

# Amicus Brief Opposes OCC Charter That Would Aid Predatory Lenders

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WASHINGTON, D.C. – The National Consumer Law Center, Center for Responsible Lending, and the National Community Reinvestment Coalition filed an *amicus* brief in *Lacwell v. Office of the Comptroller of the Currency (OCC)*, in support of the plaintiff, the New York State Department of Financial Services (DFS), against the OCC’s plan to issue “special purpose national bank” charters to nonbank lenders.

In the brief, the group urged the Second Circuit Court of Appeals to uphold the lower court’s decision to block the OCC from issuing nonbank “bank” charters since doing so would allow free reign for predatory lenders to ignore state consumer protection laws, particularly state interest rate caps on lending products.

**According to the group’s *amicus* brief:** “Allowing the OCC to grant national bank charters to nonbank lenders will eviscerate the fundamental power that states have had since the time of the American Revolution—to cap interest rates to protect their residents from predatory lending. ... Predatory lenders will be eager to obtain a national bank charter so that they can charge rates well over 100% APR that are illegal under most state laws. High-cost lenders, often under the “fintech” label, are already trying to exploit banks’ preemptive powers to evade state rate caps by using rent-a-bank schemes. The OCC is not reigning in – and in fact has been defending – predatory lenders that launder their loans through banks. A nonbank charter will make usurious lending even more widespread.”

The brief notes that the nonbank charter is a continuation of efforts by the OCC to support high-cost lenders, including an OCC *amicus* brief in support of World Business Lenders, failure to address predatory lending by WBL abetted by OCC-supervised Axos Bank, and OCC rules (recently challenged by three states) that would aid predatory rent-a-bank schemes such as the one between the payday lender CURO and OCC-supervised Stride Bank.

New York’s DFS led the challenge against the nonbank charter in *Lacwell v. Office of the Comptroller of the Currency* in a federal district court action in the Southern District of New York. In May 2019, the district court ruled against the OCC, set aside the OCC’s nonbank charter, and held that the National Bank Act “unambiguously requires that .... only depository institutions are eligible to receive national bank charters from OCC.”

Under the nonbank charter, predatory lenders would have fewer constraints than true national banks. They also would not be subject to the Community Reinvestment Act, which only applies to national banks that take deposits, creating a higher risk they will offer products that harm the communities where they do business rather than serving these communities with responsible products.

Currently, at least 45 states and the District of Columbia impose interest rate caps on some consumer loans. Among those states that cap rates, the median annual rate including all fees is 38.5% for a \$500, six-month loan; 31% for a \$2000, two-year loan; and 25% for a \$10,000, five-year loan.

The American public strongly supports state interest rate caps. At every opportunity in recent years, voters in a diverse range of states have overwhelmingly (typically by a two-to-one or higher margin) approved rate caps of 36% or less, including in Arizona, Ohio, Montana, South Dakota, and Colorado.