

Crisis, Danger, and Opportunity NCLC's Agenda for 2021 (and Beyond)

“The Chinese use two brush strokes to write the word ‘crisis.’ One brush stroke stands for danger; the other for opportunity. In a crisis, be aware of the danger – but recognize the opportunity.” —John F. Kennedy

The results of the 2020 Presidential and Congressional elections, combined with a worsening COVID-19 pandemic, create both challenges and opportunities for consumer rights and economic justice advocates.

To achieve economic justice for our low-income clients and other vulnerable people, families, and communities, and to address the racial and economic inequality that the COVID-19 crisis has made so starkly apparent, NCLC is advocating to advance an agenda of common-sense reforms rooted in basic fairness for all. Our 2021 Consumer Protection Federal Priorities Agenda (bit.ly/2021-Fed-Consumer-Protection) includes the following highlights:

Access to Justice: Restore our Day in Court End the use of forced arbitration in contracts.

Bankruptcy: A Fresh Start for Working Families Give student loan borrowers and those struggling with unaffordable criminal justice fines and fees the same fresh start opportunity as others.

Cars: Ensure Low-income Families Can Get and Keep a Car at Fair Terms Identify and dismantle barriers to car ownership for low-income people and people of color, bring fairness to car sales and finance through transparency

NCLC Attorney April Kuehnhoff and NCLC Executive Director Rich Dubois meet with U.S. Senator Ed Markey

and consistency, and ensure the cars sold are safe and reliable.

CFPB: Keep the Consumer Watchdog Working for Us Refocus the CFPB on its mission to protect consumers and fight discrimination.

Civil Rights & Fair Lending: Defend & Enforce Our Laws Preserve the collection of race and ethnicity data and require loan-level data during the COVID-19 emergency and beyond.

Credit: Limit Interest Rates to Stop Predatory Lending Extend the 36% interest rate cap that currently protects

continued on page 11



COVID-19 Foreclosures Are Coming

Here's How Lawmakers Can Soften the Blow for Homeowners

Along with the devastating public health consequences of COVID-19, many consumers will also face overwhelming financial distress as a result of staggering unemployment and increases in the cost of basic necessities such as food, child and medical care, and transportation. And as courts open up for foreclosure and eviction hearings and moratorium restrictions lift, many consumers will be at risk of losing their homes.

Over 7% of adults in the U.S. report that they are either behind on their rent or mortgage payment, or have slight or no confidence in making their next payment on time. It is predicted that between 225,000 to 500,000 homeowners in the U.S. could face foreclosure through 2021. Communities of color, especially Black and Latinx communities, who have been particularly


continued on page 11



Consumer Impact

is a biannual publication of the national Consumer Law Center to inform our supporters about NCLC's advocacy. To receive *Consumer Impact* via e-mail, contact cmurray@nclc.org.

 [Facebook.com/nationalconsumerlawcenter](https://www.facebook.com/nationalconsumerlawcenter)

 [@NCLC4consumers](https://twitter.com/NCLC4consumers)

 [linkedin.com/company/national-consumer-law-center](https://www.linkedin.com/company/national-consumer-law-center)



[NCLC.ORG](https://www.nclc.org)

NCLC Partners Council

Leadership for NCLC

Elizabeth J. Cabraser, Chair

Bryan Kemnitzer, Chair Emeritus

Leonard Bennett

O. Rand Bragg

Robert M. Bramson

Bernard E. Brown

Mark A. Chavez

Michael D. Donovan

E. Michelle Drake

Cary L. Flitter

James A. Francis

Kristi C. Kelly

Keith Keogh

Steve D. Larson

Seth R. Lesser

Matthew McCue

Scott D. Owens

David J. Philipps

John Roddy

John Andrew Spanogle, Jr.

James C. Sturdevant

Beth Terrell

Janet R. Varnell

A Note from the Executive Director NCLC Looks to the Future with Optimism and Hope

Dear friends, allies, and supporters:

One year ago, NCLC celebrated its 50th anniversary with a wonderful celebration. Looking back, we did not appreciate how fortunate we were to gather together in Boston. Little did we know what lay in store for us all in 2020. It has been an uncertain, turbulent, and trying time.

As we reflect upon the past year, our hearts go out to the millions of individuals and families who have been devastated by COVID-19; the over 200,000 who have lost their lives; and the millions more who have lost their jobs, their hard-earned savings, and any sense of economic security.

Given all of the serious challenges we face as a country, the struggle for economic and racial justice is more important than ever. With the contentious election season behind us and the promise of a new administration ahead, NCLC looks to the future with optimism and hope

about building a more just and equitable economic system for low-income and vulnerable consumers. We will seize this opportunity to bring about profound and lasting reforms to the policies and systems that have perpetuated poverty and discrimination for generations.

Inside this edition of *Consumer Impact*, you'll read about the ways the dedicated advocates of NCLC are currently working to address the overwhelming financial distress caused by the pandemic. In all parts of the country, our staff is finding ways to provide relief to homeowners in danger of foreclosure; devising strategies to help households keep their utilities on;

fighting attempts by predatory lenders to evade state interest rate caps; and combatting schemes that target Black consumers for home purchase contracts that are designed to fail and drain wealth from Black communities.

As we look ahead to a better and more hopeful future in 2021 and beyond, you can be sure that NCLC will continue to give voice to the needs of the disadvantaged and most vulnerable. I do hope we continue to earn your trust and support.

With best wishes,

Rich Dubois
Executive Director
National Consumer Law Center



Executive Director Rich Dubois

NCLC Joins ACLU-MI, NAACP LDF, and MI Poverty Law Program in Challenge to Predatory Lending Scheme

There is a long history of housing and credit discrimination in the Greater Detroit area. For years, companies have targeted Black communities with predatory lending schemes using deceptive terms. The long-term consequences of this practice — anemic homeownership rates in comparison to white families and an erosion in wealth accumulation — have devastated Michigan's Black communities. These schemes, combined with the deeply concerning recent rollback of civil-rights protections in the housing and financial sectors, have exacerbated the racial wealth gap and unjustly prevented many Black and brown families from achieving long-term economic security.

This fall, NCLC, in partnership with the NAACP Legal Defense and Educational Fund, Inc. (LDF), the American Civil Liberties Union (ACLU) of Michigan, and the Michigan Poverty Law Program, filed a federal class-action lawsuit against Vision Property Management (Vision).

The lawsuit was filed on behalf of low-income residents of Detroit, Inkster, and Flint, Michigan, to whom Vision promised a path to homeownership but who are now trapped in contracts structured to fail. Vision primarily targeted Black consumers for its home purchase scheme, the lawsuit argues.

As detailed in the lawsuit's 109-page complaint, Vision purchased approximately 1,000 foreclosed homes in Black neighborhoods, many of them dilapidated, and failed to invest in making those homes livable. Vision then sold many of these homes under contracts that obscured the true cost of buying and repairing the home. The terms of the contracts made it difficult for buyers to achieve homeownership while also allowing Vision to avoid responsibility for upkeep while would-be homeowners poured their money into making the homes livable.

"The harm Vision's practices have caused to communities and people of color shows

that vigorous enforcement of federal civil rights and consumer protection laws are

needed now more than ever," said Sarah Bolling Mancini, staff attorney at the National Consumer Law Center, in the press release announcing the suit. "This is not the moment to abandon the goals of fair housing and safe lending. In the wake of the coronavirus crisis, the need for strong federal and state protections will be even greater."

"It is time to eliminate the predatory schemes that have exploited our Black communities. We commit to standing shoulder-to-shoulder with members of low-income communities of color who have been targeted by unscrupulous predatory lenders for too long," said Lorry Brown, managing attorney and consumer law attorney at the Michigan Poverty Law Program. Keep updated on the suit at: bit.ly/vision-page



Residence of Ms. Rachel Church, a plaintiff in the *Vision* case

New from Our Bookshelf

NCLC Publications and Digital Library Updates

In response to the COVID-19 pandemic and the resulting financial crisis, the NCLC Publications team has worked hard to make free or reduced-cost resources available for consumers and advocates. In addition to offering free online access to the 2020 edition of *Surviving Debt*, staff attorneys at NCLC have written several articles on mortgage relief for homeowners affected by the pandemic, how to protect stimulus checks from garnishment, CARES Act credit reporting protections, and a continually updated list of major consumer protections in response to the pandemic. All these resources can be accessed for free on the NCLC Digital Library at nclc.org/library.

NCLC staff has also continued to update the invaluable Consumer Law Practice Series. The October, 2020, Fifth Edition of *Collection Actions* is a unique manual on defending lawsuits to collect credit card and other consumer debt, including special tactics to defend collections as medical, government, bad check, and criminal justice debt.

Finally, updated editions of *Consumer Credit Regulation* and *Consumer Warranty Law* will be available in print and on the NCLC Digital Library this winter. *Consumer Credit Regulation* is the authority on predatory lending and consumer credit, including such emerging topics as federal preemption, rent-a-bank and installment loans. *Consumer Warranty Law* offers expert practical advice and detailed analysis of litigation under Magnuson-Moss, the UCC, and state lemon, manufactured home, and other special warranty laws.



NCLC Featured on PBS Newshour

This June, *PBS Newshour* ran a lengthy segment on problems with predatory "rent-to-own" land installment contracts featuring NCLC attorney Sarah Bolling Mancini. Sarah highlighted how these contracts trap low-income communities — particularly communities of color — in exploitative financial arrangements that drain wealth and create barriers to homeownership. If you missed the program live, you can watch Sarah's interview in "Quest for Homeownership Turns Dreams into Nightmares" on the PBS website.

Red Alert on Predatory “Rent-a-Bank” Schemes

NCLC and its partners have been sounding the alarm for years on so-called “rent-a-bank” schemes, in which high-cost lenders launder their loans through banks to evade state interest rate limits. Payday lenders were using these schemes in the early 2000s, but action by states and federal bank regulators largely shut down these fraudulent arrangements. Now, online lenders, aided by federal banking regulators, are again exposing borrowers to high-cost rent-a-bank loans, jeopardizing the power states have had since the time of the American Revolution to limit interest rates to prevent predatory lending.

Banks are largely exempt from state rate caps, so predatory lenders are increasingly using banks as a “fig leaf” to launder usurious loans up to 160% APR or higher in states where those rates are illegal. Predatory lenders are using rent-a-bank schemes for installment loans, lines of credit, auto title loans, retail point-of-sale loans, and small business loans secured by homes.

Amidst the severe economic fallout of the COVID-19 pandemic, the FDIC and Office of the Comptroller of the Currency (OCC) have chosen to side with these predatory schemes. Both

agencies issued rules (so-called “Madden-fix” rules) that allow high-cost lenders to ignore state rate caps when they buy loans from banks. The OCC has released a rule that would allow high-cost lenders to skirt state rate caps merely by putting a bank’s name on the paperwork, preventing courts from looking behind contrivances to assess whether the bank is really the true lender.

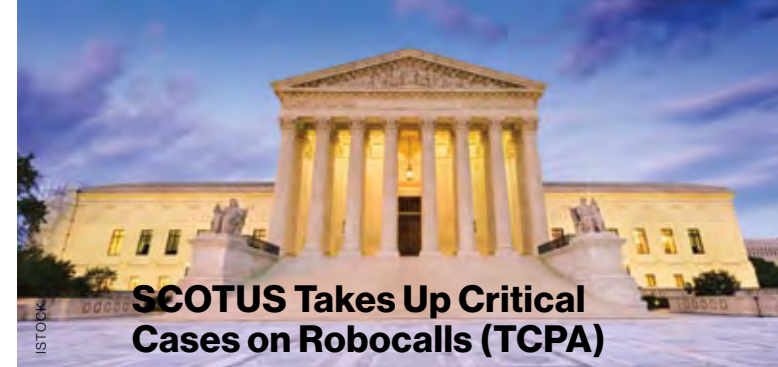


In comments to the OCC earlier this year, NCLC and its partners deeply objected to the offensive claim that predatory lending that destroys families should be allowed in the name of “access to credit.” High-cost installment loans are an even bigger and deeper debt trap than traditional payday loans. NCLC also earlier filed comments opposing the Madden-fix rules, which

are now under challenge by several state attorneys general, and filed an amicus brief supporting the Colorado Attorney General’s challenge to two lenders.

In addition to continuing to support legal challenges to rent-a-bank schemes and to the bank regulators’ rules, NCLC has partnered with the Consumer Federation of America (CFA) and other leading consumer organizations to launch a High Cost Lending Lobby Campaign to build support for a national rate cap through the Veterans and Consumers Fair Credit Act (H.R. 5050/S. 2833) and to put a stop to high-cost rent-a-bank schemes to evade state usury laws. Advocates from across the nation attended an initial online training led in part by NCLC’s Associate Director Lauren Saunders and met with their members of Congress virtually throughout the following weeks.

“Rent-a-bank schemes are the biggest threat in decades to states’ power to protect families from predatory lending. Passing a national 36% rate cap and stopping rent-a-bank evasions of state interest rate limits must be top priorities in the coming year,” said Saunders. ■



SCOTUS Takes Up Critical Cases on Robocalls (TCPA)

This July in *Barr v. American Political Consultants*, the U.S. Supreme Court upheld the constitutionality of a key Telephone Consumer Protection Act (TCPA) provision that protects Americans from receiving unwanted robocalls and texts to their mobile phones. The case, brought by a coalition of political consultants, argued that the TCPA was unconstitutional because a 2015 provision exempting calls to collect government debt showed an unconstitutional preference for one type of speech over the other. This, the consultants argued, made the TCPA’s prohibition against automated calls without consent unconstitutional, and the protection against unwanted robocalls to cellphones should be struck down in its entirety.

In an unusual partnership between consumer groups and the telecom industry, Verizon, along with the Consumer Federation of America, joined NCLC’s amicus brief to the Court, which noted that “through the TCPA, Congress sought to protect the interests of telephone consumers, businesses, and the communications network itself.” In a clear victory for consumers, Justice Kavanaugh wrote, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls,” and referred to the “torrent of vociferous consumer complaints about intrusive robocalls” that prompted the passage of the TCPA. A majority of the Court agreed that the exemption for calls to collect federal government debt was unconstitutional and struck down only that exemption, rather than the entire protection against robocalls. As a result, the TCPA limits on robocalls remain in place for all other calls, including those relating to government debt for federal student loans or money owed to the IRS.

However, the battle before the U.S. Supreme Court regarding the protections against robocalls is not over. This term, the Court takes up *Duguid v. Facebook* to determine what constitutes an “automated telephone dialing system” (ATDS) under the TCPA. This interpretation will govern whether automated texts and many robo-dialed calls to cellphones are covered by the TCPA’s requirement for consent. The calling industry has pushed for a narrow definition, which would mean that hundreds of millions of automated calls and text messages could be sent to cellphones without consent and essentially gut the TCPA. Attorneys representing consumers have insisted that the TCPA requires a broad application to ensure consumers are shielded from unwanted calls. NCLC submitted an amicus brief on behalf of itself and other national consumer groups supporting the consumer plaintiffs in the pending case. All eyes are on the Supreme Court’s decision, which will come in the first half of 2020. ■

NCLC Reports Detail Impact of Criminal Justice Debt, EITC Credit Seizure, and Predatory Lending Policies

Using Bankruptcy to Discharge Criminal Justice Debt

A major barrier to reentering society long after an encounter with the criminal justice system is the burden of paying fines and fees. To help knock down this barrier, a new NCLC primer guides bankruptcy and criminal defense attorneys on using bankruptcy to discharge criminal justice debt and help individuals avoid suspensions of drivers’ licenses and vehicle registrations. NCLC’s report, *Clearing the Path to a New Beginning: A Guide to Discharging Criminal Justice Debt in Bankruptcy*, reviews treatment of debt with use of Chapter 7 and Chapter 13 bankruptcy, an overview of which fines and fees are and are not dischargeable, and how to use the Bankruptcy Code’s automatic stay to assist those facing the consequences of nonpayment of court debt. Read the Report at: bit.ly/New-Beginning-CJ-Bankruptcy-Debt



Seizure of the EITC Leaving Student Loan Borrowers Homeless and Hopeless During Pandemic

Even after the passage of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which suspended all student loan collection activity until September 30, 2020, some borrowers are still losing the EITC that they and their families rely on. Now, in the midst of the COVID-19 pandemic, many student borrowers noted that the seizure of their EITC meant they were teetering on, and, in some cases, pushed into homelessness. *Voices of Despair: How Seizing the EITC is Leaving Student Loan Borrowers Homeless and Hopeless During a Pandemic* updates NCLC’s 2018 report examining the impact of EITC seizure on student loan borrowers and their families, and lays out what Congress can do to remedy this destructive practice that is devastating families. Read the report at bit.ly/Voices-of-Despair

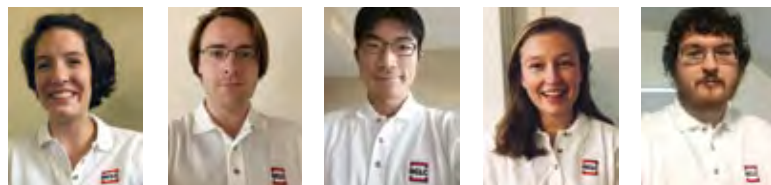


Predatory Installment Lending in the States: 2020

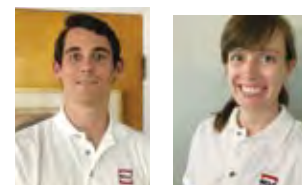
Caps on interest rates and loan fees are the primary vehicle by which states protect consumers from predatory lending, yet these caps are under attack. In state after state, high-cost lenders are mounting campaigns to persuade policymakers to discard or weaken these bulwark protections. NCLC’s *Predatory Installment Lending in the States: 2020* surveys the battleground as of 2020 and reports on the annual percentage rates (APRs) that the 50 states and the District of Columbia allow nonbank lenders to charge for a sample \$500 six-month loan and a sample \$2,000 two-year loan. States vary greatly in the level of protection they provide, some limiting APRs to reasonable, affordable levels but others allowing triple-digit APRs or imposing no cap at all. States have made several significant changes since NCLC’s report, *Predatory Installment Lending in 2017: States Battle to Restrain High-Cost Loans*. Read the report at bit.ly/Predatory-Lending-In-States ■



NCLC Summer Interns: Training the Next Generation of Consumer Attorneys



Each summer NCLC hosts a talented group of law students through our annual internship program. In the summer of 2020, NCLC welcomed (pictured from left to right above): **Mary (Bella) Book** (rising 3L, University of Michigan Law School); Greenfield Fellow **Aidan Browoleit**, (rising 3L, Washington University School of Law); **Philip Cho** (rising 3L, University of Michigan Law School); Hobbs Fellow **Sophie Laing** (rising 3L, Yale Law School); and **Christopher Stahl** (rising 3L, Boston College 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 Fellow is awarded annually by the NCLC Board of Directors in honor of Bob Hobbs, longtime NCLC Deputy Director.



In addition, we were fortunate to have **Tyler Creighton** (3L, Boston University School of Law) as an extern in our office, and **Sarah Midkiff** (3L, Northeastern University School of Law) as a Spring term Co-op placement. ■

Litigation Update

Corporate Accountability and Access to Justice for Consumers

This past spring and summer, NCLC's litigation work on behalf of low-income consumers strove to address a wide array of legal questions and establish a foundation for systemic changes in how consumers are treated by corporations and government agencies. Three cases in particular stand out as the potential first steps towards our ultimate goals of greater corporate accountability and access to justice for consumers who have been harmed.

Mortgage servicers chronically abuse the rights of the homeowners whose loans they service – for example, by failing to help homeowners obtain loan modifications when they need them. In *Stromberg v. Ocwen, Morgan Stanley Private Bank and RBS Citizens Bank*, a case before the U.S. District Court in the Northern District of California this March, NCLC supported the plaintiff in bringing suit against the loan servicer and banks, arguing that the defendants violated homeowners' rights by taking far more than the 30 days permitted by California law to record a mortgage satisfaction when a loan is paid off. This delay harmed homeowners' ability to obtain new loans and new credit. A settlement for California class members required defendants to pay ⅓ of the state's statutory maximum penalty without being required to show any harm from the delay.

The National Student Clearinghouse maintains a vast database of detailed information about college students and their college enrollment history, which it sells to potential creditors, insurers, and employers. However, the Clearinghouse maintains that it is not a consumer reporting agency and therefore not subject to the consumer enforcement rights available under the Fair Credit Reporting Act. NCLC, with Justice Catalyst and the Francis, Mailman & Soumilas law firm, sued the Clearinghouse seeking to establish that it was a credit reporting agency and seeking relief from the unlawful and

excessive charges the Clearinghouse charges consumers to obtain their file disclosures. After mediation and court approval, the case was settled for nearly \$2 million in damages and the Clearinghouse agreed to change its billing practices to comply with the applicable legal limits in the future.

NCLC has long been concerned about the debt collection practices by the U.S. Department of Education, and we believe that the system of wage garnishments and Treasury offsets used by the Department is severely flawed. Those flaws came to a head this March during the pandemic when Congress, through the CARES Act, ordered the Department to immediately cease all such collection activities. Nonetheless, significant numbers of consumers continued to have their wages garnished

or their benefits offset because the Department claims it cannot fully stop the process. NCLC and Student Defense, with the support of the Student Borrower Protection Center, immediately sued the Department

“NCLC has long been concerned about the debt collection practices by the U.S. Department of Education...”

to hold it accountable under the CARES Act, expose the inadequacies of its debt collection system, and obtain relief for the affected student borrowers. As a result, the Court is closely monitoring the Department's efforts, and cross motions for summary judgement are pending. Learn more about these cases or co-counseling with NCLC at: nclc.org/litigation/litigation.html ■

State Advocacy Update: “Translating” Consumer Law for State Policymakers

NCLC has long published model state laws and provided technical assistance to state advocates and policymakers working to protect low-income consumers. Over the past year, through the Campaign for the Future, NCLC has ramped up its work at the state level by designating one of its staff attorneys as its State Work Coordinator, hiring lobbyists in California and Massachusetts on pending legislation, and engaging earlier in the legislative process with state groups developing bills that will benefit low-income consumers.

In the year ahead, with families struggling even more under the enormous weight of debt as a result of the coronavirus crisis, we expect to have a special focus on increasing the amount of wages and money in a bank account protected from garnishment by debt collectors. State advocacy groups identified this as a top priority on the monthly Debt Policy video call NCLC hosts for state advocates.

The State Work Coordinator also engages internally with NCLC's advocates across issue areas to create quick policy responses to crises, such as “Stabilizing Consumer Finances During and After the Coronavirus Crisis in California,” and the “What States Can Do to Protect Consumers” series of issue briefs. These materials use a simple visual format that presents the problems of low-income consumers with solutions NCLC's policy experts have developed. The goal of translating more technical work into easy-to-understand formats is to promote greater use of NCLC policy solutions by state decisionmakers.

With much uncertainty at the federal level, and states recognizing that they need to do something for their residents as unemployment, unpaid debts, and eviction and foreclosure loom, there is real opportunity for positive policy change at the state level that will help our low-income clients. ■

Spotlight: Racial Justice at a Crossroads

In the midst of sustained protests of police violence and racial injustice following the killing of George Floyd, Breonna Taylor, and other Black people at the hands of law enforcement, the U.S. Department of Housing and Urban Development (HUD) quietly took steps to dismantle core civil rights protections guaranteed under the federal Fair Housing Act. The gutting of the disparate impact standard – a legal tool used successfully to challenge systemic discrimination in housing, lending, insurance, and financial services – was the latest in a series of attacks on fair housing. Only weeks earlier, the agency rolled back Obama-era rules designed to dismantle segregation and affirmatively further fair housing. Housing segregation in particular has seeded long-standing racial disparities in access to affordable credit, healthcare, employment, and education, and contributed to predatory policing practices in communities of color.

These actions are part of a larger campaign by the Trump Administration to gut civil rights and fair housing protections, retreat from supervision and enforcement of fair lending laws, and to claw back the prior administration's collection and dissemination of race and ethnicity data. And they come at a time when communities of color are facing dire threats to their housing security from a burgeoning eviction and foreclosure crisis as a result of the economic fallout from the COVID-19 pandemic. According to NCLC's recent analysis of census data, Black and Latinx households are significantly less likely than white homeowners to access home savings relief options when they miss a mortgage payment, putting them at greater risk for foreclosure once the moratoriums are lifted. High levels of unemployment and other measures of significant economic distress indicate that communities of color will need targeted interventions and relief and more protections from discriminatory policies and practices going forward.

NCLC created the Racial Justice and Equal Economic Opportunity Project to address systemic discrimination in the financial services industry. Stark, long-standing racial disparities exist in who is denied credit, provided predatory subprime or high-cost loans, subjected to excessive fees and fines, and victimized by other oppressive business practices. These practices aggressively stripped wealth and resources from communities of color, assets that are now unavailable to weather the economic distress caused by the pandemic. NCLC is challenging these policies and practices through a combination of anti-discrimination litigation, advocacy, hard-hitting reports, and training for advocates. We will continue to work with consumer, civil rights, and grassroots advocates to fight for economic and racial justice and, as the late Congressman John Lewis stated, get into some “good trouble.” More at: nclc.org/special-projects/racial-justice.html ■



Tools at Its Disposal

A Conversation on Ten Years of the CFPB

Lauren Saunders (LS) is NCLC's Associate Director and was closely involved with the development and passage of 2010's Dodd-Frank Wall Street Reform and Consumer Protection Act that, among other reforms, created the Consumer Financial Protection Bureau.

Diane Thompson (DT) is Of Counsel at NCLC, Founder of the Consumer Rights Regulatory Engagement and Advocacy Project, and Former CFPB Deputy Assistant Director, Office of Regulations.

DT: Lauren, what do you think the CFPB has done well over its first ten years? From my experience, I think the agency was far more effective at building bridges to the advocacy community than any prior banking or housing regulator. Unfortunately, much of that has fallen by the wayside in the last four years.

LS: Until Director Cordray left and the agency's priorities changed, it was so refreshing to have an agency with a sole focus on consumer protection and a range of tools at its disposal – research, supervision, enforcement, rulemaking, complaint management, and the bully pulpit. The focus on unfair, deceptive, and abusive acts and practices also got companies seriously asking

themselves whether they were engaging in those practices and might be at risk.

DT: That's true, the focus by itself changed behavior outside in the real world. It's the reverse of what many in the industry and some academic observers complained was the “chilling effect” of things like the auto lending bulletin and the guidance on marketing credit card add-ons. Both changed industry practices for the better, saved consumers' money, and allowed the CFPB to focus on other areas. If you had one wish for a next generation CFPB, what would it be? Is it a return to the Cordray era or something different?

LS: I think the most pressing issue is saving homes in Black and brown communities. The Great Recession stripped wealth from communities that were already far behind due to centuries of discrimination, and we can't let that happen again as a legacy of the COVID-19 crisis.

I'd also urge the next CFPB Director to push Congress, other agencies, and industry to do their part to protect consumers. Ultimately, the CFPB needs to be aggressive and creative in using its resources to fulfill the mission that was laid out for it in 2010. ■

Introducing the 2020 Vern Countryman Award Winner!

At the 2020 Virtual Consumer Rights Litigation Conference (CRLC) in November, NCLC was proud to present its annual Vern Countryman Award to an attorney whose special contributions to the practice of consumer law have strengthened and affirmed the rights



of low-income Americans: **Jane Greengold Stevens.**

Jane is co-director of the special litigation unit at New York Legal Assistance Group in New York City. She has worked in legal aid for most of her 50-year legal career, starting at Legal Assistance Foundation of Chicago in 1969. In her many years of practice, she has been a passionate champion for the rights of low-income consumers. She has an impressive track record of successful litigation, including cases against predatory for-profit schools who defrauded their students. Jane has brought cases against the state and federal government on behalf of student loan borrowers, including the successful 1994 case *Gibbons v. Riley*, which benefitted three million student loan borrowers. She has also attacked unlawful debt collection practices and protected exempt income from seizure in consumers' bank accounts.

NCLC extends its congratulations to Jane for her receipt of this award, and our gratitude for all she has done to fight for vulnerable consumers throughout her distinguished career! ■

Meet our 2020 Rising Star Award Winners!

Established in 2015, the Rising Star Award is annually presented to attorneys who have made major contributions to the field of consumer law and settled significant consumer law cases. NCLC is proud to present the 2020 Award to three attorneys who represent some of the best young talent in our field, and we look forward to their future success in advocating for low-income and vulnerable consumers across the nation.



Rebecca Borné

Rebecca serves as senior policy counsel at the Center for Responsible Lending (CRL), which she joined 12 years ago. CRL

is a research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. Rebecca advocates for federal protections against predatory practices that exploit the financially vulnerable, particularly in the areas of payday loans, high-cost installment loans, and depository overdraft practices. Rebecca engages with federal regulators and legislative offices, authoring comment letters to inform policy proposals, providing input on draft legislation, and occasionally testifying before Congress.

She has authored a number of research and policy reports while also serving on the board of Capital for Change, a Connecticut-based CDFI.



Nicholas H. Mattison

Nick is a partner at Feferman, Warren & Mattison in Albuquerque, New Mexico. Nick's

practice includes individual cases and class actions against fraudulent car dealers, predatory lenders, abusive debt collectors, and other businesses that rip off consumers. He has litigated many consumer class actions from start to finish, including one where he became the first and only attorney to enforce New Mexico's payday loan law. The case went all the way to trial, where his clients were awarded millions. Nick gets impressive results for individual clients as well. In 2016, he won a \$10 million verdict against an abusive debt collector.

Before becoming a lawyer, Nick was an elementary school teacher on the Navajo Nation.



David H. Seligman

David has been the Executive Director of Towards Justice since 2018. He has litigated in support of workers

and consumers in several class and collective actions to attack systemic injustices that undermine the power of workers and consumers in the marketplace. One such action includes the first antitrust case to challenge "no hire" provisions in franchise agreements among fast-food franchisees, as well as several cases supporting workers during COVID-19.

David also performs support and policy advocacy for state and local agencies in their efforts to protect workers as well as regularly writing and speaking before state legislators on forced arbitration. ■



"Personal Experience can be a Real Motivator for Supporting NCLC"

The cause that pushed **Jim Francis** into consumer law was his first-hand experience with the brazen disregard for consumer rights by the credit reporting industry.

After moving home for the summer during his junior year in college and leaving a forwarding address, he learned that a credit card bill had not been forwarded, and by the time he received it, it was past due and reporting as a delinquency on his Trans Union credit report. Despite a detailed dispute and repeated efforts to engage the company, Jim was met with complete indifference and a refusal to help. That experience resonated with Jim throughout law school, along with the realization that the same experience must have been occurring to other consumers throughout the country.

And in 1998, with co-founder Mark Mailman, he created a boutique firm that focused exclusively on consumer rights litigation. Twenty-two years later, the firm is stronger and busier than ever.

With the addition of recently named partner John Soumilas, Francis Mailman Soumilas, P.C. (FMS) now has offices in Philadelphia, New York, Chicago, and San Francisco, and is behind many of the most significant decisions, settlements, and verdicts in consumer litigation. The firm handles many areas of consumer law, and is regularly on the cutting edge of new and emerging areas, most recently adding the

representation of students and parents seeking tuition reimbursement and abatement against colleges limiting their educational programs to online attendance only.

"I feel so grateful to be able to do what I do for a living. Practicing consumer litigation is the ultimate win-win. You get a chance to make the world a better place... and I feel so privileged to do what I do for a living, and I love it."

FMS' attorneys have been regular speakers at NCLC's conferences for many years, and the firm stepped up to the plate in September 2019 and supported NCLC's Campaign for the Future and pledged at the Campaign Chancellor level. NCLC is not only grateful to the firm for their long time support but also to Jim, who recently joined the Partners Council as its newest member.

"I feel so grateful to be able to do what I do for a living. Practicing consumer litigation is the ultimate win-win." —Jim Francis

As for NCLC, Jim shared, "I feel deeply indebted to NCLC. Since my first conference in San Diego in 1998, I have benefitted tremendously from its publications, resources, and the instruction at the annual conferences. NCLC is such an important organization in so many ways. Its existence and vitality are crucial to a consumer law practice. Without NCLC, we would all be significantly compromised in our practices." ■

Campaign for the Future Update

NCLC's *Campaign for the Future* is a long-term initiative launched last November to strengthen NCLC's economic justice advocacy, and expand training and support for the consumer law community, through long-term structural investments in the following areas:

- 1. Next Generation Campaign:** Develop the next generation of consumer lawyers and build a bigger and stronger consumer law community.
- 2. Legal Aid Partnership Project:** Strengthen NCLC's support of civil legal aid attorneys who serve low-income consumers.
- 3. State Advocacy Initiative:** Expand NCLC's impact at the state level, where many of the most important consumer law battles are being fought.

4. Communications Capacity-Building Campaign: Enhance NCLC's ability to reach decision-makers, engage supporters, and influence public opinion.

5. Advancing the Agenda Fund: Invest in new strategies for advancing economic justice, including a major focus on promoting racial justice and equal economic opportunity.

To date, Campaign leaders have stepped forward to express intentions of providing more than \$10.2 million to fund these investments. With that support, significant investments are being made this year in the following Campaign priorities:

- **Racial Justice Fund:** Expanding NCLC's advocacy on racial justice and economic equality issues.
- **State Advocacy:** Providing resources for deeper engagement in state-level economic justice advocacy.

■ **High-Impact Intervention:** Direct assistance and resources to state-level allies and partnerships.

■ **Federal Advocacy:** Strengthening our impact at the federal level.

■ **Next Generation Scholarships:** Automatic 50% conference scholarships for attorneys with fewer than five years of experience in consumer law.

■ **Law School Engagement:** Summer internships for law school students.

■ **Legal Aid Scholarships:** Automatic 50% conference scholarships for all qualified legal services attorneys.

As we begin planning for 2021, we intend to continue and in some cases increase the investments initiated in the first full year of the Campaign, while making new investments in the following areas next year:


■ **Legal Aid Training:** Enabling NCLC advocates to provide more direct training for legal aid partners.

■ **21st Century Communications:** Enhancing the effectiveness of our advocacy.

■ **Communications and Infrastructure:** Providing needed and relevant information to the consumer law community.

■ **Data Analysis:** Enhanced analysis of complex data to reveal economic injustices and make the case for needed reforms.

NCLC is grateful to those who have already joined the Campaign for the Future and make this work possible, and to those who are currently considering the level of their support. To learn more about the Campaign and the role(s) you can play in its success, contact Paul Laurent at pl Laurent@nclc.org. ■



NCLC's Energy Team Helps Score Big Wins in CA, IL, and MA

Nine months ago, a then-novel coronavirus seemed a somewhat distant and uncertain threat. In the ensuing months, COVID-19 has infected 6.5 million (1 in 50) Americans and claimed well over 200,000 lives – 4 times as many lives as lost in our 10-year engagement in Vietnam. The broad scope of physical, emotional, and financial harm has devastated families across the country.

By early March, NCLC's Energy Team was asked to devise strategies to help households keep their utilities on,

at a time when millions were losing employment and their ability to pay household bills, while also being asked to shelter in place. Access to electricity, natural gas, water, and telecommunications services became more vital than ever.

At the outset, our energy staff played a lead role in having moratoriums on utility terminations (gas and electricity) adopted in California, Massachusetts, and Illinois. Those models proved useful for advocates elsewhere – as recently as mid-September, legal

services advocates in New Hampshire obtained an extended termination moratorium and a requirement that utilities offer long-term (up to 24 months) payment plans.

We also intervened in proceedings opened in those three states in which utility regulators asked what changes were needed in utility billing and collection practices to help struggling households keep the lights on. While we cannot diminish the health threats the coronavirus poses, we achieved some important successes: payment plans that allow customers up to 24 months to catch up on their overdue bills; waiver of deposit requirements and late fees; new or more accessible “arrears management” programs (in which the company wipes out overdue bills, if the customer pays current bills on time for a year; forgiveness of millions of dollars of arrears owed by low-income customers; and much better data collection that will allow utility regulators to better understand which customers (including by race) are in need of assistance. We continue to work with advocates around the country who are seeking similar policy changes.

Looking to the near-future when termination moratoriums will end, we launched a “Post Moratorium Working Group” that helps advocates push for programs that truly make energy bills more affordable, particularly low-income discount rates and Percentage of Income Payment Plans that cap a low-income household's utility bills at a low percentage of income. ■

Coming Spring 2021: Virtual Fair Debt Conference

Save the dates! The 2021 Fair Debt Conference will be held virtually (using the same platform as this year's Virtual Consumer Rights Litigation Conference) from March 8-12, 2021. Join us for 10+ sessions led by experts in debt collection issues!

our virtual conference halls to learn from the leading experts in the field of consumer law, hear from plenary speakers such as former U.S. Secretary of Labor Robert Reich, and honor this year's Rising Star and Vern Countryman Award winners (see Page 8 for full profiles of awardees). The Virtual CRLC Host Committee included Co-Hosts Bailey & Glasser; Francis Mailman Soumilas, Lief Cabraser Heimann & Bernstein, and Oregon Consumer Justice; Executive Committee members Keogh Law and SmithMarco; and members Edelman Combs Lattimer, Kazerouni Law Group, Kemnitzer Barron & Krieg, Philipps & Philipps, John Steinkamp & Associates, Terrell Marshall, and the Barnes Law Group.

Thank you to everyone who attended, volunteered, sponsored, or spoke at this year's Virtual CRLC and Class Action Symposium. Your dedication to the field of consumer law is what makes our community great, and we hope that we'll be able to see you at our 2021 CRLC! ■

NCLC offered our full CRLC curriculum online this November using a state-of-the-art virtual event platform. In addition to more than 80 substantive consumer law sessions, strategy summits, and live office hours with consumer law experts, the first-ever Virtual CRLC featured an interactive exhibitor hall, Networking Lobby, NCLC information desk, IT help center, and even more digital resources for attendees, replicating the live conference as best as possible.

Between November 9th and 20th, more than 1,130 consumer attorneys and advocates from 46 states gathered in

NCLC's Agenda for 2021

continued from page 1

active duty servicemembers to all consumers and stop overdraft fees used as a high-cost form of credit.

Credit Reporting: Stop Errors & Abuses Enact comprehensive credit reporting reform including free credit scores; a ban on information that is outdated, misleading or related to predatory activities; identity theft protections; and limits on the use of credit reports for jobs.

Debt Collection: Protect Consumers from Abusive Collection Practices Protect wages, bank accounts and other income needed for food and necessities from garnishment or government offset, including the Earned Income and Child Tax Credits and Social Security benefits.

Enact debt collection rules to protect consumers, not abusive collectors.

Energy, Telecom & Robocalls: Keep All Vulnerable Consumers Connected Ensure that essential utility services, including electricity, home energy, water, and telecom, are affordable and accessible

Protect Americans from invasive and dangerous robocalls and robotexts

Housing: Ensure Access to Sustainable Homeownership Stop the coming COVID-19 tsunami of foreclosures by extending the foreclosure moratorium and requiring lenders to assist borrowers facing hardship and help them get back on track before a foreclosure starts.

Student Loans: Lift the \$1.6 Trillion Weight from Consumer Shoulders Provide widespread student loan debt cancellation, and restore and improve vital collection limits and protections to hold predatory institutions of higher education accountable and provide relief to harmed students.

Our work to advance these and other protections and reforms has already begun. We are grateful to all those in the fight for economic justice with us. ■

COVID-19 & Consumer Law: What You Need to Know

The COVID-19 pandemic has caused widespread disruption in the daily lives of millions of people worldwide, and the hardest hit are the most vulnerable people, families, and communities at the core of NCLC's mission. Since the year began, NCLC advocates have worked closely and continually with members of Congress and their staffs, federal regulatory agencies, and state and local officials to advance a broad array of consumer protections and consumer relief in these unprecedented times.

In addition, we continue to compile information and create recommendations regarding federal and state consumer protection developments in response to COVID-19 on our website. You can find information on our “COVID-19 & Consumer Protections” webpage, and deeper analysis of federal and state-level COVID-related consumer protections (including the CARES Act) can be found on the “Major Consumer Protections Announced in Response to COVID-19” page on the NCLC Digital Library. Both are updated regularly as we strive to ensure that our community has the most current information available about the relief that families desperately need. Visit: nclc.org/special-projects/covid-19-consumer-protections.html ■

Foreclosures Are Coming *continued from page 1*

hard hit by the COVID-19 crisis, are facing greater rates of mortgage default and eviction risk. Without comprehensive assistance, people will be forced to move in with others or into a shelter, causing even greater health risks in a time when social distancing is critical.

NCLC is working on both the federal and state levels to create policies that will offer sustainable relief for homeowners. On the federal level, NCLC is urging Congress to provide relief for homeowners facing a financial hardship due to COVID-19, including:

- Providing temporary payment relief options such as forbearance of their loan payments, regardless of the type of loan;
- Providing homeowners who are at least 60 days late on their mortgage payments an automatic forbearance of loan payments;
- Offering affordable post-forbearance repayment options that will get homeowners back on track with their mortgages, regardless of the type of loan; and
- Ensuring that all homeowners receive notice of their mortgage relief options, including in-language communications for borrowers with limited English.

On the state level, NCLC is helping push for programs such as:

- Requiring comprehensive review of homeowners for sustainable relief and repayment options before a lender can foreclose on a residential home;
- Regulating practices such as failing to review for relief or wrongfully denying relief to otherwise eligible homeowners under states' Unfair and Deceptive Acts and Practices statute; and
- Requiring transparent disclosures of all relief options available to homeowners including all applicable forbearance and post-forbearance programs and any restrictions regardless of the type of loan.

NCLC will continue to collaborate with other advocacy groups to ensure affordable, sustainable relief is available for the hundreds of thousands of families that will be caught in the tidal wave of foreclosures in the year to come. ■

National Consumer Law Center
7 Winthrop Square, 4th Floor
Boston, MA 02110-1245

Nonprofit Org.
US POSTAGE PAID
Boston, MA
Permit No. 57091



National
Consumer Law
Center

*Fighting Together
for Economic Justice*

INSIDE COVID-19: What You Need to Know

New NCLC Reports on Criminal Justice Debt, EITC Credit Seizure, and Predatory Lending Policies

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.

Save the Date(s)!

Virtual Fair Debt Conference 2021

March 8-12, 2021

Need a deeper dive into the FDCPA and TCPA? This March is your chance! NCLC will host a virtual week-long Fair Debt Collections Conference during the week of March 8th, 2021. With no more than three sessions offered per day, content is more spread out with down time built in so you can continue the important work of your practice during the conference. Stay tuned for pricing and more in the coming month for NCLC's Fair Debt Conference.