

“Fake Lender” Rule Repeal a Major Victory for Consumers

After months of advocacy by a broad coalition of activists, officials, and community organizations, Congress voted to overturn the Office of the Comptroller of Currency’s (OCC) “fake lender” rule this summer. NCLC played a leading role in this major victory for consumers, which won bipartisan support in both chambers before being signed by President Biden in June.

The Trump-era rule, finalized in December 2020, had previously protected “rent-a-bank” schemes by OCC-regulated banks. In these schemes, predatory lenders evade state interest rate caps by offering loans through rogue banks (“fake lenders”), which are mostly exempt from state rate caps, effectively laundering loans of up to 200% annual percentage rate (APR)

through these banks while posing as loan “servicers.” The rule prevented courts from determining that the predatory lender was the “true lender,” allowing these lenders to avoid accountability while harming small businesses, veterans, and consumers saddled with high-cost installment loans offered at illegal rates under state law. While forty-five states and the District of Columbia (DC) currently cap interest rates and loan fees for at least some consumer installment loans, an alarming rise in the number of rent-a-bank schemes made the rule’s repeal even more urgent this year.

NCLC is calling for further action to prevent rent-a-bank lenders from abusing vulnerable consumers. The Federal Deposit Insurance Corporation



Associate Director Lauren Saunders

(FDIC) must bring vigorous enforcement against banks that are assisting in these rent-a-bank schemes. We have filed amicus briefs and are available to consult on legal challenges. We have also called for the implementation of a national 36% interest rate cap covering all lenders, including banks, so that these schemes – and others that will follow – cannot be used by high-cost lenders to dodge state laws. Follow NCLC’s work on Rent-a-Bank loans here: nclc.org/issues/high-cost-small-loans/rent-a-bank.html. ■

Impacts and Resources Following the *TransUnion L.L.C. v. Ramirez* Decision

The new U.S. Supreme Court term has just started, but the repercussions of the cases decided by the Court during last year’s term continue to reverberate for consumer advocates. Perhaps no decision has drawn more attention and had a greater impact than *TransUnion L.L.C. v. Ramirez*, 141 S. Ct. 2190 (2021), in which the Supreme Court issued a 5-4 decision addressing whether consumers suffered concrete harm due to violations of the Fair Credit Reporting Act (FCRA), including inaccurate credit reports, that met the

requirement for Article III standing. *Ramirez* follows up on the Court’s 2016 decision in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), which also addressed FCRA violations.

Both the *Spokeo* and *Ramirez* decisions have ramifications far beyond FCRA class actions. They will have a decided impact on virtually all federal court consumer and other class actions and even on many individual federal court actions. This includes cases, for example, under the Fair Debt Collection Practices Act (FDCPA), the Truth in Lending Act (TILA), the Telephone Consumer Protection Act (TCPA), the Real Estate Settlement

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MATT LACLAIRE

A Note from the Executive Director

Dear friends and supporters,

This is a challenging but hopeful time in the struggle for consumer rights and economic justice. With consumer ally (and past NCLC Conference speaker) Rohit Chopra now in place as Director of the Consumer Financial Protection Bureau (CFPB), this is, in some respects, the most favorable climate for pro-consumer reform in years.

As you will see from the articles in this newsletter, NCLC is working at every level to seize the moment and push a strong reform agenda. Since the beginning of this year, with a new administration and a new Congress in place, we've been able to make meaningful strides in advancing consumer protections rooted in economic justice, racial equity, and basic fairness for low-income individuals, families, and communities.

In a major victory this summer, it was deeply gratifying to see Congress overturn the "fake lender" rule, which allowed predatory lenders to evade state interest rate laws and make usurious loans with annual percentage rates as high as 200%. The fake lender rule threatened to pave the way for a massive expansion of predatory lending in all fifty states, and we are proud to have played a major role in helping advocate for this positive step for consumers.

NCLC also worked with many key allies over the past few months to protect homeowners from default and foreclosure during the pandemic. Among other things, we helped secure key protections and federal funding that we believe can and should lay the groundwork for longer-term reforms for vulnerable mortgage borrowers.

Inside this newsletter, you'll find updates on NCLC's litigation, state advocacy, and innovative efforts to educate and engage the consumer law community — including our cutting-edge treatise revisions, conferences, and resources relating to the *TransUnion v. Ramirez* decision. You'll also read about many of our other ongoing projects relating to student lending, unwanted calls and texts, racial justice, and much more.

These are promising times. But as always, we face major challenges in the courts and from well-funded interests who oppose our work, and we know that it will take a renewed sense of urgency to achieve the systemic changes we are fighting for. With your support and partnership, I am confident we will succeed.

With best wishes,



Rich Dubois
Executive Director

NCLC Applauds Introduction of 36% Interest Rate Cap Bill in U.S. Senate

NCLC and our partners celebrate and support the Veterans and Consumers Fair Credit Act (VCFCA), recently introduced in the United States Senate. This bill would extend the Military Lending Act's (MLA) 36% interest rate cap on many consumer loans to all Americans, and prevent predatory lenders from avoiding state interest rate limits via high-cost "rent-a-bank" schemes by covering all lenders, including banks.

The 36% rate cap is widely accepted as the dividing line between responsible lending and destructive credit, and is supported by a bipartisan cross-section of Americans: by

one recent poll, 70% of voters, including an overwhelming majority in both parties, supported a 36% annual cap on consumer installment loans. A national rate cap would also help pave the way towards financial inclusion for low-income communities and communities of color – groups often targeted by predatory lending schemes – while eliminating safe havens for lenders trying to evade state-level regulations through tactics like "rent-a-bank" schemes. We are proud to have helped push for the introduction of this bill and will continue to advocate for advancement of the VCFCA and a national 36% rate cap to help guarantee economic justice for working families. ■

Advocates Secure Pandemic Relief for Struggling Homeowners

The economic devastation caused by COVID-19 has created an extremely difficult environment for struggling mortgage borrowers – particularly those in low-income communities and communities of color. NCLC has successfully partnered with key allies to improve the landscape of options for homeowners facing COVID hardships, to secure fairer rules protecting against foreclosure during the pandemic, and to obtain new federal funding to assist mortgage borrowers affected by COVID.

Preventing a wave of COVID-related foreclosures was an immediate priority for advocates. With our partners, NCLC worked with policymakers to continue moratoriums on foreclosures for struggling mortgage borrowers with loans backed by the Departments of Housing and Urban Development (HUD), Veterans Affairs (VA), and Agriculture (USDA), as well as Fannie Mae (Fannie) and Freddie Mac (Freddie). Advocates also succeeded in winning extended opportunities to obtain forbearance, as well as longer forbearance periods for many struggling homeowners during the crisis.

Looking even further beyond this important immediate relief, NCLC advocates were instrumental in helping deliver better repayment options, stronger protections, and new federal funding to address ongoing pandemic-based hardships experienced by homeowners. Our advocates helped lead the charge in promoting stronger



Staff Attorney
Alys Cohen

pandemic-specific loan modification programs for borrowers with loans backed by the VA and by HUD's Federal Housing Administration (FHA); more affordable loan modification interest rates through Fannie and Freddie; and new pre-foreclosure procedures from the Consumer Financial Protection Bureau (CFPB), among other critical measures.

On top of these advancements, the Homeowner Assistance Fund championed by NCLC and our partners was included in President Biden's American Rescue Plan, and will be providing much-needed federal resources to help struggling homeowners catch up on utility bills, insurance payments, and other housing costs during COVID.

NCLC will be working to translate these positive steps into permanent protections for struggling homeowners. Follow along with our work to promote sustainable, equitable homeownership during COVID-19: nclc.org/covid-housing ■

TransUnion L.L.C. v. Ramirez *continued from page 1*

Procedures Act (RESPA), and state law claims brought in federal court.

After the *Ramirez* decision the federal district courts and courts of appeal have seen a significant rise in defense motions seeking to challenge the standing of plaintiffs in consumer cases, specifically those seeking statutory damages. Since standing is a federal jurisdictional question, it can be raised at any point in the proceedings and can't be waived.

In order to assist our community in responding to standing challenges, NCLC has created a special resource page on its website: nclc.org/ramirez.

The website includes a detailed NCLC article on the practice implications of the *Ramirez* decision, sample *Ramirez* briefings, links to two webinars for consumer advocates that NCLC co-sponsored with the National Association of Consumer Advocates (NACA), and links to other valuable information. NCLC's practice treatises on the FDCPA and the TCPA have already been updated online to reflect *Ramirez* and the first cases applying the decision, and updates of other treatises are on the way.

The resource page will be updated as more materials become available. Please email ramirez@nclc.org with any submissions of relevant materials. ■

Cy Pres Spotlight: Brian Bromberg

With dogged determination, **Brian Bromberg** and his co-counsel **Jonathan R. Miller** were able to bring a Fair Debt Collection Practices Act (FDCPA) case – *Moukengeschaie v. Eltman, Eltman & Cooper, P. C., et al.* – across the line with a successful settlement. Despite being hounded by obstacles unfriendly to consumers and dragging on for years, success in the case brought compensation for their clients, and a *cy pres* award of unclaimed funds to NCLC.

In 2014, Jovana Moukengeschaie had been approached by a debt collection law firm about an ancient judgment it claimed she owed to LVNV Funding,



LLC (LVNV). Ms. Moukengeschaie had never heard of either LVNV or the judgment. An investigation showed that a completely different company that had long since gone out of business had obtained the default judgment against Ms. Moukengeschaie, without ever bothering to serve her. The confusion was compounded by LVNV and Eltman, who claimed to have purchased the default judgment, but who had ignored New York state rules designed to keep consumers in the loop. Worst of all, the defendants had done the same thing to hundreds of other New York consumers. Brian and his team were able to obtain meaningful relief for the New York consumers who had been affected – including, for those who had already paid off the faulty judgments, significant cash refunds.

Brian credits NCLC as being pivotal to his move into consumer law, having started out in general practice and doing a little bit of everything. While doing some bankruptcy cases, he read about the FDCPA after a client came in with collections letters that kept getting progressively worse. Brian took that

Brian Bromberg and his new pup, Ruby

client on in the late 90s and was introduced to NCLC – the treatises, conferences and networking – and the rest is history. As Brian says, “despite all SCOTUS’ attempts otherwise, it is great to be able to do something good for people in need. I feel good about what I do and know it means something.”

“I’ve been trying to steer *cy pres* awards to NCLC for a long time, and I am very happy with this result. I do it because NCLC has helped me succeed through their important trainings and conferences, which literally bring in new business for me. NCLC’s Consumer Rights Litigation Conference offers both education and training, but also networking – the sharing of experiences really does help to build my practice and learn new tricks. For that, I am eternally grateful and this is how I can pay it forward.”

NCLC is deeply grateful to Brian and Jonathan (now with Land of Lincoln Legal Aid, Inc.) for their hard work and generous support of our work!

*If you are interested in nominating NCLC to receive a *cy pres* award, please contact Paul Laurent at pl Laurent@nclc.org. ■*

NCLC Sets Sights on Structural Changes to the TCPA

Recent legal developments surrounding the Telephone Consumer Protection Act (TCPA) have allowed a flood of unwanted live robocalls and unwanted text messages to reach the cell phones of consumers across the country. The Supreme Court’s decision in *Facebook v. Duguid* greatly weakened the limits on these calls and texts, both from scam artists and from debt collectors and telemarketers. At the same time, the Federal Communications Commission (FCC) is in the process of implementing new mandates applying to providers of telephone services, requiring providers to stop facilitating illegal calls and texts, and to enable more automatic call blocking of illegal calls. Moreover, several members of Congress are interested in pursuing legislation that will further stop the invasion of unwanted, illegal, or scam robocalls and texts.

NCLC has been active on all of these fronts: filing comments with the FCC on TCPA and robocall issues; facilitating the

process of developing legislation to reinvigorate the TCPA to require more robust caller-ID; and ensuring that consumers harmed by unwanted calls have access to meaningful remedies. The potential legislation is being developed with input from TCPA experts, a bipartisan group of state attorneys general, and telephone technology experts.

Additionally, NCLC has thoroughly updated its comprehensive review of TCPA law in Chapter 6 of its *Federal Deception Law* book. The updated chapter includes analyses of the effect of the Supreme Court’s decisions in *TransUnion LLC v. Ramirez* (see article on page 1) and *Facebook, Inc. v. Duguid*, which interpreted the statutory term “automatic telephone dialing system” (ATDS). Privacy experts from the Electronic Privacy Information Center (EPIC) made substantial contributions to the ATDS analysis. ■

Campaign for the Future: Impact Update

The investments of consumer law community leaders in NCLC's *Campaign for the Future* are being felt throughout the organization — and the community itself. With over \$10.4 million pledged toward our \$20 million goal, and approximately \$3.9 million already received, NCLC has begun making new investments or supplementing core funding to advance the broad, long-term objectives of the Campaign:

- Building a bigger and stronger consumer law community
- Strengthening NCLC's support of legal aid programs
- Expanding state-level advocacy and engagement
- Enhancing NCLC's communications capacity
- Investing in new strategies to promote economic justice

Specific investments approved by NCLC's Board this year include the following Campaign priorities:

- **Racial Justice:** Supporting personnel and resources to expand NCLC's emphasis and advocacy on racial justice and equal economic opportunity issues.
- **State Advocacy:** Expanding our economic justice advocacy in a growing number of states, including an increasing amount of affirmative advocacy.
- **Communications Capacity-Building:** Including a user-focused revamp of www.nclc.org and integration with NCLC's Digital Library.
- **Law School Engagement:** Supporting summer internships for law school students to attract interest and build expertise in consumer law.

- **Legal Aid Partnership Project:** Providing an increased amount of free consulting and training services to legal aid programs.
- **Next Generation and Legal Aid Scholarships:** Offering automatic 50% conference scholarships for qualified legal services attorneys and private attorneys with fewer than five years of experience in consumer law.

In just the first year of Campaign spending, 565 attorneys (and/or their programs) benefitted from these Campaign scholarships alone!

The impact of the Campaign — and the support of its leaders and donors — is

already making a difference, but there is much more to be done. As we begin planning for 2022, and as the pandemic (hopefully) begins to recede, we intend to continue making crucial investments while resuming our outreach to build the support needed to realize the Campaign's full, transformative vision for our community.

NCLC is grateful to all those who have expressed and are acting on their intentions to support the Campaign to date! Learn more about the Campaign at nclc.org/about-us/campaign-for-the-future.html, and contact NCLC's Paul Laurent at pl Laurent@nclc.org for more information or to get involved! ■

In Memoriam: NCLC Board Member Donna Daley

We are deeply saddened to share the news that **Donna Daley**, a longtime member of NCLC's Board of Directors, passed away on June 15, 2021. Donna was a dedicated member of NCLC's board for 16 years, and she will be greatly missed. Donna served as the Vice President of the NCLC Board of Directors and was an active member of her community in Cambridge, Massachusetts. She also served on the Board of Directors of South Middlesex Legal Services, and participated on the statewide Massachusetts Clients Council Steering Committee.



Donna Daley

NCLC Executive Director Rich Dubois remembered Donna's many years of service to the Center: "We were deeply saddened to hear of Donna's passing. For 16 years she was a cherished and dedicated member of the board and our audit-finance committee. She had a genuine warmth and caring spirit that touched everyone she encountered. She was a force for good in her community who was dedicated to helping those who were vulnerable and struggling. Her passing is a great loss."

Fellow Board Member Mark Budnitz reflected on Donna's time with NCLC: "What I'll miss most is her smile. It could light up a whole room. We were very fortunate to have her on the Board, both for what she contributed as a Board member and for just being the kind of person she was." ■

New Attorney Spotlight: Alpha Taylor

This June, we welcomed **Alpha Taylor** to NCLC as a staff attorney in our Washington D.C. office. Alpha's work focuses on student lending and other consumer law issues.

What initially drew you to consumer law?

I always knew I wanted to make a positive impact in the lives of low-income people, and after law school, I found an opportunity to do so working on foreclosure issues at a public interest law firm. I then transitioned to the Legal Aid Society of Greater Cincinnati, working on consumer cases in housing and student lending, and eventually moved to Washington D.C. to work with tenants and disabled veterans.

How did you come to work at NCLC?

I knew about NCLC's work from my time in legal aid: we often used NCLC's housing and student loan manuals. I also attended two NCLC Consumer Rights Litigation Conferences. Those made a huge difference in the way I practiced, so when I was in D.C. and heard that NCLC was hiring, I knew I wanted to apply. I started out reading NCLC manuals; now I'm on the other side writing them!

What excites you most about working in NCLC's student lending unit?

It's a very exciting time to be in the

Staff Attorney Alpha Taylor

student loan world. Every week something new happens, and we get a chance to influence those changes. Right now, for instance, we're working on the Department of Education's negotiated rulemaking, where the Department rewrites the rules governing most federal student loan programs.

When you're not advocating for borrowers, what do you do in your spare time?

I change diapers! I have an eight-month-old son, and I like to hang out with him, taking him on walks around our neighborhood and enjoying the outdoors. ■



All Over the Map

Many States Fall Short in Protections Against Predatory Lending

Caps on interest rates and loan fees are the most effective tools that states and the federal government have to protect consumers from predatory lending. Yet, while an annual percentage rate (APR) cap of 36% is broadly supported by the public on a bipartisan basis, many states have a long way to go in establishing reasonable limitations on the cost of borrowing.

NCLC's recent state-by-state review, *Predatory Installment Lending in the States* (May 2021), provides a detailed snapshot of the national landscape for state-level protections against high-cost installment lending in 2021. The findings are mixed for consumers: while the majority of states offer some kind of interest rate and fee caps, many states lack any kind of rate cap or sit far above the recommended level, with a handful only requiring that loans not "shock the conscience."

Recent changes in state-level caps between 2020 and 2021 have similarly resulted in a mixed outlook for consumers. In Illinois, for instance, Governor J.B. Pritzker signed a 36% APR cap on all non-bank loans made in the state, a significant and very positive step. Unfortunately, in neighboring Indiana, the legislature enacted a law that increases already excessive fees that lenders can charge in the same year.

To advance financial fairness, NCLC urges all states to enact a 36% APR cap, including fees, with lower APR caps for larger loans. Our staff experts have recently summarized research on what happens when states cap interest rates, and found that consumers are consistently better off and find better alternatives when protected by rate caps. Read our report and recommendations for state legislatures, and learn more about our work on high-cost installment loans at nclc.org/issues/high-cost-small-loans.html. ■

State Advocacy Update

Over the last six months, NCLC's State Advocacy Project has continued to build national coalitions around credit reporting and debt collection reforms, helped pass debt collection bills, and worked with our partners to organize a national advocacy convening.

In Maine, NCLC worked closely with local advocates to pass LD 737 which, among other things, creates a new automatic protection for \$3,000 in a consumer's bank account against seizure for a debt. This reform has been a focus of the state advocacy project, and similar bills will be introduced in other states next session.

NCLC continues to host monthly calls on debt collection and credit report policy, where advocates can share intelligence on the opposition to reform campaigns, brainstorm ideas for bills, and share materials and best practices. In October, NCLC was again an organizer of the Economic Justice Policy Advocate Convening, where state advocates from across the nation shared and discussed ideas for new state-level bills and initiatives for the coming legislative session. Looking to next year, NCLC expects to be substantially involved in debt collection reform work in at least six states, as supporter investments in NCLC's Campaign for the Future allow us to continue expanding our state advocacy. ■

Student Loans: A Period of Crisis — and Opportunity

The U.S. student loan system is in crisis, and the next year will be a period full of significant challenges — but also a moment ripe with opportunities for real and lasting reforms to benefit student loan borrowers.

The suspension of student loan payments and debt collection during much of the COVID-19 pandemic has provided short-term relief to millions of student loan borrowers; however, the ending of payment suspensions, scheduled to happen early in 2022, as well as the exit of major loan servicers from the federal loan portfolio, is certain to create serious problems for vulnerable borrowers.

Two planned negotiated rulemaking processes in 2021-2022 provide a once-in-a-generation opportunity to advance critical priorities. NCLC will play a central role in promoting long-term reforms of the student loan system to support postsecondary access and success, and lessen or eliminate racial equity gaps to create greater socioeconomic security and mobility.

NCLC will represent the legal aid community on the U.S. Department of Education's 2021 negotiated rulemaking

committee for affordability and student loans, with Staff Attorney Persis Yu selected to fill that critical role.

NCLC's goals in this process will include:

- Ensuring that debt cancellation programs are accessible to and provide adequate relief for borrowers
- Reforming income-driven repayment
- Eliminating interest capitalization on federal student loans
- Expanding access to the courts for victims of for-profit and other predatory school fraud
- Improving educational access by expanding Pell Grant eligibility
- Fixing the Public Service Loan Forgiveness program
- Expanding and automating the total and permanent disability discharge program

The issues addressed in this rulemaking process provide an opportunity to directly improve policies in those areas, but they are only part of the broken system. Other core NCLC student loan priorities include:

- Addressing racial disparities

- Protecting essential, poverty-reducing benefits from seizure due to defaulted loans
- Improving repayment options for defaulted borrowers
- Fixing abusive and/or ineffective loan servicing problems
- Reforming student loan debt collection policies and practices
- Expanding "fresh start" opportunities for student loan borrowers
- Investigating and challenging the predatory practices of for-profit schools
- Building low-income borrower representation capacity
- Increasing impact litigation
- Advocating for broad-based loan cancellation

NCLC's focus will remain on maximizing the potential for college access and success for all students, especially those who are low-income, people of color, and women — often the most vulnerable borrowers in our society. For more information on our work to make postsecondary education affordable for students and their families, visit nclc.org/issues/student-loans.html. ■

Updates from NCLC's Digital Library

The second half of 2021 brought exciting new treatise revisions and more free and invaluable resources to the NCLC Digital Library.

For over 40 years, *Unfair and Deceptive Acts and Practices* has been the definitive guide to the most important consumer statute in every state — the state's unfair or deceptive acts or practices (UDAP) statute. Now in its tenth edition, the treatise is fully updated for 2021 with 50-state and Federal Trade Commission (FTC) precedent on UDAP challenges to credit, debt collection, mortgages and foreclosures, as well as automobile sales, leases, and finance. The practice manual also analyzes remedies, scope, and the preconditions to litigation under each state's UDAP statute.

Repossessions, NCLC's treatise covering every aspect of motor vehicle, manufactured home, and household goods repossessions, has also just been released in its tenth edition, updated with the latest case developments and statutory changes. Learn more about both of these new revisions and read the first chapters for free at nclc.org/library.

In addition to the new print and digital revisions, all 21 titles in the Consumer Law Practice Series are updated online to keep up with changes in the law. Access to the digital format is included with every NCLC treatise subscription.

NCLC has also published new resources, and made some key resources temporarily available to the public for free, enabling advocates and counselors to better understand the legal rights of

consumers experiencing economic hardship in the wake of both the COVID pandemic and recent natural disasters. Of special note is a new chapter 12 added to NCLC's *Mortgage Servicing and Loan Modifications*, titled "Homeowner Rights During Natural Disasters and COVID-19." The chapter covers limits on foreclosure, rights to forbearance, and loan modifications for homeowners following a natural disaster and COVID-19 pandemic.

The digital edition of *Surviving Debt: Expert Advice for Getting Out of Financial Trouble*, now fully updated for 2021, is also free to all for a limited time as a resource for advocates and counselors with clients suffering financial challenges in these difficult times.

Visit nclc.org/library to learn more! ■



Staff Attorney Jen Bosco

"Climate change presents serious risks for low-income households, and low-income households and people of color tend to face the greatest risks from adverse weather events and natural disasters."

Q & A with Staff Attorney Jen Bosco

NCLC Staff Attorney **Jen Bosco** manages NCLC's work on energy affordability and utility issues affecting low-income consumers. Her areas of expertise and successful advocacy include utility bill payment assistance, affordable electric vehicle programs for low-income people, protections from predatory energy supply companies, and medical debt. Jen is a contributing author to NCLC's *Access to Utility Service* and *Collection Actions* treatises, and co-wrote NCLC's Model Medical Debt Protection Act.

How are low-income communities and consumers impacted by energy issues?

Energy affordability is a huge issue in this country – about one-third of households report problems paying for their home energy and utility needs. Due to the racial wealth gap and legacy of systemic racism, affordability problems are even more frequent among Black and Latinx households. If consumers can't afford basic utility service, water, and internet service, there are implications for health, safety, employment, education, and more.

Can you describe NCLC's involvement in the development of energy policies at the local, state, and federal level?

There is so much going on in energy policy right now. We are in the early stages of a transition away from fossil fuels, requiring more renewable energy and energy efficiency investments to address climate change. Climate change presents serious risks for low-income households, and low-income households and people of color tend to face the greatest risks from adverse weather events and natural disasters. So how do we balance the investments needed to address climate change with the need to keep energy affordable? This is the

underlying concern in most of our work on utility bill payment assistance programs, the transition away from natural gas, electric vehicles, and other areas.

What are some of the successes achieved and lessons learned from NCLC's advocacy to protect low-income utility consumers during the COVID-19 pandemic?

At the onset of the pandemic, NCLC recognized right away that it would be crucial to keep low-income families connected to utility service during the pandemic, but that families were likely to face unprecedented financial challenges. In March 2020, we started advocating for states to prohibit utility disconnections for nonpayment during the public health emergency. We were then able to work with state advocates to urge longer-term measures to protect consumers. It has been said many times, but the pandemic really did bring widespread attention to poverty, racism and home energy security, so advocates were able to build on the renewed interest in these areas to obtain some needed increases in federal assistance and improve the utility bill payment assistance programs in several states. ■

Longtime NCLC Leader Will Ogburn Honored by CFA

This October, **Will Ogburn**, former Executive Director at NCLC, was selected to receive the Consumer Federation of America's Consumer Champion Award for outstanding commitment, leadership, and effective advocacy on behalf of consumers. He has been chosen alongside four other notable recipients, including state attorneys general **Maura Healey** (MA) and **Keith Ellison** (MN).



Former Executive Director, Senior Fellow Will Ogburn

Will served as NCLC's Executive Director for 28 years, working not only to strengthen NCLC's effectiveness as an advocacy organization, but also to cultivate the growth of the broader consumer law community through the development of NCLC conferences, publications, and other educational resources. He continues to serve vulnerable consumers and their advocates as a Senior Fellow at NCLC. Congratulations Will! ■

Emergency Broadband Benefit Provides \$3.2 Billion to Low-Income Households

The COVID-19 pandemic exposed the harsh reality of the digital divide – broadband internet is an essential service, but one that is often unaffordable for low-income consumers, particularly communities of color. As the coronavirus shifted schools, work and other essential services online, NCLC worked night and day with our longstanding digital equity partners and with industry leaders to find common ground and connect millions of vulnerable households across the country.

A hard push by this coalition resulted in the \$3.2 billion Emergency Broadband Benefit (EBB) program, created in December 2020, providing immediate dollars to low-income households for a connected device, up to \$50 per month for broadband service (up to \$75 for households on tribal lands), and a one-time benefit of up to \$100 for a laptop or other device. NCLC’s deep experience in this arena provided

guidance in best practices of other low-income utility affordability programs and promoted the efficiencies of utilizing existing low-income programs in the delivery of the broadband benefit.

Since the EBB’s passage, NCLC has provided input to the Federal Communications Commission (FCC) on program rules, developed tools and toolkits, and has presented to multiple stakeholder groups to promote the EBB and explain the enrollment process. Over 6 million households have enrolled in EBB since mid-May.

NCLC continues to work in coalition with our partners in telecom and technology, legal services, rural broadband, schools and libraries, and community action agencies to secure funding for permanent broadband affordability and digital inclusion



within the infrastructure and budget reconciliation bills. The current bipartisan infrastructure bill, which has passed out of the Senate and awaits a vote in the House, contains \$14 billion for a successor program to the EBB. “We will continue to work tirelessly to ensure that there is a permanent low-income broadband assistance program, funding for laptops, tablets and desktops, and digital literacy training in our pursuit of digital equity,” said [Olivia Wein](#), NCLC Staff Attorney. ■

Protecting Utility Ratepayers: Massachusetts Case Study

Nearly one million Massachusetts residential gas and electric customers (824,972) were behind on their energy bills when the COVID-related moratorium on shut-offs ended on July 1st this summer. They owed a total of \$794 million dollars. Alarming, 83% of that debt (\$661 million) was held by households who were more than three months behind on their bills, placing their utility service at high risk of termination. On average, they owed \$1,436 per household. A large majority of this balance is held by a “new class” of residential customers who are not on the discount rate available to lower-income households, but who have been unable to pay their bills due to the pandemic. These customers are not used to applying for, and likely unaware of, all the available assistance and were first in line as terminations resumed this summer.

Households of color have been found to have higher energy bills, and to also experience termination and the threat of termination much more frequently than white households. Early on in the pandemic, survey data from Indiana University showed that low-income Black households were sent utility disconnection notices at twice the rate of white households, and had their electricity disconnected five times more frequently. Hispanic households received notices at five times the rate and lost electricity at eight times the rate of white households.

NCLC’s report *More Can and Must Be Done to Prevent Utility Consumers from Losing Service Due to Mounting COVID-Driven Arrearages in Massachusetts and Other States* provides a snapshot of utility debt in Massachusetts held before the shut-off moratorium was lifted on July 1st. Among other recommendations, the report points out the necessity of getting the federal Emergency Rental Assistance Program (ERAP) funds credited to the accounts of customers in debt much more quickly in order to prevent terminations. Additionally, the report points out how imperative it is to collect good data by zip code in order to both assess and address disparate racial impacts in credit and collection — not only in Massachusetts, but across the nation. See the report here: bit.ly/more-covid-util-arrearages. ■



Racial Justice Spotlight: Creating a More Equitable Future

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



In this season of Thanksgiving – an occasion whose origins are inextricably linked to the long history of displacement, forced assimilation, violence, and broken promises made to Indigenous people – we must commit ourselves to moving beyond positive but largely symbolic gestures, such as the declaration of Indigenous People’s Day in many communities earlier this year.

The ongoing struggles of Indigenous communities across the country demonstrate, in stark clarity, the existence of deep systemic racism in this country that must be addressed with concrete policy change. For example, according to the Centers for Disease Control and Prevention (CDC), persistent racial inequity and historical trauma have contributed to disparities in health and socioeconomic factors during the COVID pandemic for Indigenous people, leading to infection rates for Alaska Natives and American Indians that have been as much as 3.5 times higher than those of non-Hispanic whites. Indigenous workers have also

fared poorly during the crisis: more than one-quarter of the Native American workforce was unemployed at the height of the pandemic in 2020, the highest rate of any racial group. These struggles reflect similar inequities faced by other communities of color.

As the nation struggles to emerge from the COVID-19 pandemic, and as marginalized groups face some of the steepest climbs back to relative normalcy, NCLC is working to promote policies to ensure an equitable economic recovery, and to lay a foundation for longer-term improvements to consumer protections and assistance programs that needed upgrades even before the coronavirus outbreak began. Hard-hit Indigenous, Black, Latinx and Asian families often have fewer resources and are at greater risk for eviction, foreclosure, and utility termination. To stave off foreclosure, for example, NCLC helped win a number of policy concessions from the federal agencies that insure or guarantee the majority of mortgages made to borrowers of color. These victories include the addition of pandemic-specific home-saving programs; a streamlined process to access the

programs; and extending the length of the program to allow more borrowers to access these home saving measures.

Moreover, NCLC is working in partnership with civil rights and grassroots organizations to strengthen and expand fair housing policies, including the disparate impact standard used by consumer advocates to challenge discriminatory practices. We are also focusing our attention on affirmatively advancing equity in the credit and housing markets, including through the expanded use of special purpose credit programs aimed at underserved communities. These activities complement legislative efforts focused on increasing access to credit through small-dollar mortgages, which are disproportionately used by borrowers of color and other socially disadvantaged groups to achieve homeownership.

To address past injustices and create a more equitable future for Indigenous and other communities of color severely harmed by the pandemic, NCLC is focused on advancing an equity agenda that preserves homes and other assets, fights discrimination, and advances access to sustainable credit. ■

NCLC Summer Interns: The Next Generation of Consumer Advocates



Every summer, NCLC welcomes a talented group of law students for our summer internship program. This year, we were lucky to host five excellent future lawyers for the summer, including (from left to right): **Byron Carter** (rising 2L, Emory University School of Law); Greenfield Fellow **Steven Davis** (rising 2L, Washington University School of Law); **Scott Haeck** (rising 2L, University of Michigan Law School); **Hannah Hubbard** (rising 2L, Harvard Law School); and Hobbs Fellow **Amy Lorenc** (rising 2L, University of Michigan Law School). The Greenfield Fellowship is awarded annually to a 2L at the Washington University School of Law in honor of Professor Greenfield, a longtime supporter of NCLC, and the Hobbs Fellowship is awarded annually by the NCLC Board of Directors in honor of Bob Hobbs, former NCLC Deputy Director. Thank you to our Intern Class of 2021 for your many contributions this summer, and we look forward to following your academic and professional progress! ■



Register Now!

December 6-16: Virtual Consumer Rights Conference & Class Action Symposium

NCLC's annual Consumer Rights Litigation Conference and Class Action Symposium are the most essential convenings of the year for attorneys and advocates representing consumers. Last year's online CRLC gathered 1,130 consumer attorneys and advocates from 46 states over a two-week period, and this year we will once again gather virtually to bring training, education, and networking to you with the push of a button, without having to completely put your life or your practice on hold!

Week One, Education Week, will feature in-depth tracks led by experts in Auto Loans, Credit/Banking, Credit Reporting, Debt Collections, Mortgages and Foreclosures, Student Loans, and

the TCPA. Additional sessions will also cover criminal justice debt, medical debt, the crossover of domestic violence and consumer law, and the nuances of how COVID continues to affect the economic landscape. Major recent legal developments with implications for consumer practitioners, including the Supreme Court's decision in *TransUnion LLC v. Ramirez*, will also be addressed in depth in multiple sessions.

Week 2, Engagement Week, will feature a wide array of strategy summits, roundtable discussions, office hours, networking events, and other opportunities to engage with your fellow consumer law practitioners. Week 2 will also feature this year's Consumer Class Action Symposium, which includes sessions on Evidentiary Issues in Class Certification, Preparing for Class Action Trials, Hot Topics in Class Action Litigation, Diversity and Inclusion in the Class Action Bar, as well as an Ethics session. In addition, the 2021 Symposium will include three practitioner-led workshops: Winning Your Motions Through Effective Oral Advocacy, Making ESI an Integral Part of Your Litigation Practice, and Winning Your Motions Through Effective Written Advocacy.

Vulnerable consumers need a strong, well-prepared consumer law community to stand up for them, and this conference will help you meet the challenges of the present and future. We look forward to seeing you online soon, and can't wait to convene the community in-person again in 2022! Register now at bit.ly/CRLC-2021. ■



Litigation Case Study: *Henderson v. Vision Property Management, LLC*

—Stuart Rossman, NCLC Director of Litigation

Flexibility and a willingness to approach challenges from different perspectives are valuable and important skills to have in consumer litigation. The ultimate purpose of NCLC's litigation is to stop abusive consumer practices and protect low-income consumers, making it particularly wise to consider all of the potential strategies to achieve those goals. Therefore, when NCLC seeks to protect consumers through litigation, we do not limit our options to available consumer law causes of action; we also explore other legal claims that may present alternative ways to win our cases.

A good example is the class action case of *Henderson v. Vision Property Management*, which NCLC Staff Attorney [Sarah Mancini](#) and I filed in the federal court for the Eastern District of Michigan last year with the Michigan

ACLU, the NAACP Legal Defense Fund, and the Michigan Poverty Law Program. We allege that Vision induced prospective homebuyers in the Greater Detroit area to sign lease-purchase contracts for homes based on false promises of homeownership, misrepresenting the nature of the transaction, failing to disclose the cost of credit in its alternative financing arrangement, and failing to disclose significant problems with the condition of the properties in order to reap enormous profits.

Our complaint asserts traditional consumer claims for the entire putative class under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). However, it also recognizes that Vision specifically targeted Black homebuyers for its predatory home purchase scheme. Therefore, we included sub-class civil rights claims on behalf of those who have

been discriminated against pursuant to the Fair Housing Act (FHA) and the Equal Credit Opportunity Act (ECOA).

By diversifying our strategy and combining consumer law and civil rights claims in our pleadings, we believe that we can best represent the interests of all of our clients while enhancing the overall likelihood of success in our case. Learn more about the *Henderson* case and follow our progress in the litigation: nclc.org/henderson. ■



Staff Attorney Sarah Bolling Mancini, Executive Director Rich Dubois, and Zachary Anderson, a plaintiff in *Horne et al. v. Harbour Portfolio et al*, a predecessor case to *Henderson v. Vision*.

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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.

NCLC Receives Highest Ratings from Charity Watchdogs

NCLC earned a **Platinum Seal of Transparency from Guidestar** and **our fourth consecutive 4-star rating from Charity Navigator**.

We received these accolades — the highest possible honors in each respective rating system — from two of the most important non-profit evaluators in the country in recognition of our sound financial practices, as well as our consistent transparency and accountability.

GuideStar awards its Platinum Seal to organizations who meet its highest standards for consistent and detailed disclosure of goals, performance, and leadership structure.

Charity Navigator's 4-star rating is reserved for exceptional organizations that **exceed industry standards** for financial health, transparency, and accountability. **Only 21% of charities** evaluated by Charity Navigator have received at least four consecutive 4-star evaluations, putting NCLC among a select group of the most fiscally sound and trustworthy organizations in the country.

These recognitions reflect not just our own work, but also the generosity and wisdom of our Board, Partners Council, funders, and all of the supporters who make our work possible.

Thank you for helping make NCLC one of the nation's most respected non-profits! ■



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