Litigation

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Spokeo, Inc. v. Robins

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- Amicus brief of the National Consumer Law Center, Verizon, and Consumer Federation of America to the U.S. Supreme Court supporting neither party in Barr v American Association of Political Consultants, Inc., et al, March 2, 2020; Press release
- Amicus Brief by the National Consumer Law Center and the Center for Responsible Lending supporting neither party in David Petersen, et al v. Chase Card Funding, LLC, Chase Issuance Trust, and Wilmington Trust Company, as Trustee of Chase Issuance Trust filed with the U.S. Western District Court of New York, Feb. 7, 2020
- NCLC has submitted an amicus brief to the U.S. Supreme Court in the case of Seila Law v. CFPB, No. 19-7. The 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 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.

- NCLC has joined an amicus brief with Better Markets and the Center for Responsible Lending that has been filed with the U.S. Supreme Court in the case of Liu v. SEC, No. 18-1501. 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 appellant’s argument, rejected by both the District Court and the 9th Circuit Court of Appeals, is that disgorgement is an 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 consumer protection agencies through virtually identical grants of equitable authority and jeopardize their enforcement efforts by eliminating critical options for effective consumer relief.

- Amicus Brief of National Consumer Law Center, Center for Responsible Lending and Colorado Public Interest Research in support of plaintiff in Martha Fulford v Avant of Colorado LLC et al and Web Bank, January 13, 2020

- Amicus Brief of National Consumer Law Center, Center for Responsible Lending and Colorado Public Interest Research in support of plaintiff in Martha Fulford v Marlette Funding, January 13, 2020

- NCLC and the National Association of Consumer Advocates (NACA) submitted a Supplemental Comment to the Judicial Conference Advisory Committee on Civil Rules and its Rule 30(b)(6) Subcommittee regarding the alternative proposed amendments to federal Rule of Civil Procedure 30(b)(6), March 29, 2019

- NCLC, in conjunction with the National Veterans Legal Services Program and Alliance for Justice, represented by Gupta Wessler LLC (Complaint), filed a Federal Circuit brief (Brief) defending their partial victory (Summary Judgment) in a class action challenging the federal judiciary’s collection of millions of dollars in excess fees for access to online court records (PACER). NCLC and the other plaintiffs allege the excessive PACER fees inhibit public understanding of the courts and thwart equal access to justice, erecting a financial barrier that many citizens are unable to clear. The case, now on appeal at the United States Court of Appeal has attracted an array of supporting briefs from former judges, news organizations, and civil rights groups. Report in the New York Times.

- Amicus brief filed with the Unites States Supreme Court in support of the petitioner in Obduskey v McCarthy & Holthus LLP by the National Consumer Law Center, September 17, 2018

- Amicus brief filed with the Unites States Supreme Court in support of the respondents in Frank v. Gaos (cy pres) by the National Consumer Law Center and U.S. PIRG Education Fund, Inc., September 5, 2018

- Amicus brief and related materials of 10 consumer groups over Acting Director of Consumer Financial Protection Bureau (Leandra English vs. Donald J. Trump and John M. Mulvaney),
Dec. 8, 2017
• NCLC and NACA comments to the Civil Rules Advisory Committee re: Rule 30(b)(6), August 9, 2017
  o Supplementary comments on behalf of NCLC and NACA, January 3, 2019
• Testimony of NCLC Director of Litigation Stuart Rossman before the U.S. Senate Committee on Aging re: pension advance schemes, Sept. 30, 2015
• NCLC and NACA comments to the Civil Rules Advisory Committee re: Rule 23, September 4, 2015
• NCLC and NACA comments to the Civil Rules Advisory Committee re: Rule 23, April 1, 2015
• U.S. Consumer Law Attorney Fee Survey 2017-2018 (Released by Ronald L. Burdge, Esq. on Sept. 10, 2019)