Amicus Briefs

Below are some of the amicus briefs filed by NCLC and our partners on behalf of our low-income clients. In collaboration with national, state, and local organizations and attorney advocates, NCLC provides guidance on a wide range of cases impacting low- to middle-income consumers and their families.

Access to Justice || Civil Rights || Credit Reporting|| || Criminal Justice || Consumer Protection & the CFPB || Debt Collection || Housing || Predatory Lending || Regulatory Enforcement || Student Loans || TCPA

Access to Justice

2020

- **Kauders v. Uber Technologies and Rasier LLC**

NCLC and Public Justice filed an amicus brief urging the Massachusetts Supreme Court to confirm that Massachusetts has just one test for contract formation—whether that contract includes a forum selection clause, an arbitration clause, neither, or (as here) both, and whether the contract was purportedly formed on a computer, using a smartphone, or in the increasingly old-fashioned manner of a signed paper document. Neither Cullinane nor Ajemian applied a heightened notice or reasonableness standard. Rather, they both correctly applied the single unitary standard for forming a contract under Massachusetts law—a standard that Uber's rider registration interface fails to meet.

On Jan. 4, the Massachusetts Supreme Judicial Court issued a major opinion about how contracts get formed online in the case of Kauders v Uber. The Court ruled that the same two-part test—reasonable notice of contract terms and clear manifestation of assent to those terms—governs agreements consummated over computer or mobile device as for any other type of contract. Further, in applying that test to Uber's user interface, the Court made several important observations about consumer behavior and online terms of use. The Court found that Uber's registration process did not form an enforceable contract under Massachusetts law based on lack of notice and overturned the pending order compelling arbitration of the issues presented in the case.

2019

- **China Agritech v. American Pipe & Construction Co. v. Utah**

The Supreme Court held that "the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action." The question presented in this appeal was whether the plaintiffs, whose individual claims were timely as a result of American Pipe tolling also may bring those claims in a subsequent class action on behalf of all class members who also had timely claims under the American Pipe rule. The 9th Circuit said they could. NCLC, in an amicus brief prepared by the Gupta Wessler law firm, joined AAJ in support of the plaintiff's claim and seeking affirmation of the 9th Circuit's ruling.

The Supreme Court ruled, however, that upon denial of class certification, a putative class member may not, in lieu of promptly joining an existing suit or promptly filing an individual action, commence a class action anew beyond the time allowed by the applicable statute of limitations.

- **Franks v. Google**

NCLC filed an amicus brief joined by U.S. PIRG. The issue presented was a challenge by a professional objector and industry-based class action opponent to the approval of a pure cy pres settlement distribution. The agreement negotiated between Google and the consumer class in the underlying breach of privacy case resulted in a more than reasonable damages figure. However, because of the enormous size of the class, it was economically infeasible to distribute the funds to the class members. Therefore, all of the damages were allocated to appropriate non-profit organizations. NCLC's amicus brief focused on cy pres as a vital component for ensuring the enforceability of consumer laws and preserving their deterrent impact.

Based on a suggestion made by the Solicitor General in his submitted amicus brief, and discussed at the oral argument in the case, however, the Supreme Court ultimately decided it should not reach the merits of the appeal because there were substantial questions about whether any of the originally named plaintiffs had standing to sue in light of the standards established in Spokeo. Therefore, the Court never reached the cy pres issue but, rather, vacated the judgment of the Ninth Circuit and remanded the matter for further proceedings on the standing issue.

- **Home Depot v. Jackson**

NCLC submitted an amicus brief prepared by the Lieff Cabraser and Tousely Brain Stephens Law firms. The case raised a narrow, atypical issue: whether a third-party counter-defendant may remove a case to federal court under the Class Action Fairness Act ("CAFA"), notwithstanding that the federal court lacked subject matter jurisdiction over the original parties. The amicus brief provided the Court with representative examples of fact patterns under which a counter-defendant would attempt to remove a case under CAFA, particularly when the target of a state-court debt collection action counterclaims that the underlying debt is invalid under state law. Class action counterclaims arise in debt collection actions to dispute the merits of the debt itself. When one party avails itself of state court in an effort to collect another party's fraudulent debt, we argued that it is not unreasonable to expect the latter to answer the charge that its debt is unlawful in that same forum. We stressed that Home Depot not only sought to change the way removal jurisdiction has worked in a radical manner, but would do so in a way that would impact the ability of consumers to raise meritorious counterclaims in an efficient and fair manner.

The Supreme Court ultimately agreed. It held that a third-party counterclaim defendant may not remove a case to federal court — even if the counterclaim against the defendant is brought as a putative class action that otherwise satisfies the requirements for federal subject matter jurisdiction under CAFA. In context, the Court stated, the term "defendant," as used in 28 U.S.C. § 1441(a), means the defendant sued in the original complaint. The majority held that Section 1441(a) refers to the removal of a "civil action" and that the "civil action" subject to removal is the action "defined by the plaintiff's complaint," not a counterclaim later filed in that action. The only "defendant" entitled to remove, the Court thus concluded, is the defendant named in the original complaint. The majority also determined that construing the term "defendant" to have different meanings for purposes of Section 1441 and CAFA would render the provisions "incoherent."

2010

- **AT&T Mobility L.L.C. v. Concepcion**

NCLC joined a dozen other advocacy organizations in a brief by the Legal Aid Society of the District of Columbia and NACA arguing that the Federal Arbitration Act does not prevent state contract law from invalidating as unconscionable a contract providing that a consumer entering into the contract has waived her right to a class action against the phone company.

The Supreme Court on April 27, in a highly anticipated decision in Concepcion sharply limited consumer class actions. The court ruled that the Federal Arbitration Act (FAA) preempts the "Discover Bank" rule, finding unconscionable a contractual clause banning class relief. The Court limited FAA language that an arbitration agreement can be struck down "upon such grounds as exist at law or in equity for the revocation of any contract." The Discover Bank rule prohibited bans on class-wide relief found in consumer adhesion contracts where damages are small and where the party with superior bargaining power deliberately cheats large numbers of consumers out of individually small sums of money. Since this rule applies to bans on class relief both in court and arbitration, it is grounds for "the revocation of any contract." The majority still struck it down as inconsistent with the FAA. The majority found that it was fundamental to arbitration that it be streamlined and expeditious. The Discover Bank rule, by forcing class arbitration on an unwilling party, negates the FAA requirement that arbitration agreements be enforceable as written. Class arbitration is inconsistent with FAA arbitration because it greatly increases the risks to defendants, requires arbitrators to make class certification judgments, and is slower, more costly and more likely to generate procedural issues.

- **Wal-Mart Stores v. Dukes**

NCLC joined in an amicus brief with the Consumers Union of the United States, Inc. and Center for Constitutional Rights. Although the case primarily concerns issues of employer wage discrimination against female employees, its implications for other class actions is enormous. The brief argues that Wal-Mart Stores, Inc. ("Wal-Mart") was mistaken that a defendant has the right to individual hearings to determine the monetary relief owed by its discriminatory policies. This position would gut the class-action mechanism along with its intended efficiencies. Wal-Mart disregards widely approved techniques used to calculate monetary relief in class suits generally, and in employment-discrimination class actions specifically. Second, the employees' experts on discrimination satisfied the requirements for expert testimony.

The Supreme Court found (9 to 0) that classes certified under Fed. R. Civ.P. 23(b)(2) cannot include claims for individualized monetary relief—in this case, backpay—at least where the monetary relief is not incidental to injunctive or declaratory relief. Instead, the class should proceed under Rule 23(b)(3) that contains additional requirements. The case's other ruling (5-4 with the usual five conservative justices in the majority) found insufficient commonality where the class alleged that thousands of Wal-Mart managers pursuant to a corporate culture had each discriminated against 1.5 million female employees. While the decision contains broad and troubling language about commonality, the unusually ambitious nature of the claims should limit the holding's applicability regarding many consumer class actions.

- **Jackson v Rent A Center, Inc.**

NCLC and Consumer Action joined in an amicus urging the Supreme Court to affirm the 9th Circuit's decision and hold that unconscionability is a question for a court, rather than the arbitrator, to decide because judicial review of unconscionability challenges to arbitration clauses is necessary to maintain the fairness and integrity of arbitration proceedings.

Civil Rights

2019

- **Bostock v. Clayton County**

NCLC, with 56 other civil rights organizations, joined an amicus brief prepared by The Lawyers' Committee for Civil Rights Under Law and The Leadership Conference on Civil and Human Rights, filed in a trio of cases before the Supreme Court. These combined cases, which the Court will consider next term, examine whether employment discrimination on the basis of sexual orientation and gender identity are covered under Title VII of the Civil Rights Act of 1964. The brief argues that outlawing job discrimination based on LGBTQ status is fully consistent with Title VII's long history of anti-discrimination achievements, as well as the statutory text that has made those successes possible. Furthermore, if Title VII does not bar LGBTQ discrimination, that will leave many LGBTQ people of color vulnerable to workplace discrimination – an outcome contrary to Congress' paramount goal of ensuring equal access to employment opportunities for minorities. Since there are nearly two million LGBTQ people of color in America's workforce, they are far more likely to suffer discrimination than their white counterparts. We argue, therefore, if Title VII is not construed according to its plain text so that it covers LGBTQ discrimination, such discrimination would go unchecked by federal law, and biased employers would have a convenient pretext for discriminating against LGBTQ persons of color. It is thus impossible to carve out LGBTQ discrimination from Title VII's ambit without inflicting severe harm on countless employees of color.

- **State of New York v. U.S. Department of Commerce**

NCLC joined with over 150 civil rights, grassroots, advocacy, labor, legal services groups in an amicus drafted by the Leadership Conference on Civil and Human Rights, The Leadership Conference Education Fund, Muslim Advocates, National Coalition on Black Civic Participation, National Association of Latino Elected and Appointed Officials and Wilmer Cutler Pickering Hale and Dorr LLP.

The case involved a challenge by numerous states, local governments, and non-governmental organizations to the Secretary of Commerce's announcement to add a citizenship question to the 2020 census over the strenuous objection of the Census Bureau. The stakes are high and long-lasting as the decennial census endeavors to count every person residing in the US, regardless of citizenship status. The count is used to apportion political power at all levels of government, allocate $800 billion annually in federal funds, and affect policy and investment decisions by government and non-government entities. The addition of a citizenship question threatened to undermine the integrity of the population count by depressing the count for those who fear the government will use the information against them, in particular noncitizens and immigrant communities of color. The amicus brief challenged the defendants' premise that the citizenship question has been a part of the modern census, as the question hasn't been a part of the census since 1950 (before the passage of the Voting Rights Act). The amicus also argued that the plaintiffs had standing because the citizenship question would lead to an undercounting which would result in a loss of federal funding. Finally, the amicus challenged the defendants' assertion that the citizenship question was necessary to enforce the Voting Rights Act.

The Supreme Court upheld that the Enumeration clause allows for a citizenship question to be added to the Census, but stated that the decision to add this question is a reviewable action under the Administrative Procedure Act (APA). The Supreme Court also agreed that the explanation provided by the Commerce Department for the question was insufficient. The majority wrote that under the APA, it was expected that the Commerce Department would "offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public", but that the reason provided by the Commerce Department appeared to have been contrived and was pretextual. The Supreme Court, therefore, affirmed the District Court's injunction prohibiting the addition of the citizenship question until the Commerce Department is able to provide a satisfactory explanation for such an action.

- **Comcast v. NAAAOM**

NCLC joined 20 other national civil rights organizations in an amicus brief filed by the Lawyers Committee for Civil Rights Under Law with the United States Supreme Court. The case concerns the issue of whether a claim of race discrimination under 42 U.S.C. § 1981, a historic and critical civil rights law, fails in the absence of but-for causation. The brief seeks to detail how the application of a but-for analysis to claims brought under section 1981 could hinder access to the protections guaranteed by the statute and argues that the application of a but-for standard to establish claims of intentional race discrimination would be inconsistent with the statute's text, history, and purpose.

2017

- **Bank of America v. City of Miami**

NCLC joined an amicus brief prepared by the Cohen Milstein law firm and also signed by the Lawyers Committee for Civil Rights, NFHA, ACLU, the Poverty & Race Research Action Council, the Leadership Conference on Civil Rights and the Impact Fund, supporting the standing of the City of Miami to assert discrimination claims against BOA and Wells Fargo under the FHA. The brief argued that standing under the FHA extends to municipalities not directly targeted by discrimination. Noting that racially discriminatory lending practices are a major cause of this country's residential segregation, we asserted that the FHA was designed to address the systemic problems associated with such segregation and permits cities to seek redress for injuries caused by discriminatory practices.

The Supreme Court ruled that the city's claimed injuries fall within the zone of interests that the FHA arguably protects," and, therefore, "the city is an 'aggrieved person' able to bring suit under the statute." The Court sent the case back to the 11th Circuit Court of Appeals after it "declined to decide whether the city had asserted a direct enough connection between the banks' actions and the harm it claimed."

Credit Reporting

2020

- Consumer Data Industry Association v. Frey, in his capacity as Acting Attorney General of the State of Maine

NCLC's amicus brief was joined by Maine Equal Justice in support of the State of Maine. The brief argues the Fair Credit Reporting Act's (FCRA) text and structure, as well as its legislative history, clearly indicate that Congress did not intend to enact a sweeping prohibition against all state regulation of the contents of a consumer report. The policies underlying Maine's Economic Abuse and Medical Debt Provisions are consistent with the goals of the FCRA, including accurate consumer reporting, and supplement already-existing provisions of federal law or codify existing practices agreed to by the credit reporting industry. Maine passed the Economic Abuse Provision to alleviate the damage to credit caused by economic abuse. It does not contradict the FCRA, but rather supplements and streamlines procedures already available to survivors of economic abuse. Because Maine law now also prohibits collection of debts caused by economic abuse, prohibiting the reporting of these debts reflects the credit status of survivors more accurately. The net effect is the removal of negative credit information when medical debt has been paid or settled in full and the appearance of positive credit data when medical debt is in repayment. These changes will in turn lead to higher credit scores that accurately reflect the financial status of a consumer.

- Ramirez v. Transunion

The FCRA provides three core rights that allow consumers to ensure that information contained in consumer reports is accurate: (1) a consumer must be informed when a consumer report is used against them; (2) a consumer must be allowed to see what information their file contains; and (3) consumers have the right to dispute inaccurate information. These three rights work together, and when a consumer reporting agency (CRA) disregards one of these rights and fails to provide the consumer the required notice detailing their rights, like TransUnion did here, the system designed by Congress breaks down. Under the FCRA, it is not enough to simply make the disclosure of the consumer's file. The disclosure must be clear and understandable to the consumer in order to allow them to determine the accuracy of the information. TransUnion's failure to comply with Section 1681g(a) and Section 1681g(c) was not merely procedural or technical. Rather, this failure harmed consumers' concrete interests in knowing what is being reported about them and how to correct erroneous information.

Criminal Justice

2021

- **BBBB Bonding Corporation v. Caldwell**

NCLC joined Public Counsel, Community Legal Services in East Palo Alto, the Debt Collective, Public Law Center, Watsonville Law Center, and East Bay Community Law Center in submitting an amicus brief to the California Court of Appeal in support of the respondents. The case concerns a bail bond company's violation of the California requirement to notify co-signers—typically friends and families of the arrested person in this context—of their obligations when entering into a consumer credit contract. The amicus brief, which asks the California Court of Appeal to affirm the trial court's preliminary injunction, (1) outlines the consumer protection framework that contains the co-signer notice requirement, (2) highlights the importance of that statutory requirement for consumers, particularly in credit bail transactions and particularly for vulnerable communities of color, and (3) demonstrates how the bail bond company's arguments that the credit bail business should be exempt from consumer protection laws that govern all consumer credit transactions in California would vitiate the law.

2020

- **Scholl v. Mnuchin**

NCLC joined a number of other national and California-based organizations in submitting an amicus brief to the U.S. District Court for the Northern District of California in support of the plaintiffs' motion for preliminary injunction. The lawsuit challenged the Trump administration's withholding of CARES Act economic stimulus payments from incarcerated people. The amicus brief argued that, because the COVID-19 pandemic and incarceration are disproportionately affecting the same economically vulnerable Black and Brown communities that have faced historical barriers to employment, safe working conditions, and the ability to build emergency savings, withholding the much-needed resources provided by the CARES Act would intensify preexisting inequities and cause irreparable harm to incarcerated people and their communities. The brief also explained how the costs of incarceration, including the cost of jail and prison phone calls, contribute to the financial precarity of incarcerated people and strip resources from communities of color and emphasized that criminal system-involved people are burdened by enormous financial costs including fines, restitution, debt from cash bail, and probation fees.

The district court ultimately granted the plaintiffs' motion for preliminary injunction. In support of its holding that the plaintiffs would be irreparably injured without an injunction, the court pointed to the amicus brief that NCLC joined and emphasized that incarcerated people often cannot bear the entirety of the costs associated with acquiring basic necessities—food, hygiene, and communication—in prison, and that their families often must shoulder these costs. The court also stated that the harms felt by recently released individuals are particularly acute as they face uncertain employment as well as additional financial burdens and other collateral consequences associated with their time in prison.

Consumer Protection & the CFPB

2020

- **Seila Law v. CFPB**

NCLC's amicus brief was joined by the Center for Consumer Law and Education Center (a joint partnership between West Virginia University College of Law and Marshall University); the UC Berkeley Center for Consumer Law & Economic Justice; The Housing Clinic of the Jerome N. Frank Legal Services Organization at Yale Law School; Consumer Action; and Professor Craig Cowie (Asst. Professor of Law and Director of the Blewett Consumer Law & Protection Program at the University of Montana Alexander Blewett III School of Law). The brief supports the 9th Circuit's ruling that the Dodd-Frank Act provision providing that the Director of the CFPB only can be terminated by the President for-cause is constitutional. Because the CFPB has chosen to join the appellant's challenge to its own management structure, the Supreme Court has appointed former Solicitor General Paul Clement to defend the Court of Appeals' decision. However, since that opinion found that the for-cause termination provision was valid the Court of Appeals did not reach the issue of remedy and, therefore, Mr. Clement has not addressed that issue either. However, the appellant, the CFPB (via the current Solicitor General), and a number of their supporting amici have argued for various outcomes in the event that the provision is found to be unconstitutional, ranging from severance of the offending clause to the repeal of Dodd- Franks. NCLC's brief, therefore, argues that if a remedy nonetheless is necessary it only should entail the severance of the current "for-cause" termination provision (which, in essence, would result in an "at-will" termination status for the Director). Such a remedy would give effect to the express language of the Dodd-Frank Act's severability clause and comport with the traditional doctrine of severability that provides that a court should nullify no more of a statute than is necessary. We also assert that undoing Congress's sweeping restructuring of financial regulation by eliminating the CFPB instead of severing the for-cause removal provision would contravene Congress's intent to establish a sole federal regulator charged with stabilizing the marketplace and protecting consumers.

2018

- **Ohio v. American Express Co.**

NCLC joined a brief also submitted on behalf of the U.S. Public Interest Research Group Education Fund, Inc., the Center for Responsible Lending, Consumer Federation of America, Consumers Union, the National Association of Consumer Advocates, and Public Citizen. The United States and several states sued Amex, claiming that its anti-steering provisions (i.e. merchants could not offer if the Amex card as a payment option unless they agreed not to steer customers towards other credit cards that provided better financial deals for the merchant) violate §1 of the Sherman Antitrust Act. The District Court agreed, finding that the credit-card market should be treated as two separate markets—one for merchants and one for cardholders—and that Amex's anti-steering provisions are anticompetitive because they result in higher merchant fees. The Second Circuit reversed. It determined that the credit-card market is one market, not two. The Court of Appeals concluded that Amex's anti-steering provisions did not violate federal antitrust law. Our brief was prepared by U.S. PIRG and the firm of Cohen, Milstein, Sellers & Toll and argued that American Express's merchant restraint suppresses price competition and thereby harm consumers. The Supreme Court affirmed the Second Circuit ruling.

Debt Collection

2020

- **Rotkiske v. Klemm**

The key question presented in this case is whether the discovery rule applies to toll the Fair Debt Collection Act's ("FDCPA") one-year statute of limitations. NCLC filed its own amicus brief in which we argued that debt collection, which affects millions of Americans each year, often is accompanied by deceptive or unfair practices, particularly by the third-party debt collectors that are subject to the FDCPA. We contended that the FDCPA was intended to curb such abuse, but that such a purpose would be impaired if consumers were not given a fair opportunity to pursue violations that go undetected when they occur. Therefore, we supported the proposition that the one-year statute of limitations should not be construed as an absolute bar to claims that are brought beyond a year from the date of the violation.

In an 8-1 opinion authored by Justice Thomas, the Supreme Court ruled that, absent the application of an equitable doctrine, the statute of limitations in the FDCPA begins to run on the date on which the alleged violation occurs, not the date on which the violation is discovered. The Court recognized, however, the existence of a fraud-based discovery rule, although it found that Rotkiske failed to properly make that fraud argument on appeal (contrary to the dissent filed by Justice Ginsberg). We are disappointed that the discovery rule clearly will not apply in FDCPA cases as we argued, but we were pleased that the Court did not change any of its jurisprudence regarding the availability of equitable tolling of the applicable statute of limitations under appropriate circumstances.

2019

- **Obduskey v. McCarthy & Holthus, LLP**

NCLC submitted an amicus brief in support of the consumer's argument that non-judicial foreclosures are covered under the FDCPA, clarifying that mortgages are debts, the law firm in question was a debt collector, and the letter in question was in connection with the collection of a debt. The brief also analyzed the mechanics of Colorado foreclosure law and discussed the policy reasons for applying the FDCPA to non-judicial foreclosure.

The Supreme Court, however, affirmed the lower court ruling and held that a business engaged in no more than non-judicial foreclosure proceedings is not a "debt collector" under the FDCPA, except for the limited purpose of enforcing security interests.

2017

- **Henson v. Santander**

NCLC joined with NACA, Tzedek DC, The Legal Aid Society of the District of Columbia, and Civil Justice in an amicus brief to address the question whether a company that regularly attempts to collect debts it purchased after the debts had fallen into default is a “debt collector” subject to the Fair Debt Collection Practices Act. Our amicus builds upon one that we filed in the 4th Circuit, which was authored by Dick Rubin and Joanne Faulkner. Dan Edelman is the lead author of this version of the brief. This amicus brief argues that the ruling below, holding that a bad-debt purchaser is not subject to the FDCPA because the debt buyer is not seeking to collect “for another” (1) runs afoul of the principles of statutory construction; (2) is inconsistent with congressional intent and legislative history of the FDCPA; (3) is contrary to decades of guidance and enforcement actions by the federal agency responsible for enforcing the FDCPA; and (4) would exempt the entire debt buying industry and grant debt buyers a significant competitive advantage over other debt collectors whose collection efforts must comply with the FDCPA, which would elevate form over substance and weave a technical loophole into the fabric of the FDCPA big enough to devour all of the protections Congress intended in enacting that legislation.

The Supreme Court decided, however, that Santander was not a debt collector under the FDCPA’s second definition of debt collector. The narrow opinion held that a debt buyer is not subject to the FDCPA as an entity regularly collecting debts “owed or due another,” leaving intact the alternative approach of showing that a debt buyer qualifies as a debt collector under the FDCPA because the “principal purpose” of its business is the collection of debts.

2016

- **Midland Funding v. Johnson**

NCLC joined Public Citizen, the Legal Aid Society of DC and NACA in an amicus brief prepared by Public Citizen in support of the respondent. The case presents two questions: (1) whether filing a proof of claim on a knowingly time-barred debt violates the FDCPA, and (2) whether any such claim under the FDCPA is impliedly repealed by the Bankruptcy Code. The Public Citizen amicus brief argues: (1) The Court should affirm that a knowing attempt to collect time-barred debt violates the FDCPA, and (2) The least sophisticated consumer standard for assessing whether collection conduct is deceptive or misleading under 15 U.S.C. 1692e should be applied to proof of claims in bankruptcy, not what a competent attorney or trustee would believe as argued by Midland Funding.

- **Sheriff v. Gillie**

NCLC coordinated efforts in this FDCPA case to file an amicus brief prepared by Dick Rubin and Deepak Gupta that also was joined by Public Good and NACA. The issues presented are (1) Whether special counsel – lawyers appointed by the Attorney General to undertake his duty to collect debts owed to the state – are state “officers” within the meaning of 15 U.S.C. § 1692a(6)(C); and (2) whether it is materially misleading under 15 U.S.C. § 1692e for special counsel to use Attorney General letterhead to convey that they are collecting debts owed to the State on behalf of the Attorney General.

Our amicus focuses on the second issue, including rebutting Petitioner’s argument that the Supreme Court should reject the least sophisticated consumer standard and instead adopt an “average consumer” standard.

2013

- **Marx v. General Revenue Corp**

The court held that when a debt collector wins a Fair Debt Collection Act case brought by a consumer that the consumer may be made responsible for the debt collector's court costs, amounting to $ 5443, in this case. Previously most courts had held that the debt collector could only recover its costs if it established that the consumer brought the suit in bad faith and for the purpose of harassment. The debt collector must establish that to obtain the payment of its attorney fees by the consumer.

2010

- **Jerman v. Carlisle**

Debt collectors' legal mistake in the language of a Fair Debt Collection Practices Act notice did not amount to a bona fide error defense letting the debt collector off the hook.

- **United Student Aid Funds, Inc. v. Espinosa**

Argued that the Fair Debt Collection Practices Act's bona fide error defense was not intended by Congress to apply to mistakes of law by debt collectors. Since the bankruptcy court's error in confirming a Ch. 13 plan discharging a portion of the student loan debt without first finding undue hardship in an adversary proceeding was not jurisdictional, the judgment was not void. Because student loan creditor received actual notice of the filing, due process was met. The bankruptcy court's legal error in confirming the debtor's plan absent a finding of undue hardship in an adversary proceeding did not render its judgment void. Bankruptcy courts presented with a plan proposing the discharge of student loan debt without a determination of undue hardship in an adversary proceeding should not confirm such a plan, even if the creditor fails to object or to appear at the proceeding at all.

Housing

2020

- **Massachusetts Fair Housing Center and Housing Works, Inc. v. U.S. Department of Housing and Urban Development (HUD)**

The National Consumer Law Center submitted an amicus brief in support of the Massachusetts Fair Housing Center and Housing Works, Inc. motion for an order under postponing the effective date of a rule issued by the Department of Housing and Urban Development ("HUD"), Implementation of the Fair Housing Act's Disparate Impact Standard (the 2020 rule) and for a nationwide preliminary injunction barring HUD from implementing the 2020 Rule until the Court has determined whether the 2020 Rule is valid. NCLC, as an expert in mortgage financing in general and specifically in issues of mortgage discrimination, focused its attention on the impact the 2020 Rule would have on the effective enforcement of the Fair Housing Act on behalf of African American and Hispanic mortgagors.

2015

- **Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.**

NCLC filed an amicus brief with our colleagues at the ACLU in an appeal in the United States Supreme Court in which the disparate impact cause of action under the Fair Housing Act is being challenged. The brief is substantially similar to the amicus we filed in the Mt. Holly case prior to that appeal being settled before a decision was handed down. It is one of approximately a dozen amicus briefs being coordinated by a coalition of civil rights organizations, including NCLC, to be filed in support of the appellee. The unique contribution of our amicus brief is that it focuses on disparate impact as a vital tool for remedying the discriminatory lending practices that fueled the subprime lending bubble and contributed to the current foreclosure crisis. The brief also argues that disparate impact analysis is a crucial tool for stopping housing discrimination against domestic and sexual violence victims. The Supreme Court subsequently upheld the decision of the 5th Circuit Court of Appeals and ruled that disparate-impact claims are cognizable under the Fair Housing Act.

- **Jesinoski v. Countrywide Home Loans, Inc**

NCLC and amici opposed the respondents' argument that TILA rescission must be exercised by filing a lawsuit. Rescission gives homeowners the right to cancel a loan transaction for three days after a loan closing. Consumers can exercise this right simply by giving notice to the creditor. The plain language of the statute unmistakably supports this position. Additionally, administrative interpretations from the Federal Reserve Board and judicial interpretations from the federal courts of appeal support rescission through notice. The Truth in Lending Act gives a homeowner the right to rescind a mortgage loan (other than a purchase-money mortgage) for up to three years if the lender failed to make certain key disclosures about the loan. Some courts had held that the homeowner had to file suit in court within this three year period. The Supreme Court issued a unanimous decision, agreeing with our amicus brief that the only thing the homeowner has to do within the three-year period is notify the creditor that he or she is exercising the right to rescind. The Supreme Court also made another very helpful comment, stating that the consumer could return the net amount owing on the loan after rather than before rescinding. The right to rescind under the Truth in Lending Act has been one of the most important tools to fight predatory mortgage lending. This decision will make a difference for many homeowners.

2013

- **Mount Holly v. Mount Holly Citizens in Action**

NCLC wrote the amicus brief with the ACLU and were joined on the brief by the National Coalition Against Domestic Violence; NCRC; the National Center on Homelessness and Poverty; the National Housing Law Project; Public Citizen and the National Women's Law Center. The Mt. Holly case concerns the application of the Fair Housing Act disparate impact discrimination cause of action in a municipal zoning challenge by elderly African Americans and Hispanic Americans whose affordable residences were consider "blighted" by their town and threatened with demolition to build unaffordable housing. The case was settled by the parties and dismissed.

2012

- **First American v. Edwards**

NCLC joined AARP, Center For Responsible Lending, and the National Consumers League in a amicus brief prepared primarily by Public Citizen, Inc., arguing that permitting Real Estate Settlement Procedures Act plaintiffs to seek statutory damages without proving their monetary loss does not undermine the values of the constitutional requirement of "standing" – that a plaintiff has a real stake in the suit.

The Court dismissed its decision to grant certiorari in *Edwards v. First American. Corp.* as improvidently granted. In *Edwards* the Ninth Circuit held that a homebuyer had standing to assert a violation of RESPA's ban on referral fees and kickbacks against a title insurer even though the homebuyer did not allege that she was overcharged as a result of the illegal conduct. The court based its decision on the text of RESPA and legislative history showing that Congress was concerned about more than just the cost of settlement services. Kickbacks could affect a service provider's impartiality and willingness to give professional advice. In doing so the Ninth Circuit followed similar decisions from the Third and Sixth Circuits. No circuit courts have required economic injury to establish standing under this section of RESPA.

- **Magner v. Gallaher**

NCLC joined an amicus brief prepared by the Lawyers' Committee for Civil Rights Under Law with other national civil rights organizations arguing that the Fair Housing Act properly is interpreted to authorize disparate impact claims and that the Eight Circuit applied the correct burden-shifting approach to litigating disparate impact claims consistent with current practices and HUD's proposed regulation. NCLC also consulted with the ACLU (which cites NCLC's Credit Discrimination manual and references NCLC's sub-prime mortgage discrimination disparate impact cases brought under the Fair Housing Act) and the Department of Justice with regard to the preparation of the amicus briefs they separately prepared.

The Fair Housing Act makes it unlawful "[t]o refuse to sell or rent after the making of a bona fide offer … or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a).

Plaintiffs are owners of rental properties who argue that Petitioners, municipal officials, violated the Fair Housing Act by "aggressively" enforcing the City of Saint Paul's housing code. According to Respondents, because a disproportionate number of renters are African-American, and Respondents rent to many African-Americans, requiring them to meet the housing code will increase their costs and decrease the number of units they make available to rent to African-American tenants. The district court granted summary judgment for the City, and the Eighth Circuit reversed holding that the lessors should be allowed to proceed to trial because they presented sufficient evidence of a "disparate impact" on African-Americans.

The Supreme Court granted cert on the following critical questions presented:

1. Are disparate impact claims cognizable under the Fair Housing Act?
2. If such claims are cognizable, should they be analyzed under the burden-shifting approach, under the balancing test, under a hybrid approach, or by some other test?

Predatory Lending

2020

- **People of the State of California, et al. v. The Federal Deposit Insurance Corporation (FDIC)**

NCLC joined Center for Responsible Lending and the National Coalition for Asian Pacific American Community Development in an amicus brief in People of the State of Calif. v. FDIC on the validity of the FDIC's "Madden-fix" rule.

- **People of the State of California, Illinois, and New York v. The Office of the**

Comptroller of the Currency and Brian P. Brooks

NCLC joined Center for Responsible Lending, East Bay Community Law Center, National Association for Community Asset Builders, and the National Coalition for Asian Pacific American Community Development in support of the plaintiffs' petition to the U.S. District Court for Northern California.

2010

- **Midwest Title Loans v. Mills**

NCLC joined AARP, Consumer Federation Of America, Indiana Legal Services, Inc., and The Sargent Shriver National Center On Poverty Law in an amicus brief primarily prepared by Public Citizen and the Center For Responsible Lending in support of the Indiana Attorney General's certiorari petition to the U.S. Supreme Court. Indiana, which regulates auto-title lending, sought to apply its law to title loans made by Illinois lenders to Indiana residents when the loans were advertised in Indiana and the lenders registered liens in Indiana and repossessed cars in Indiana– but the loan contracts themselves were signed over the border in Illinois. A lender brought a commerce clause challenge and was successful arguing that the Indiana law unlawfully interfered with interstate commerce: "The contract was, in short, made and executed in Illinois, and that is enough to show that the territorial-application provision violates the commerce clause."

Cert denied leaving intact the 7th Circuit decision that the Indiana law regulating car loans between Indiana consumers and Illinois car dealers unlawfully interfered with interstate commerce.

2008

- **Commonwealth of Massachusetts v. Fremont Investment & Loan, and Fremont General Corporation**

NCLC joined AARP, Center for Responsible Lending, National Association of Consumer Advocates, and National Association of Consumer Bankruptcy Attorneys in an amicus brief vigorously disagreeing with Fremont's claim that the Superior Court's injunction "is flawed as a matter of public policy." Fremont's lending practices exemplified the "immoral, unethical, oppressive, or unscrupulous" conduct prohibited as unfair by Chapter 93A. Milliken & Co. v. Duro Textiles, LLC, 451 Mass. 547, 563 (2008).

The promise of subprime mortgage lending is simple: allowing persons without traditional access to credit the opportunity to become homeowners and buildlong-term wealth. That promise, however, is fulfilled only when the subprime mortgage is backed by solid underwriting and includes fair terms that the borrower will be able to meet over the long-term. Unfortunately, some subprime lenders disregarded the underwriting process and the fairness of loan terms in focusing on short-term profits that could be gained by catering to Wall Street's insatiable appetite for subprime loans. Fremont singularly concentrated on the profits to be made by selling more and more loans to Wall Street.

Regulatory Enforcement

2020

- **AMG Capital Management, LLC v FTC**

NCLC, along with Professor Craig Cowie from the University of Montana Law School and the legal clinics at Berkeley, Yale, and West Virginia University Law Schools, filed an amicus brief with the Supreme Court in support of the respondent (FTC) asserting the district court's exercise of its power to award accounting remedies under Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b)("Section 13(b)"), is consistent with longstanding notions of a court acting in equity to do "complete justice."

Consumer redress through Section 13(b) actions, as envisioned by Congress and provided by the court, continues to protect American consumers and promote a fair marketplace. Stripping the courts of their equitable power to provide redress would create perverse market forces that would expose vulnerable populations to fraud while putting lawful market actors at a competitive disadvantage.

- **Liu v. SEC**

NCLC joined an amicus brief with Better Markets and CRL. The issue presented in Liu is whether the SEC has the ability to order disgorgement as a remedy in its cases under the explicit equitable authority granted by its enabling statute. The certified the question whether, and to what extent, the SEC may seek "disgorgement" in the first instance through its power to award "equitable relief " under 15 U. S. C. §78u(d)(5), a power that historically excludes punitive sanctions. The appellant's argument, rejected by both the District Court and the 9th Circuit Court of Appeals, is that disgorgement is an unauthorized penalty rather than an equitable remedy. Our amicus brief supports the position that disgorgement is, in fact, an equitable remedy which falls well within the broad express powers granted to the agency by Congress. But it goes further in arguing that a contrary ruling would call into question similar remedies available to other agencies through virtually identical grants of equitable authority and jeopardize their enforcement efforts by eliminating critical options for effective relief. Without raising the issue directly in the amicus brief, we primarily are concerned that a bad opinion affecting our ability to exercise private rights of action under the ECOA, FHA and ERISA, among other consumer protection statutes, where NCLC often relies upon disgorgement as a viable remedy and a necessary component for successfully certifying a class The Supreme Court held that a disgorgement award that does not exceed a wrongdoer's net profits and is awarded for victims is equitable relief permissible under §78u(d)(5).

2012

- **National Meat Ass'n. v. Harris**

NCLC joined in an amicus brief with Public Citizen, Center for Responsible Lending, AARP, Public Health Law Center and Consumer Federation of America in a case about whether the Federal Meat Inspection Act expressly nullifies or preempts a particular California law. The amicus brief argues there is a presumption against federal laws preempting state laws. Although the main brief did not challenge the presumption, the Chamber of Commerce's amicus brief did challenge it. The Supreme Court held that the California statute directly conflicted with the federal statute and was preempted without having to address the presumption against preemption.

Student Loans

2020

- **New York Legal Assistance Group v. Devos and U.S. Department of Education**

Based on our extensive experience advocating for debt relief on behalf of low-income students harmed by abusive schools and consulting with legal aid attorneys across the country who represent student borrowers, amicus writes to explain how the Department of Education's 2019 Rules arbitrarily and capriciously ignored congressional intent and its own prior justification for heightened student protections. Further, it ignored the experience of the students Congress intended the Higher Education Act to help. Legal aid organizations told the Department about the ways in which schools deceive borrowers and the struggles borrowers face in getting relief. Instead of reducing burdens for borrowers and increasing school oversight, the 2019 Rules not only rescind virtually all of the student protections added by the 2016 Rules, they also give predatory schools a free pass to lie and cheat students, while saddling them with debt they will never be able to repay.

TCPA

2020

- **Lindenbaum v. Realgy, LLC**

The National Consumer Law Center submitted an amicus brief, joined by the Electronic Privacy Information Center, to the Sixth Circuit Court of Appeals challenging the district court's decision to put hundreds of private and public enforcement actions at risk of unwinding. Robocallers who are responsible for the hundreds of millions to billions of calls currently in dispute will be let off the hook for conduct that clearly violated the law. Robocallers will also be able to evade numerous FCC orders against future robocalling that are based on TCPA violations that occurred during the covered period; this will cause harm to consumers for years to come. A decision to affirm the lower court's decision would reward robocallers at the expense of consumers. This Court should instead follow the lead of Congress and the Supreme Court in ensuring the vigorous enforcement of TCPA protections.

- **Facebook v. Duguid**

The National Consumer Law Center submitted an amicus brief, joined by Consumer Reports and the Consumer Federation of America, to the U.S. Supreme Court in opposition to Facebook's proposal that the definition of an automated dialing system (ATDS) under the Telephone Consumer Protection Act (TCPA) encompass only equipment that generates and automatically dials random or sequential telephone numbers. If the Court agrees with Facebook, autodialed calls and texts to all cell phones and the other protected lines will be virtually unstoppable–rendering the TCPA's restriction on autodialing meaningless.

- **Barr v. American Association of Political Consultants**

The National Consumer Law Center, the Consumer Federation of America, and Verizon filed a joint amicus brief in a case in which a group of robocallers is challenging the constitutionality of an exemption provision of the Telephone Consumer Protection Act (TCPA). The amicus brief does not support either party in the appeal. Nor does it take any position on the validity of the specific TCPA exemption at issue in the case. Rather the amici argue that the TCPA plays an integral role in protecting the country's communications customers as well as the communications system from being deluged by automated, unsolicited calls to mobile phones. The purpose of the statute represents a compelling interest sufficient to justify any narrow restrictions on speech inherent in protecting consumers and the communications network from such calls. Therefore, minimal exceptions to the TCPA's general protections should not in any way justify a ruling from the Court that would undermine Congress' ability to adopt the TCPA's general prohibition on non-consented-to calls to cellular phones.

2019

- **Salcedo v. Hanna**

NCLC, joined by several consumer groups, prepared an amicus brief asking the 11th Circuit for rehearing *en banc* in *Salcedo v. Hanna*, ___ F.3d ___, 2019 WL 4050424 (11th Cir. Aug. 28, 2019). The case holds that a consumer lacked Article III standing under Spokeo to bring a class action under the TCPA against a firm that sent him, and thousands of other individuals, an unwanted telemarketing text message. The opinion says that receipt of a single text message is not a concrete injury, and some language in the opinion suggests that text messages, no matter their number, never cause concrete injury. Our brief focused on the ways that the panel decision misinterpreted the TCPA and its history, and would harm consumers. Rehearing subsequently was denied.

2018

- **Marks v. Crunch San Diego**

The National Consumer Law Center and the National Association of Consumer Advocates (NACA) filed a joint amicus brief as consumer protection organizations that work to protect consumers from the scourge of unwanted robocalls. The brief argues the Federal Communication Commission's (FCC) pre-2015 orders are still in effect and are binding on Courts. The effect of ACA International v. FCC, 885 F.3d 687 (D.C. Cir. 2018), on three pre-2015 FCC orders interpreting the definition of automated telephone dialing systems (ATDS) under the TCPA, 47 U.S.C. § 227(a)(1), is critical to this appeal but has not received thorough analysis in the other briefs. All three orders state, among other things, that a system that dials numbers from a list is an ATDS.

2016

- **ACA International (Cavalry Portfolio Services) v. FCC**

The National Consumer Law Center, the National Association of Consumer Advocates, Consumers Union, AARP, Consumer Federation of America, and MFY Legal Services are each non-profit filed a joint amicus brief, drawing on extensive experience in consumer protection legal issues, including the financial impact of onerous policies and practices affecting consumers, and specifically, the burdens and intrusions of increasingly rampant automatically dialed "robocalls" and texts to cell phones. The amicus brief raised the following issues: the distressing—and sometimes financially perilous—impacts on consumers subjected to multiple unwanted and unconsented-to robocalls to their cell phones. Amici support the FCC's 2015 Order as an entirely legal and justified interpretation of the TCPA, and appropriate safeguarding of consumers' legal right to decide whose autodialed and prerecorded calls and texts to their cell phones they will receive.

2011

- **Mims v. Arrow Financial Services, LLC**

NCLC and the National Association of Consumer Advocates (NACA) urged the Supreme Court to review a lower court decision denying a consumer the right to file their federal Telephone Consumer Protection Act (TCPA) claim in a federal court by finding that Congress limited TCPA claims to state courts. On June 27, 2011, the United States Supreme Court granted the petition for review. Oral argument for petitioners is scheduled for November 28, 2011.