Fresh Start: Will States Let Debt Collectors Push Families Into Poverty As Pandemic Protections Expire?** (Nov. 2021): bit.ly/NFS-2021-rpt

- **Assisting Consumers with Rental Debt During COVID-19: Legal Aid and Non-Profit Attorneys Share Their Experiences** (Dec. 2021): bit.ly/covid-rent-debt

- **What States Can Do About Credit Repair Abuses** (Jan. 2022): bit.ly/state-credit-repair-abuses

- **Pay-to-Pay Fees: Twisting the Knife** (Jan. 2022): bit.ly/pay2pay-fees

- **No Silver Bullet: Using Alternative Data for Financial Inclusion and Racial Justice** (Dec. 2021): bit.ly/RJ-alt-data

NCLC reports and issue briefs help advance consumer protections: in its recent advisory opinion on insufficient name-matching procedures, the CFPB cited our *Broken Records Redux* report in its explanation of the ongoing flaws in the background screening industry's practices. We're proud to have played a role in bringing about the CFPB's strong opinion in this case, and will continue using substantive reports like these to identify consumer injustices and fight for economic justice! ■

Racial Disparities in Wealth – and Health

An Investigation of the Impact of Medical Debt on Black Families

The Consumer Financial Protection Bureau (CFPB) reported this spring that an estimated total of \$88 billion in medical bills are listed on consumer credit reports. A truly alarming number of consumers struggle with medical expenses, and the weight of this burden falls most heavily on communities of color.

NCLC has released a new report, *The Racial Health and Wealth Gap: Impact of Medical Debt on Black Families*, examining how the disproportionate burden of medical debt among Black households reflects, and contributes to, longstanding racial disparities – and how policymakers can take meaningful steps to close these gaps by addressing the medical debt crisis.

The report discusses how the legacy of systemic racism in the United States manifests itself in today's significant racial health gap – disparities in healthcare access, quality, and outcomes across racial groups – and a racial wealth gap. These disparities help account for the greater amount of medical debt overall carried by Black families. According to the U.S. Census Bureau, 27.9% of Black households carry medical debt, compared to 17.2% of white non-Hispanic households.

This disproportionate burden of medical debt among Black communities stems from and further widens racial health and wealth gaps. Individuals with medical



NCLC Staff Attorney and report author Berneta Haynes testifying before the U.S. Senate this past March.

debt – often uninsured or under-insured people – are more likely to avoid, delay, or skip necessary medical care. Hospitals and third-party debt collectors are also more likely to aggressively pursue Black families, given the disproportionate amount of medical debt they carry – creating a higher level of undue stress for Black families and often resulting in loss of income and wages, liens on homes, and other long-term financial damage.

Our report calls on policymakers and advocates to address medical debt as

a racial justice issue by centering medical debt in reparations for racial justice, strengthening protections against aggressive debt collection, improving hospital financial assistance, and more.

On March 29th, NCLC Staff Attorney Berneta Haynes, the author of the report, testified before the U.S. Senate Committee on Banking, Housing, and Urban Affairs on the economic impact of growing medical debt in the United States. ■

Read the full report at bit.ly/Rpt-RacialHealth22 and see Berneta Haynes' Senate testimony at bit.ly/med-testimony-3-29-22

Explore NCLC's advocacy for affordable healthcare and fair debt collection at nclc.org/issues/debt-collection.html

Upcoming 2022 Mortgage Conference



As the impacts of the pandemic continue to be felt around the country, this year's Mortgage Conference will focus on providing the tools advocates need to meet the challenges of this moment. This will include discussions of the early implementation of Homeowner Assistance Fund (HAF) programs in the states, federally-backed loss mitigation options, dealing with "zombie" second mortgages, and an array of other hot topics. We are also offering a pre-conference intensive geared towards laying the groundwork for new advocates handling mortgage cases.

Join us June 23rd and 24th in St. Louis, MO for an essential summer program, complete with outdoor breaks & breakfasts to encourage safe gatherings where you can network with your colleagues and enjoy some much needed vitamin D! ■

Thank You!

NCLC relies on the generosity of our supporters to advocate for fairness, to litigate for justice, and to educate, train, and support the consumer law community. Space limitations prohibit us from recognizing every supporter by name, but we are tremendously grateful to *all* who have recently donated to NCLC, including the following individuals and organizations who have made significant gifts in support of our efforts.

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Nicholas Ortiz: Wired to Fight Bullies



Nick Ortiz

Nick Ortiz has been helping consumers for 20 years. Like so many other consumer lawyers, his initial motivation came from wrongdoings he faced personally. “I had a credit card in college and the company engaged in unfair practices and unsavory tactics. I would send money but they wouldn’t cash the check, instead hitting me with late fees and penalties. I became interested in stopping abuses like

those. I don’t like bullies; I experienced it personally and I don’t like it at all. I am basically wired to fight bullies.”

Taking a circuitous route into law – starting a business and traveling widely before law school – Nick decided to fight consumer abuses and started his practice in Cambridge, MA. “I’m not a ‘big firm’ type. I had been offered a position with the third largest firm in Boston, but that’s not what I wanted. I did a fair amount in bankruptcy but then moved into other areas, and my firm now mainly focuses on wage and overtime cases, consumer protection, and class action litigation involving privacy, debt collection, and credit reporting violations. Recently, we were able to recover \$4 million in a settlement for 3,000 seasonal workers owed overtime at Six Flags, and \$5.6 million cash and \$31 million in debt forgiveness from a major financial services company involved with repossession notice violations for an all-Massachusetts class action case.”

When not fighting for consumers, Nick can be found either playing chess (which he finds very meditative) or traveling. “I started playing chess with my father and friends, then online and over the board in competition. It requires total focus but is relaxing, too. Visiting different places is also important to me. I went to the Amazon and was kayaking on one of the smaller tributaries and came upon this cathedral-like expanse of trees. It was a spiritual place on the river that was not entirely benign. It had this surreal element to it that beckoned you to just lie back and drift into the water to take it all in, which on the Amazon, is not a good thing to do, really.”

Nick and his law partner, Raven Moeslinger, are motivated to fight battles for consumers. “It’s very gratifying to take on that fight for people who normally don’t have a voice. It allows us a grander purpose in life to pursue righteous victories, and NCLC is a big part of that. Stuart Rossman, NCLC’s Director of Litigation, was very helpful to me when I first started out, and repaying that kindness to NCLC is vitally important.”

Nick and his firm are more than “repaying that kindness” by joining NCLC’s *Campaign for the Future* at the Campaign Chancellor level (\$500,000 or more in combined support), to support our efforts to build and strengthen the organization and the consumer law community. NCLC is deeply grateful for Nick’s leadership and support. ■

NCLC received an anonymous donation of \$400,000 earlier this year, and wishes to express our thanks and appreciation to the supporter who made that extraordinarily generous gift, and to the many others who support NCLC anonymously. Your generosity has a profound impact on our work protecting consumers and advancing economic justice. We are deeply grateful for your support.

Campaign for the Future Impact Update

NCLC's Campaign for the Future is a long-term endeavor — designed to build and strengthen NCLC's capacity and the consumer law community **permanently** — but it is already having an impact here and now. These are just a few examples of the Campaign's impact in its first two years:

Next Generation Campaign: In 2020 and 2021, the Campaign for the Future funded **159 conference scholarships** for attorneys in practice for less than five years — enabling young consumer lawyers to learn from the leading experts in their field(s), and benefit from the support, mentoring, and expert assistance they need to succeed.

Legal Aid Partnership Project: In its first two years, the Campaign provided **1,215 conference scholarships** for legal aid attorneys to attend NCLC conferences — improving the quality of their representation of low-income people and families, and allowing strapped legal aid programs to dedicate more resources to those needy clients.

State Advocacy Initiative: The Campaign is enabling NCLC to deepen our engagement in state-level economic justice advocacy in a growing number of states (recently including TX, GA

and CA), partnering with local organizations and advocates on affirmative advocacy for economic and racial justice.



Advancing the Agenda Fund: NCLC's initial investments in this area — made possible by Campaign supporters — have been focused on racial justice and equal economic opportunity, providing critical funding to expand and strengthen our advocacy on issues including homeownership, medical debt, student loans, utilities access and affordability, access to the financial marketplace for Limited English Proficiency (LEP) consumers, and many more.

We are grateful for the support of those who have invested in the Campaign so far to make this impact possible, and to those who will join the Campaign in the years ahead. For more information about the Campaign and its impact, and how you can get involved, contact Paul Laurent at plaurant@nclc.org.



“I am very grateful to those supporting NCLC’s Campaign for the Future. Simply put, the NCLC conferences are the most effective way for legal aid lawyers practicing consumer and housing law, like myself, to strategize and learn from leaders in the field across the country, and the scholarships made possible by the Campaign for the Future are the most effective way to get legal aid practitioners to the conferences.”

— James A. Kowalski, Jr., President and CEO, Jacksonville Area Legal Aid

Cy Pres Awards Advance Justice for Consumers

Nominating NCLC for a *cy pres* award is one of the most effective ways to promote and advance consumer protections. NCLC is always available to provide any information or assistance attorneys need to navigate the *cy pres* nomination process — if you are interested in nominating NCLC, please contact Paul Laurent at plaurant@nclc.org or by calling (617) 542-8010. Thank you to all consumer attorneys who have recommended NCLC as a recipient for *cy pres* awards, including these recent successful nominators:

- | | | | | |
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NCLC Welcomes New Staff Attorneys

The Newest Voices of NCLC



Berneta Haynes joined NCLC in January as a staff attorney focused on issues including energy access and affordability, and medical debt. Before joining NCLC, Berneta served as a senior director at Georgia Watch, a state-based consumer advocacy organization in Atlanta.

“I still remember the many times my mother struggled to keep the lights on.

Growing up in Arkansas, I was aware of how often she had to figure out how to cut corners – putting expenses on her credit card, or buying fewer groceries in a month just to pay the bills. Those were regular occurrences that she tried to shield us from so we didn’t have to worry. But you know when your parents are struggling.

I thought about these experiences years later when I was in law school. I spent one summer working in a legal aid office in Philadelphia, helping clients whose utility service was being

shut off – usually due to issues relating to poverty, or to energy-inefficient housing.

I was working mostly with people who reminded me of my own folks: they were Black and working class, and were forced to find workarounds to survive in a system that really is set up for them to fail. I knew then that I wanted to get to the root of these problems, and these are the types of issues I have the opportunity to work on at NCLC.

I’ve wanted to be a lawyer since I was a little kid, because I know what it’s like to not have any power – and I wanted to make things better for people like the folks I grew up with. Now, I’m working for an organization that gets calls asking for input from the White House and United States Senate.

I’d say that the transition to NCLC is going pretty nicely so far, and I’m excited to see my childhood dreams become a reality.”

–Berneta Haynes, NCLC Staff Attorney

What States Can Do

An NCLC State Advocacy Update

This legislative session, NCLC continues to push for changes in state laws that will protect more of the wages and bank accounts of low-income consumers from seizure for old debts. We are working with allies in states with some of the lowest protections, such as Georgia, as well as in very high-cost states whose wage protections struggle to keep up with increasing costs of living, including California. In addition to being an economic justice issue, debt collection is a racial justice priority, as a shocking 39% of consumers in communities of color have a debt in collection, compared to 24% in white communities.

For those concerned with wage garnishment, bank levy, or other post-judgment debt collection practices in your state, NCLC has resources: from model laws like the Model Family Financial Protection Act and NCLC reports like *No Fresh Start in 2021*, which compares and grades state laws, to monthly meetings where advocates from across the country can share information and strategies that have worked, as well as assistance with campaign materials. NCLC is increasingly active in state advocacy in a wide range of issue areas, including utilities, housing, automobiles, and credit report issues. ■

Those interested in how NCLC can add value to your state work are encouraged to contact staff attorney Michael Best at mbest@nclc.org.



NCLC welcomed **Carla Sanchez-Adams** as a full-time staff attorney in March. Carla works on predatory lending, banking, payments, and fintech issues, ensuring that low-income and other vulnerable consumers are protected from abusive practices and fraud, and have access to safe and fair financial services. Carla was previously a managing attorney with Texas RioGrande Legal Aid, Inc. (TRLA).

“I was born in Brownsville, a Texas border community, and I saw from a young age what many immigrants and low-income people went through there. I knew even then that I wanted to help give back to my community. I wanted to be a human rights lawyer.

I would go on to learn that poverty law is sort of the U.S. equivalent of international human rights law. And it was only while studying for the bar exam one day that I learned what consumer law was, how it could be used to sue bad people who exploit the poor, and get money back into the hands of people who need it.

Since then, I spent almost 13 years as a legal aid attorney, advocating for economic justice and the rights of survivors of domestic violence, sexual assault, and human trafficking – work that is often challenging, but allowed me to directly help people in need.

I will miss directly representing consumers, but high-level policy work is critical because so many big decisions are made without the input of people who know how they affect consumers on the ground. I’m looking forward to continuing to serve my community – just in a slightly different way.”

–Carla Sanchez-Adams, NCLC Staff Attorney

Protecting Consumers from Scam Robocalls

Every month, over 4 billion robocalls are answered by American telephones, approximately 32% of which are scam calls. The harm caused by these scam calls is staggering: according to Truecaller, 59.4 million Americans fell victim to phone scams in 2021, resulting in the theft of an astounding \$29.8 billion.

Many of these calls could be stopped by the gateway provider who accepts these scam robocalls into the American telephone network from overseas, or even by the next downstream provider who processes these calls from the gateway provider. However, these providers profit from every answered call, and so have little incentive to reject these calls, despite the massive harm they inflict on American telephone subscribers.

Through “tracebacks” of illegal calls conducted by the Industry Traceback Group, an arm of USTelecom (a telephone industry trade association), providers are aware of the fraudulent nature of these calls. Yet, many continue transmitting fraudulent robocalls to American telephones, even after multiple warnings.

NCLC and our allies have filed multiple comments with the Federal Communications Commission (FCC), and provided presentations to FCC staff, urging the agency to shut down complicit providers quickly, and to provide better access to traceback information, especially for private litigants.

We’ve also asked the FCC to articulate clearly that prerecorded scam calls that are placed without the called party’s consent are always illegal under the Telephone Consumer Protection Act (TCPA); opposed efforts to allow ringless voicemails without consent; and encouraged the FCC to limit to three per month non-telemarketing pre-recorded calls to residential landlines made without consent. In addition, NCLC is working with lawmakers on legislation to strengthen the TCPA and provide additional protections against scam robocalls. ■

The Time is Now for Overdue Student Loan Reforms

By NCLC Staff Attorneys Abby Shafroth, Kyra Taylor, and Alpha Taylor

Many student loan borrowers and their families are still recovering financially from the pandemic, and record inflation has made it even more difficult for them to pay down debts. Many will struggle to stay afloat when the federal payment pause ends unless more is done to offer relief. We are urging the Biden Administration to provide such relief – including some amount of loan cancellation to all borrowers and critical systemic reforms – before turning payments back on. Over the last few months, NCLC’s student loan team has been in the trenches on the following campaigns:

Restoring the Promise of Income-Driven Repayment (IDR): The first modern IDR programs were created with the promise that federal student loan payments would be affordable and that, through eventual cancellation, student loans wouldn’t be a lifetime burden for low-income borrowers. This promise has been broken. Only 32 borrowers have ever successfully obtained loan cancellation through IDR, and 4.4 million borrowers have been in repayment for multiple decades. Along with the Student Borrower Protection Center (SBPC) and the Center for Responsible Lending (CRL), NCLC has proposed that the Department of Education (ED) institute an IDR Waiver to waive barriers standing between low-income borrowers and the promise of IDR cancellation, and we are working with a diverse coalition to advocate for this much-needed reform.

Automatic Loan Discharges for Defrauded Students: After years of inaction and efforts to prevent defrauded borrowers from obtaining the loan cancellation they were entitled to, ED has finally begun identifying more predatory schools whose former students are eligible for “borrower defense” loan cancellation.

Unfortunately, it is limiting relief to borrowers who apply. While these efforts are a start, they will not reach the most vulnerable borrowers, who often do not know what a borrower defense is or how to apply. We’re advocating for ED to issue automatic group discharges to borrowers who attended predatory schools, rather than putting the burden on borrowers to discharge unlawful debt.

Protecting Crucial Benefits for Families with Debt: Earlier this year, Education Secretary Miguel Cardona committed to protecting the expanded Child Tax Credit (CTC) from seizure via “offset” this year to collect on past-due student debt, after we helped shine a light on this practice. But student loan debt – and debt in general – should never prevent low-income families from receiving the help they need, and we’re calling on Congress and the Biden administration to continue this progress by permanently protecting the CTC and the Earned Income Tax Credit (EITC) – another crucial benefit for working families – from seizure to collect on government debts.

Racial Equity for Student Borrowers: Data shows that Black borrowers are more likely to be targeted by predatory schools, to have to borrow to access college, to struggle with repayment, and to have debt negatively impact their ability to build wealth. Black women are especially harmed by student loan debt: one year after graduating, Black women owe an average of \$41,466 in undergraduate loans, while their white counterparts owe \$33,851 – that’s 20% more. We’ve joined our allies in requesting meetings with the Biden administration on the impact of student debt on Black women, and in hosting webinars highlighting this issue. ■

Visit NCLC’s Student Loan Borrower Assistance Project website at studentloanborrowerassistance.org to get the latest news and advice on student loan issues.

NCLC's Litigation Partnerships

—Stuart Rossman, NCLC Director of Litigation



Class action litigation is a powerful tool to stop abusive business practices that affect millions of consumers. While an individual lawsuit may bring justice for an individual consumer, it is less likely to change the industry's business model and prevent future harm to other individuals. Only by joining together and aggregating their claims can consumers challenge major financial and other institutions on a more level playing field.

Over the last 23 years, NCLC has filed appearances in over 150 cases in federal and state courts at all levels across the country (not including *amicus* briefs). Most have been class actions which we co-counsel with private attorneys, legal services advocates and other public interest organizations. No two cases are identical, but despite their differences, there are some common threads that inform our case selection.

First and foremost, NCLC looks for cases that seek to reform the rules of the marketplace. We prioritize cases that will have a far-reaching impact and can benefit from our unique legal and policy expertise, along with our ability to help bring together a strong litigation team.

The Litigation Project Guidelines posted on our website at nclc.org/litigation/litigation-project-guidelines.html are the guiding principles for our selection of cases and the co-counseling opportunities we pursue. NCLC's Litigation Steering Committee, including advocates with different types of consumer law expertise, meets on a regular basis to review potential new cases for NCLC's consideration. The Committee plays an invaluable role in helping us evaluate the strengths and weaknesses of cases in development, as well as identifying theories and arguments which either should, or should not, be included in our pleadings.

Partnering with outside attorneys in its cases, NCLC has established constitutional due process rights of consumers, especially debtors; expanded standards of deception and unfairness; secured appropriate interpretations of consumer protection laws; caused hundreds of millions of dollars of illegal overcharges to be set aside for the benefit of low-income households; and attacked hidden illicit finance fees discriminating against consumers of color.

We welcome inquiries from attorneys who feel that NCLC's reputation and expert knowledge of consumer law can benefit a class action which meets our guidelines. We can often provide extra value in matters that involve cutting edge, novel issues of law; or, when working with less experienced lawyers, we can provide the levels of skill and experience required to be considered adequate counsel in class actions and other complex litigation.

As a nonprofit organization, we do not have the resources to take on every good and important case – but if you've got a class action case which meets NCLC's guidelines and might benefit from our expertise, we look forward to hearing from you! ■

NCLC Digital Library Updates

This spring, NCLC has published revisions to two critical titles in the Consumer Law Practice Series:

Fair Debt Collection, 2022 Tenth Edition, is now available in digital format on the NCLC Digital Library. *Fair Debt Collection* is the definitive Fair Debt Collection Practices Act (FDCPA) treatise, now completely reorganized, rewritten, and updated, with analysis of CFPB Regulation F, all you need to know about meeting constitutional standing requirements after the Supreme Court's *Ramirez* and *Spokeo* decisions, and much more. The invaluable FDCPA Case Connector provides subscribers with a flexible and searchable database of over 15,000 case summaries.



NCLC's Consumer Law Practice Series has a new look!

Federal Deception Law, 2022 Fourth Edition, is also now available in print and digital format, and covers all essential private remedies for marketplace deception, including two updated chapters on the Telephone Consumer Protection Act (TCPA), the definitive analysis of the Federal Trade Commission's (FTC) Holder Rule and Telemarketing Sales Rule, as well as other important FTC rules establishing key unfair and deceptive acts and practices standards.

The first chapter of both of these exciting new revisions, as well as the other titles in the Consumer Law Practice Series, is available for free on the NCLC Digital Library, where users can also view the table of contents and subscribe.

In addition to these revisions, NCLC's *Consumer Credit Regulation* has just been updated on the NCLC Digital Library, with the latest on regulation of predatory lending; rent-a-bank lending; regulation of novel attempts to evade state usury limits; the application of state credit laws to earned wage access products; and more. The updated text is available to all subscribers. A new appendix in *Consumer Class Actions* also provides a 50-state analysis of state courts' standing doctrines in the wake of the *Ramirez* decision. ■

NCLC has been hard at work getting the Digital Library 2.0 ready to launch on a new and improved platform later this year, making Consumer Law Series subscriptions even more essential for consumer attorneys. Sign up for our mailing list at www.nclc.org/library to stay tuned.

NCLC Responds to Historic Increase in Home Heating Costs

Low-income families struggle to afford home heating costs even in the best of times. With costs skyrocketing following recent international crises, NCLC is advocating for programs and policies to help families afford their utility bills and stay connected to vital electric and gas utility service, and has seen recent progress on the state-level.

In Massachusetts, for example, the cost of filling an average tank of home heating



oil is 80% higher than one year ago – \$600 more than in 2021. NCLC began working with MASSCAP (Massachusetts Association of Community Action Programs) in March on a bill to add \$20 million in state funding (supplementing federal fuel assistance funds the state receives) to address the recent spike in energy prices. The Governor signed the bill into law on April 1. NCLC is also working with community action agencies in Massachusetts and the state’s fuel assistance agency to make it easier for households to apply for aid. As a result, the state has preliminarily agreed to adopt “categorical eligibility,” meaning that a household that has already been found eligible for another income-tested program in the state will often not have to go through the lengthy application process for getting fuel assistance.

In Illinois, NCLC worked with the Illinois Association of Community Action Agencies in 2021 to revise state law to include a requirement that energy assistance, including participation in the Low Income Home Energy Assistance Program (LIHEAP) and the state’s Percentage of Income Payment Plan (PIPP) program, be available to income-eligible persons regardless of

immigration status. The new law also removes barriers that had previously shut down the PIPP program for customers in need of assistance and provides a vehicle for doubling funding for state energy assistance programs over a three-year period. In Spring 2022, NCLC successfully led negotiations with the large Illinois gas and electric utilities to create new consumer protections for customers struggling to afford higher gas and electric bills following the end of the winter utility shutoff moratorium that ended April 1st.

New Illinois law removes barriers for customers in need of assistance and provides a vehicle for doubling funding for state energy assistance programs over a three-year period.

State advocates working on utility access and affordability issues are encouraged to read NCLC’s issue brief on *Protecting Seriously Ill Consumers from Utility Disconnections: What States Can Do to Save Lives Now (Feb 2021)*, which offers recommendations for protecting some of the most vulnerable utility customers during this challenging time. ■

Unfinished Business: An Equity Agenda *continued from page 1*

of Black women and other women of color in the United States. In one of the newest policy briefs from NCLC’s Racial Justice and Equal Economic Opportunity Project, *Unfinished Business: Roadmap for an Equitable Economic Recovery in 2022*, NCLC is calling on the federal government to make the deep structural reforms that are necessary to address racial and gender inequities in the U.S. economy to foster a more inclusive economic recovery. With the CTC and other federal supports expiring, the federal government urgently needs to increase protections for families in danger of foreclosure and

eviction; end punitive debt collection tactics that take money away from families, like the CTC; and provide overdue relief to students through cancellation of a portion of federal student loan debt, among other critical reforms spanning various topics of consumer law.

In the coming months, NCLC advocates will be busy pressing the federal government to adopt these and other proven strategies to protect women and their families. Moreover, advocates will be shining a light on emerging issues. For instance, a new NCLC report, *The*

Racial Health and Wealth Gap: Impact of Medical Debt on Black Families, examines the relationship between the racial health gap and the racial wealth gap, and the harms of aggressive medical debt collection. The report was issued shortly before the credit bureaus took action to change how they report medical debt, which will result in the removal of nearly 70% of medical bills from credit reports.

The Biden-Harris administration has made progress on its equity agenda, but much more needs to be done. NCLC has outlined the path forward, and we look forward to working with Congress and with the Administration to fulfill its promise to advance equity, civil rights, and racial justice. ■

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The nonprofit National Consumer Law Center® (NCLC®) works for economic justice for low-income and other disadvantaged people in the U.S. through policy analysis and advocacy, publications, litigation, and training.

36% Interest Rate Cap Gains Momentum

New Mexico Passes Critical Protection Against Predatory High-Cost Lending

Early this past March, New Mexico's governor signed a measure into law establishing a 36% annual percentage rate (APR) cap for loans up to \$10,000 – lowering the cap from its previous level of 175% APR and raising the covered loan amount from \$5,000. The new law also contains measures to prevent evasions by “rent-a-bank” lenders.

This development is a very positive one for consumers in New Mexico. Predatory lenders often profit from high-cost loans that put struggling individuals and families in a debt trap that make their problems worse by piling on unaffordable payments at exorbitant interest rates. A rate cap of 36% APR, ideally lower for larger loans, prevents grossly unaffordable loans while forcing lenders to engage in more responsible underwriting.

New Mexico's decision to join the growing numbers of states with a strong rate cap of 36% or less on small-dollar loans reflects the growing momentum behind this commonsense consumer protection – which is supported by a majority of Americans across the political spectrum.

NCLC was proud to assist advocates in New Mexico who led the push for this legislation alongside pro-consumer lawmakers.

We urge other states to enact their own 36% caps, and we call on Congress to pass the Veterans and Consumers Fair Credit Act (VCFCA) to extend the 36% cap to every state in the nation. ■

Read more about the critical need for a national 36% cap in our Why 36% report: nclc.org/images/pdf/pr-reports/why36pct.pdf

Until a national 36% cap is passed, many consumers also remain at risk of exploitation through abusive “rent-a-bank” schemes, through which predatory lenders try to circumvent state rate caps. Follow along with our work fighting rent-a-bank schemes at nclc.org/issues/high-cost-small-loans/rent-a-bank.html

