



JUSTICE OUT OF BALANCE

Profit Making through Debt Collection in the Courts:
How Funders Can Help Restore Balance

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Introduction

We all assume that our nation's civil courtrooms offer justice evenhandedly to plaintiffs and debt defendants alike. Yet, none of that is true in most courts across the country.

This notion of justice includes the assumption that defendants receive meaningful notice of a pending action and that the judge will make a decision only after reviewing all the evidence to ensure that the plaintiff's claim is valid, and the defendant has no valid defenses. We also assume that reasonable limits define what the publicly funded local court system can do to help one party collect a judgment from another. The courts, we expect, have processes to ensure that a defendant will not be destroyed economically, rendered homeless, or even incarcerated because he cannot pay a debt judgment. In short, debt collection should not cripple a person financially, undermining her basic ability to make ends meet, keep current on a home mortgage or rent payment, or carry on with work or a business.

Yet, none of that is true in most courts across the country. The civil justice system, overloaded by debt collectors, has not responded well. The result is an unbalanced system that particularly penalizes low- and moderate-income workers, people of color, retirees, persons with disabilities who depend on a fixed income, and anyone who does not have adequate health insurance.

This brief addresses the current realities of the court-based debt collection landscape, exploring how debt collectors use the courts to generate profit at the expense of justice. Debt collection practices impede the court's review of the evidence and result in hundreds of thousands of people being stripped of income, savings, and wealth every month. This brief also highlights how the fallout from this off-balance justice system

falls disproportionately on Black, Latinx, Indigenous, and Asian American and Pacific Islander people. The judicial debt collection system continues and amplifies the impact of the historic discrimination that created wealth gaps.¹

This brief is a call to action to reform the system. In it, we identify a set of reforms and promising practices, describe pathways to make needed changes happen, and highlight the role funders can play in promoting equity and restoring justice.



THE JUDICIAL DEBT COLLECTION SYSTEM

increases the negative impact of the historic discrimination that created today's wealth gaps amongst Black, Latinx, Indigenous, and many Asian American and Pacific Islander people.

The Civil Judicial System: Debt Collection and Unbalanced Justice

Ruthless debt collection—regardless of whether the debt itself is just or unjust, or even whether or not it is written off by the original creditor—is not a new phenomenon.

It has long been a core feature of the structure of power and privilege that blocks opportunity to generate wealth for underresourced populations, plunders wealth from communities of color, and contributes to the racial wealth gap. Profiteering debt collectors have designed schemes to take advantage of state and local court systems and stack new debt (interest, costs, and fees) on top of old debt—often on debts the original creditors have already written off. The scheme depends heavily on high-volume filings and default judgments, which are granted when the defendant debtor is not present in court, to produce binding orders based on debts that may be invalid or, often, directed against people who are not the real debtors.

Debt collectors then report these judgments to credit bureaus, creating a negative mark on the debtor's credit record and reducing his or her credit score. The lower credit score then constricts the person's ability to secure safe housing, employment, transportation, and other basic necessities and increases his or her cost of credit.

The limited evidence on this dynamic demonstrates that lower income and Black, Indigenous, Latinx and other people of color disproportionately experience the array of harmful effects from such judgments and the resulting reports to credit bureaus. For example, in New York City, 95% of those who have default judgments against them live in low and moderate income neighborhoods and more than half live in predominantly Black or Latinx communities.² Similar studies in Chicago, St. Louis, and Newark show that Black consumers receive twice as many default judgments as White consumers.³

The continuing harm of this off-balance justice system multiplies far beyond the credit record of the individual named in a judgment. The publicly funded courts also provide the debt collector with tools to intercept paychecks, wipe out bank accounts, and otherwise seize assets of the debtor. As a result, the business of debt collection through the courts exacerbates the racial wealth divide.

Court-based debt collection is desperately in need of an examination of its disproportionately racialized, economically adverse impacts; that examination must lead to systemic reform to restore justice to the court-based debt collection process.



Consumer Debt in Collection

Consumer debt includes medical bills, fines and fees, private student loans, credit cards, utility bills, car loans, and other unsecured debt.

Consumer debt is an important tool that can help build or protect assets and wealth by enabling investments in business start-ups, education or skills training, and home improvements. Yet, the advantages of access to helpful credit have not been available to all. Policies and practices such as race-based redlining, which prevented access to affordable real estate mortgages or fair property appraisals, undermined the ability of people of color to build wealth through homeownership and created unequal credit markets based on that lack of wealth.⁴ These discriminatory laws, policies, and practices became self-perpetuating racialized realities about who can access affordable credit and who represents a greater risk to a creditor. The persistent result is higher interest rates or more predatory terms for consumer credit for communities of color.

Consequently, people with less wealth have fewer resources to deal with unforeseen events such as a job loss, home or auto repairs, or a health crisis. And so, they are more likely to have to rely on a credit card or predatory loans to pay for necessities.

Other factors contributing to the widespread inability of consumers to cope with financial shocks include wage stagnation beginning in the 1970s,⁵ the move towards jobs with greatly increased income volatility,⁶ rapidly rising housing costs since the 1960s,⁷ and spiraling childcare costs.⁸ A significant number of American residents have little to no income or wealth available to manage an unexpected crisis. In a Federal Reserve survey in 2018–2019, four in ten households indicated that they would struggle to cover an unexpected \$400 bill without resorting to high-interest debt.⁹

And for these households, debt often leads to more debt. Large institutions, like banks, market credit cards to address debt, which adds higher interest and more charges.

Yet, people feel deep shame around debt and work hard to pay what is owed. This is why people will often pay medical bills—the most common form of debt in collections¹⁰—with high-interest credit cards or loans, even though interest and loan fees only increase the cost of the medical bill.

Before the COVID pandemic, consumer debt was at an all-time high, exceeding \$14 trillion.¹¹ The significant rise in consumer debt over the previous decades follows the most aggressive widening of wealth and income inequality since these indicators have been tracked. About 71 million households, 30% of American households, and 45% of households in majority nonwhite zip codes with a credit report, had a debt in collection, usually for bills 180 days or more past due.¹² This activity thus systemically helps grow the racial wealth gap.

The COVID pandemic has not slowed debt collection,¹³ even as it has sharply highlighted, and widened, racial inequities. Black, Indigenous, Latinx, Asian, Pacific Islander and other people of mixed race have been disproportionately more exposed to job loss, death or medical incapacity of family wage-earners, and COVID-related debt such as medical bills, credit card debt to pay rent and essential costs, and unpaid rent or mortgages or other bills. Federal relief will reach some, but it will miss many in need.

Pre-pandemic debt amounts varied widely, but the median debt in collection in 2014 was just over \$1,835.¹⁴ The COVID-19 crisis has not yet changed this picture significantly, but as job loss and economic stress continue, and households exhaust savings, prematurely withdraw retirement funds, and use up available credit, a surge in debt collections is likely when government aid and stimulus measures expire.¹⁵ Unless, of course, a wave of state, county, and city systemic changes rebalance the justice system.



Debt Collectors and Debt Buyers Profiting from Inequity and Hardship

Debt collectors, especially corporate debt buyers, are companies that exist to profit from individuals who cannot pay their bills. Credit card companies, hospitals, and utility companies usually have an inventory of overdue debts. Some have in-house debt collection units, but most companies eventually write off the debt while also seeking to gain some revenue from it.

As a common business practice, they bundle these portfolios of overdue debts—even those they have written off—and sell them to debt buyers, usually for pennies on the dollar. Some debt buyers resell bundles of debt to other debt buyers. The information sold to debt buyers is often contained in bulk spreadsheets with no guarantee of accuracy as to, for example, the identity and location of alleged debtors, the amount of the debts, availability of further collections activity under governing statutes of limitations, or whether the debt was discharged in bankruptcy.¹⁶ Debt that debt collectors attempt to collect on even though it is no longer collectible—whether because of statute of limitations issues, because it was discharged, or for other reasons—is known as “zombie debt.”¹⁷

These companies (and some in-house debt collection departments) aggressively pursue collection of the original amount of the debt through the courts, usually tacking on additional interest, court costs, and attorneys’ fees. Debt collectors themselves estimate that they contact individuals a billion times a year. The top complaint among consumers in debt collection is continued attempts to collect debts that either have been paid or were not their debts in the first place.¹⁸

Debt buyers have proliferated since 1993; the value of debts bought by debt buyers increased from \$10 billion in 1993 to \$98 billion in 2013.¹⁹ That growth is driven by the profitability of using the courts and unbalancing the justice system to collect debts; “zombie debts” are at the heart of a highly lucrative business model.

ZOMBIE DEBT²⁰

- ◆ Unpaid debts that are beyond the statute of limitations when you can be taken to court for payment
- ◆ Unpaid debts you owe but forgot about
- ◆ Unpaid debts wiped out with bankruptcy
- ◆ Debts you already settled with the creditor
- ◆ Fraudulent charges from identity theft
- ◆ Fake debts “creditors” claim you owe as part of a scam

Source: Better Business Bureau, “What you need to know about zombie debt” (2021) <https://www.bbb.org/article/news-releases/23300-bbb-tip-what-you-need-to-know-about-zombie-debt>

Flood of Cases—Drought of Justice

The small-claims and civil court systems and their processes are ideally suited for debt-collection corporations to maximize profit regardless of the justice of the outcomes. Debt buyers file massive numbers of debt collection lawsuits in local courts that are compelled to respond even though they are not resourced for it.

While civil court dockets have generally been shrinking, the numbers of debt collection cases have increased dramatically. Between 1993 and 2013, the number of cases more than doubled, from 1.7 million to 4 million. And that accelerating trend continued in many states, as Texas reports from 2014–2018 demonstrate. (See Figure 1.)

As a result of these trends, debt collections cases now account for one in four cases on the civil docket, up

from one in nine.²¹ (See Figure 2.) The high-volume filing of debt collection cases purposely overwhelms courts’ oversight capacity. The result is fewer protections for alleged debtors and record numbers of default judgments. Those harmed are low- and middle-income households, and also disproportionately Black, Latinx, and other people of color.

Figure 1

Debt Claims More Than Doubled in Texas Over 5 years

Top civil cases by type, 2014–2018

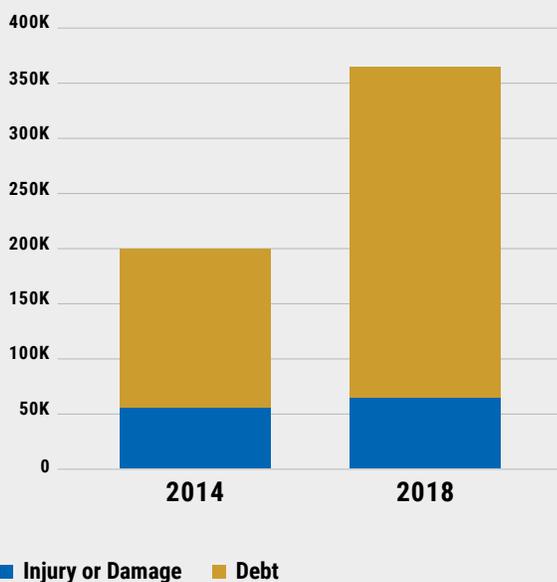
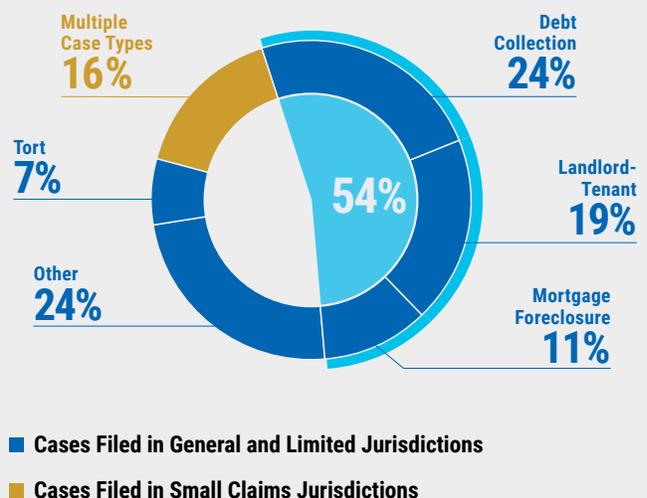


Figure 2

More Than Half of Civil Litigation in 2013 Involved Suits Brought by Businesses Against Individuals

Estimated share of state civil cases by type



NOTES: Percentages do not add up to 100 percent because of rounding.

How the off-balance justice system works and the 6 areas for systemic change

The off-balance justice system relies on a number of tactics and procedural approaches; understanding how debt collectors manipulate the system highlights areas where systemic change is needed.

1 UNRELIABLE ALLEGED FACTS AND ROBO-SIGNING OF COMPLAINTS

Debt buying companies create debt collection factories that file thousands of lawsuits at one time. The process for generating the lawsuits is largely automated and entirely standardized. The attorney who signs the filing documents spends as little as 30 seconds reviewing them—a practice known as robo-signing.²² The attorney simply does not have time to ensure that the facts alleged in the suit—the debtor’s name and address, the amount of the debt, and the validity of the debt—are accurate.²³ Yet, by signing the complaint, the attorney asserts that these facts are accurate.

2 LACK OF MEANINGFUL NOTICE

Individuals sued in these cases often do not receive proper notice and summons.²⁴ Even when summonses are provided, the papers often do not effectively inform defendants that the case involves a debt they recognize. Service rules do not always require plain language or verification of service. The Center for Responsible Lending describes what has come to be known in the industry as “sewer service,” in which companies fraudulently claim they properly served an individual even though they never provided notice.²⁵

Mailing is often not much better. Even when notice is mailed or delivered, it is often sent to an old address or an incorrect defendant. Most courts, as a matter of routine, issue a summons to the individual named at the address in the file, regardless of how old that address is. Most courts presume service is complete and valid when the plaintiff says it is, unless the defendant appears to contest service. Contesting service is a long shot on the face of it; even an experienced attorney does not often succeed with this type of argument.

And it is one of the more complicated types of motions, making it difficult for an unrepresented individual to attempt.

Even if notice of the suit gets to the correct individual, targets of debt suits often cannot leave work to attend court, may be unaware of the potential consequences of failing to appear, and rarely have access to an affordable lawyer.

If the individual does not file timely responsive papers or appear in person to contest the case, the court rules usually require the entry of a “default” judgment, which is a full-scale court order in favor of the debt buyer based solely on the non-appearance of the sued individual.²⁶

3 DEFAULT JUDGMENTS ISSUED WITHOUT REVIEW OF THE UNDERLYING EVIDENCE

Default judgments are not based on a review of evidence.²⁷ Rather, the facts about the debt alleged by the debt collector—including the amount of the debt and the identity of the debtor—are presumed to be true. Furthermore, debt collectors are allowed to add pre-judgment and post-judgment interest, court costs, and attorneys’ fees, driving up the total owed.²⁸ Over time, these add-ons can accumulate to amounts far higher than the original debt and follow the defendant for many years, crippling his credit history and making needed credit more expensive and more difficult to get.

The stress from this cascade of destabilizing events has been shown to damage the health of those caught in it.²⁹

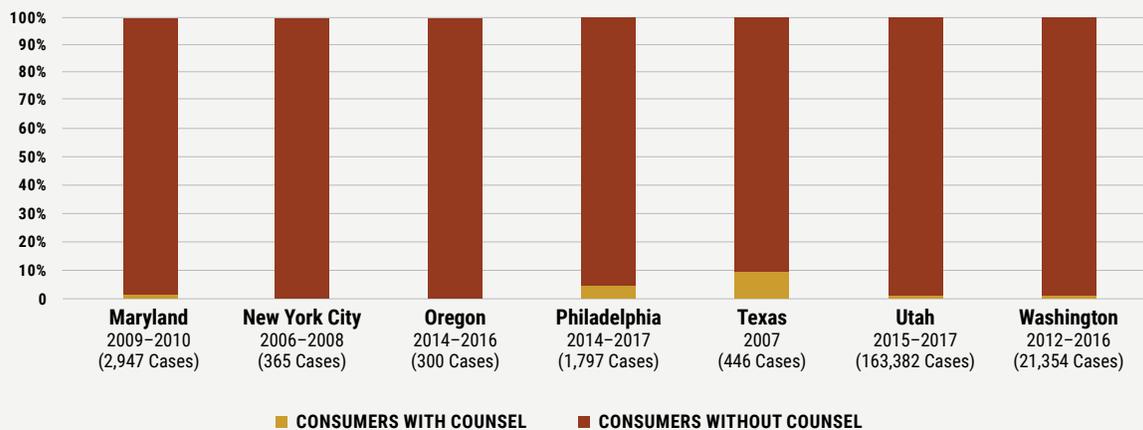
The big profits are in the high volume of default judgments: 70% of the thousands of cases filed result in default judgments.³⁰ For example, even during COVID, Capitol One reported \$1.4 billion in collections from accounts already recognized as a loss.³¹ Debt collectors, including hospitals,³² build their collection strategy around mass filings, high rates of default, and a hard focus on court-aided confiscation of the defendant’s income and assets, all without having to prove anything. The courts are the venue and the vehicle for these outcomes; debt collectors co-opt judicial power at the expense of justice.

Even when debtors do respond to a summons, in the jurisdictions that provide reports, most do not have legal counsel. (See Figure 3)

Figure 3

Most Debt Claims for Which Data Are Available Involved Consumers Without Counsel

Average defendant representation rates across 7 jurisdictions, various years



4 DIFFICULTY REOPENING CASES

Often, the first time a person learns of a debt collection judgment is after—sometimes long after—the judgment was entered. For example, many debtors learn of a debt judgment through an adverse entry on their credit report. Yet, the debtor is unlikely to have any recourse at that point.

In most court systems, once a default judgment is issued, challenging the judgment, or the process that produced it, is both complex and as likely to result in more add-ons to the debt as to yield relief. Attempting to have a judgment vacated or reopened is difficult; to succeed, the debtor must have not only defenses to the original claim and the service of summons, but also convincing explanations for why his action attacking the judgment was so long delayed. Often, court procedures severely limit the time frame when defenses can be presented. It is legally tricky, as well, to contest the service of summons to claim it was never received without subjecting oneself to the court's jurisdiction by appearing before the court to challenge the summons. On top of these barriers, the debtor may face difficult practical obstacles, like the original court records having been lost or archived.³³ And, typically, such an appeal will incur additional fees, particularly if—as is likely—the appeal fails.

5 PUBLICLY FACILITATED COLLECTIONS AND WEALTH STRIPPING

Armed with a default judgment, the debt collector has access to the full power of the publicly financed court system to enforce the debt. The debt collector can garnish the defendant's wages, intercepting a portion of every paycheck regardless of the household's circumstances or the economic consequences. A federal law protects 75% of a paycheck or a minimum of 30 times the Federal minimum wage, allowing up to 25% of a paycheck to be diverted to pay the debt ("garnished"). Some states provide greater protections, but not all of them do.³⁴

Collection through the court system can also wipe out emergency or other savings. Many states have no protections for bank accounts, allowing creditors to wipe them out entirely. In those states, if an employee's paycheck is direct deposited into a bank account, the whole amount is exposed to garnishment. Savings are just as vulnerable. A debtor may not realize the garnishment actions occurred until he or she is unable to access the bank account or a debit card is refused. The draining of bank accounts impairs debtors' ability to pay other bills, exposes them to predatory lenders, increases their economic insecurity, and deepens the cycle of debt and wealth-stripping.

Collection through the courts can also be used to impose liens on owned property, which can prevent home sales or interfere with business income. Debt collectors can force a sale of the assets, including business equipment or professional tools or even homes. And they can make sure that the default judgment is posted on the defendant's credit rating, hampering access to housing, employment, and affordable credit going forward.

For one Iowa woman, the most frustrating and scary time of her life started when her debit card was declined.

Health care worker Adunni Noibi felt sick. But when the mother of three stopped at her local pharmacy for medication, her debit card wouldn't work. Her bank app showed that she had money in her account, so Noibi figured it was just a glitch.

But it wasn't just her card malfunctioning. Unbeknownst to Noibi, a debt collector had filed a lawsuit months earlier, seeking about \$3,300 on student loans she took out in 1998. The debt collection company had obtained a judgement and frozen not only all her bank accounts, but her children's accounts, on which she was listed as a co-signer.

Days after the incident at the drugstore, Noibi felt well enough to get out of bed, only to realize her mortgage had not been paid. When she called the bank, she finally learned her accounts were frozen. This was a much bigger deal than simply requesting a new debit card, she realized.

Noibi's mother provided some temporary financial help, but Noibi had bills to pay and three children to take care of. She was also worried that the funds from her tax returns and stimulus check, both of which were set to hit her account in April, would also be frozen—or worse, simply taken.

She sought out [Iowa Legal Aid](#). Thankfully, staff lawyer Jayme Wiebold not only agreed to take the case but had experience with this particular debt collection agency and its tactics. Noibi never received any notifications about the pending lawsuit, or the actions taken against her, she says. It was only after she called the bank that she even received an official letter notifying her of the frozen accounts.

“If I'd received something that said someone was going to be taking my money, I would've been on the phone immediately trying to figure something out,” Noibi says.

With help from Iowa Legal Aid, Noibi was able to stop the debt collection company from keeping the account frozen and taking her money. The debt collection company dropped the suit after Noibi agreed to not sue the agency for its collection practices.

Source: Megan Leonhardt, “Debt Collectors Are Leveraging the Court System More Than Ever—And This May Have Significant Consequences for Americans,” *CNBC* (May 12, 2020), <https://www.cnn.com/2020/05/11/debt-collectors-are-leveraging-the-courts-more-than-ever-before.html>.

6 A MODERN RISK OF DEBTORS' PRISON

In many jurisdictions, if individuals do not follow court orders or appear when summoned to answer questions about their assets, they can be jailed for contempt of court.³⁵ Arrest warrants may be issued, potentially complicating a traffic stop and endangering probation or parole status; in some states, warrants are public record, which can adversely affect employment or housing applications.

While the numbers who serve time in jail are still fairly small, looming in this unbalanced system in crisis is the possibility of this “modern” debtors’ prison.



I have personally seen garnishments of wages, evictions, credit card debt suits, credit bureau disputes and even criminal cases flowing from underlying medical and other consumer debt—all negatively affecting creditors, debtors, and a clogged court system.

JUDGE ALEX MCVEAGH³⁶
Hamilton County General Sessions Court, TN

One ProPublica analysis discovered that high-interest lenders filed 66% of all small claims cases heard in Utah between September 2017 and September 2018.

For example, a local lender, Loans for Less, filed 95% of the small claims cases in South Ogden, a suburban city of 17,000 about a half hour north of Salt Lake City.

ProPublica documented the case of four individuals who were arrested by an armed constable, handcuffed, and taken to jail: an employee who was arrested as she was finishing a work shift at a Walmart (and whose wages were already being garnished), another person who was arrested at church, a third at home watching his granddaughter, and a fourth as she was parking to go to work. They spent anywhere from a few hours to a couple days behind bars before being released after paying a few hundred dollars in bail or promising to appear in court.

None of the four had committed a crime. They had each borrowed money at high interest rates from Loans for Less and were sued for owing sums that ranged from \$800 to \$3,600. When they missed court dates, the company obtained warrants for their arrest.

Arrest warrants were issued in an estimated 3,100 small claims cases in Utah during the 12 months reviewed from 2017 to 2018. Almost all of the warrants—91%—were issued in cases filed by payday, auto title, or other high-interest lenders.

Source: Anjali Tsui, “They Loan You Money. Then They Get a Warrant for Your Arrest,” *ProPublica* (Dec. 3, 2019), <https://www.propublica.org/article/they-loan-you-money-then-they-get-a-warrant-for-your-arrest>.

The Results Change When the System is in Balance

The assumption that the American civil justice system actually produces justice is built on the theory of an adversarial system, in which both sides have fair warning, equal access to information, and access to a vigorous lawyer. Each side presents its arguments to a judge, who arbitrates and referees and ensures conformity to rules. And then the judge or a jury decides which version of the facts has been proven, and the judge applies the law to dictate the outcome.

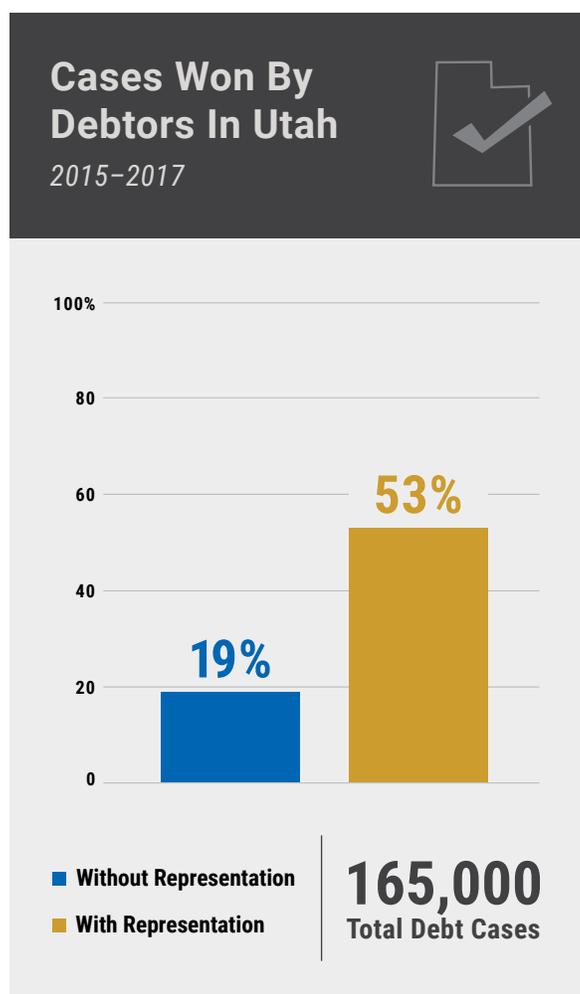
The assumption that this system produces justice collapses in an environment built on default judgments, in which only one side has all the information plus the advantage of being unopposed in court. That side invokes the power of the court without having to prove anything.

That 70% of debt cases in this off-balance system end in default judgments is not an indication that those cases are justly decided. Less than 10% of people sued for debt have lawyers.

Debtors who have lawyers win much more often; thus, the debt collectors' business practice is to concede when the other side has a lawyer. The logic is that the claim is not likely to succeed and, therefore, arguing it is not a cost-effective use of time and resources.

In other words, legal representation can be a key difference maker. For example, a study of nearly 297,000 debt cases in Virginia district and circuit courts disposed between April 2015 and May 2016 found that debt cases were more likely to be dismissed when individuals were represented by an attorney. Similarly, a study of more than 165,000 debt cases disposed in Utah from 2015 to 2017 found that 53% of people with representation won their cases, compared with 19% of those without representation.³⁷

The disparate racial outcomes that prevail throughout the consumer debt landscape also appear with respect to court cases and default judgments.³⁸



While it is still unclear what the effect of the COVID-19 pandemic has been or will be on consumer debt in general,³⁹ it is quite clear that court filings, wage garnishments, and other collection tactics are proceeding unabated during the crisis.⁴⁰ Catastrophic impacts are looming and require that balanced justice be restored.

A legal aid lawyer in Chicago relates two typical stories of debt-buyer cases

1

A disabled immigrant from the Middle East in her 70s living on a fixed income faced a high four-figure debt-buyer lawsuit over old credit card debt that the original creditor had written off years previously. She had stopped making payments years before due to her indigency and inability to work. A hearing had been set for the debt buyer's motion for default judgment when the woman contacted the lawyer in desperation. With weeks to go before the hearing, the lawyer indicated that he would challenge the admissibility of the debt buyer's business records and basic ability to prove up the debt. The debt buyer wanted the woman to enter into a payment plan. When she refused, through her lawyer, the debt buyer dropped the case.

2

A working-age Black woman was sued by a debt buyer for a mid-four-figure credit card debt. The case was unusual in that the woman appeared in the case, so she was not in default but the case was set for trial. She had originally been keeping up with the credit card debt at issue in the case, but she eventually had to stop making payments while she was between jobs and had no income. The original creditor had written off the debt. The lawyer challenged the admissibility of the debt buyer's documents and proof of the debt. The debt buyer disputed the lawyer's challenge and demanded that the woman enter a payment plan, as he had repeatedly done before. When the lawyer refused, the debt buyer dropped the lawsuit on the eve of trial.

Source: Interview with the author, July 26, 2021.



Restoring Justice with Accountability and Balance: An Agenda for Reform

Systems reforms that promote justice in the debt collection courts are possible at the federal, state, and local levels. The massive amount of consumer debt is the product of many years of racially inequitable lending, fines and fees, health care bills, and other practices, compounded by collection practices that worsen and sustain racial wealth gaps, and the potential for significant COVID related debt. **Now, it is time to prevent further harm.**

Currently, debt collectors take advantage of a false narrative that individuals willfully do not pay their debts. Reform is served by a more true and equitable narrative featuring corporate accountability and balanced justice.

- Debt collection should not cripple a person's basic ability to make ends meet or generate wealth.
- Zombie debt should not be resurrected in default judgments.
- Debt collectors should be held accountable for fair practices that require them to provide meaningful notice and prove their cases in court.
- The court system should not be the publicly financed collection toolkit and profit center for debt collectors.
- "Debtors' prison" is not acceptable.
- The courts must take responsibility for creating processes and a system that is much closer to balanced justice in debt collection cases.

Some reform ideas upstream of the court-based debt-collection system would outright cancel or cap many kinds of debt, in part to account for the unfair origins of the debt.⁴¹ Here, however, we focus on a reform agenda for the collection process, as well as multiple ways for funders to help drive reform.

FEDERAL CONTEXT AND POTENTIAL REFORMS

Federal policies set the floor for national standards; states can establish standards above that floor.

The Consumer Financial Protection Bureau (CFPB) regulates consumer financial product service providers, including bill collectors, and implements the Fair Debt Collection Practices Act at the federal level.⁴² The Federal Trade Commission enforces consumer protection laws against creditors and debt collectors but not most financial institutions.⁴³ The two agencies thus have separate but overlapping authority.

The CFPB can regulate debt collection practices in the courts. For example, it could prohibit a creditor from suing or even threatening to sue on a debt the creditor knows or should know is outside the statute of limitations. Such a rule could also require creditors trying to collect such a debt to disclose to the alleged debtors that the debt is time-barred and cannot be enforced in court.⁴⁴ This kind of federal leadership can change the power balance and reshape the system.

The federal limitation on garnishment of wages (limiting garnishment to 25% of income) is a provision of the Consumer Credit Protection Act.⁴⁵ Congress could create

federal standards that protect assets and economic security more substantially by protecting a higher threshold of wages and assets, such as bank accounts up to a certain dollar amount, as well as a home, car, tools, and business materials, so families can continue to work and pay their current bills. These protections would advance justice by preventing the harms that follow when people are blindsided by a loss of access to their funds because of a court judgment they did not know about. These protections would also reduce the incentive of bill collectors to pursue the high-default litigation strategy by making it less lucrative, which in turn would reduce administrative overload in the courts.

More generally, the Department of Justice should investigate the racial disparities evident in court-based debt collection (among other issues in debt and debt collection).

Philanthropy can support research and analysis in this area, as well as advocacy to promote action by CFPB, Congress, and the DOJ regarding these racial disparities.

The National Consumer Law Center has effective advocacy capacity on the federal level; it also maintains comprehensive networks of other federal advocates and state advocacy groups.

The footnotes for this brief reveal a number of important and excellent sources illustrating research capacity in the field, including the PEW Research Foundation, the Aspen Institute, the Center for Responsible Lending, the Urban Institute, and Pro Publica, among many others.

STATE AND LOCAL REFORMS

State and local policy changes are more likely to occur within a shorter time horizon than federal changes. State action would also build momentum for changes at the federal level. Federal provisions provide a floor. States can improve upon federal standards through state legislation or rules adopted by the highest court or other judicial oversight body; a number of recommendations are set forth in the next sections of this brief. Moreover, some of the recommendations are exclusively controlled by the states and localities, so federal intervention is not required.

The court system itself can be more proactive in supervising debt collections and improving the justice of outcomes. In nearly every state, the courts have yet to implement policies, rules, procedures, and business practices to manage consumer debt collection cases in a consistent, coherent, and long-lasting manner with a focus on balanced justice.

The needed reforms may require action by state legislators or the court system itself. Philanthropy can help test innovation; fund research; support advocacy and narrative change efforts; exert influence with the bar associations, as well as creditor groups like hospitals and credit card companies; and inform and influence decision-makers.

A good place for funders to start is the legal aid lawyers who represent clients in collection procedures. They will know the current state of the law and procedures and the realities of the court calls and practices and know the identities of the officials and institutions that control the systems, as well as any advocacy groups already active on the issues. The National Consumer Law Center also has local advocates in its network in most states, and those connections will have access to the same types of information. A small grant to a legal aid agency or other expert group for help with landscaping the issues in a locality would jump-start a reform process.



Recommendations to Restore Balance to the Justice System in Debt Collections

Several types of innovations and reforms may help restore balanced justice.⁴⁶

1 MAKE LEGAL REPRESENTATION MORE ACCESSIBLE

Because debt collectors profit almost entirely from defaults, they often simply dismiss cases out of hand when the individual has a lawyer. Even when the matter is contested, many people have good defenses, including the statute of limitations, attacks on the legality or validity of the original credit transaction, mistaken identity, bad service of process, payments already made to discharge the debt, and more. Providing free or affordable legal representation for individuals in debt cases will increase the level of justice and decrease the perverse incentives currently causing debt collectors to maximize their gains by inundating court dockets.

Funders can work to increase legal representation, either directly, through support for advocacy, or by engaging in cross-sector cooperation to leverage support from other funders or from government.

- In several jurisdictions, tenants have a legislated right to counsel in eviction proceedings.⁴⁷ Indigent persons facing eviction are assigned publicly funded attorneys, similar to public defenders. The same system, or a similar one, could provide representation for debt collection cases. Philanthropy could support the research, design, and evaluation of demonstrations and document the ways to sustainably fund them. Philanthropy could help catalyze local advocacy with support to start or scale up demonstrations.
- A public-private initiative could fund the courts to set up a pilot in which both parties in a debt dispute are offered the right to—or required to engage in—a pre-litigation consultation/negotiation/mediation with an evaluation component to justify public funding if outcomes are met.
- The state bar association could be influenced to use Interest on Lawyer Trust Accounts funds, matched

by other philanthropy, to increase legal aid and/or pro bono representation for debt collection cases.

- Philanthropy can explore ways for employers to offer legal counsel as an insurance program to employees. Public-private models for this, sometimes called Judicare, are in operation around the country.⁴⁸
- Funders can support nonprofit advocacy to fund legal consultation and representation of consumers with debt issues using pooled funds from fees assessed on credit card and other lenders or targeted surcharges on the original lenders who package debt to sell to debt buyers.
- Philanthropy can provide targeted support to local legal aid agencies or the court system to provide counsel for defendants with income up to 200% of the federal poverty line. This kind of targeted legal help was a successful part of mortgage foreclosure relief in the Great Recession.⁴⁹
- Philanthropy could fund or help seed fundraising programs to establish or endow a “chair” for a specialist debt-defense lawyer at a local legal aid agency or a law school clinic to represent defendants and inform nonprofits and attorneys addressing these issues.



Innovative court program resolves medical bills before collectors are involved

A new online dispute resolution program to help resolve medical bills is under way in Hamilton County, Tennessee. The program, which is a collaboration between Hamilton County General Sessions Court Judge McVeagh, court approved mediators, Tennessee Alliance for Legal Services, and Erlanger Health System, helps individuals resolve unpaid medical bills before the bills are sent to a debt collector.

Patients receive information about the program through the court or the hospital. The court hosts the online dispute resolution platform. Individuals who register with the program can directly message the hospital to begin discussions about the bill and identify strategies to manage it, such as verifying the costs, adjusting the bill amount, or developing a payment plan. Court-approved and trained mediators play a crucial role in building trust in the system. When a participant requests a mediator, the hospital agrees to work toward a conclusion that satisfies both parties and avoids the economic disruption caused by lawsuits and debt collection tactics. Qualifying individuals can also receive assistance with legal questions or help negotiating a solution from Legal Aid of East Tennessee. The entire process is free, voluntary, and confidential.

Administrative Office of the Courts Director Deborah Taylor Tate said, “By providing an opportunity to resolve debt easily before it causes even more stress or additional legal issues, this program will be a real solution for families in the Chattanooga area.”

Recent research, conducted by The Sycamore Institute as part of the Southern Partnership to Reduce Debt (SPRD)— a multiyear, multistate initiative of the Annie E. Casey Foundation—highlighted the prevalence of medical debt in Tennessee and the harm it causes to health and well-being, as well as economic security. Tennessee has the 10th highest rate of medical debt in the country; one in four Tennesseans with a credit report hold medical debt. People who have medical debt are less likely to access needed medical care, which may negatively affect health outcomes, already burdened by the stress of debt.

The research, along with Judge McVeagh’s experience with an increasing number of debt cases, inspired the collaborative effort. Legal Aid attorneys helped craft the language used in the platform and in the materials describing the program to make the program easily accessible. The court’s role in sponsoring the platform and providing trained mediators is essential to insuring outcomes are trustworthy. The pilot program was developed with a seed grant from the State Justice Institute; it continues to be supported by the Tennessee Supreme Court Access to Justice Commission and the Alternative Dispute Resolution Commission.

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2 REFORM COURT PROCESSES, POLICIES, RULES, AND PROCEDURES

Given the need to address court-based issues systemically, funders can help elevate the narrative making the public case for change. They can fund creation and implementation of court reforms, and they can fund the advocacy and research that identify the changes needed to restore balance and increase racial equity in the system. Funders can also support courts' adoption of the data systems and reporting needed to support changes and monitor results.

The courts need to monitor their own operations more vigorously to understand how and why outcomes happen, learn how to alter those outcomes to deliver impartial justice, and eliminate abuses.⁵⁰ Courts can provide better information and training on debt-collection issues to judges and clerks, providing them the tools to ensure that debt-collection procedures comply with consumer protection rules and that appropriate judicial review is carried out before a hearing is allowed to proceed.⁵¹

Courts, through their Supreme Court Chief Judge or the highest court, can alter procedures and business practices to reduce the holes in the system that debt collectors exploit to produce high numbers of default judgments. The agenda should include:

- Monitoring court data so that the system can respond with remedial rules and practices when abuses or unjust outcomes become evident;
- Supervising the quality and veracity of service of summons more carefully;
- Eliminating or sharply limiting the validity of "constructive" service of summons in debt cases;⁵²
- Offering court calls during hours on weekends, evenings, or at other times outside of those when most people are at work;
- Scheduling every case for trial (before a judge or a trained attorney magistrate) to ensure a balanced review of the evidence and facts, with heightened

requirements for notice explaining the process and reasons why it is important for defendants (the debtors) to appear;

- Prohibiting mass "cattle-call" dockets, especially those set up for the convenience of the debt-collection firm seeking to process defaults quickly;
- Prohibiting criminalization and incarceration based directly or indirectly on nonpayment of a civil judgment;
- Adopting enforceable sliding-scale standards that limit collection on a judgment to accommodate a defendant's ability to pay.

Funding multiyear advocacy, supported by the call for justice, can highlight the need for and advance reforms (statutory or judicial) that shift responsibility and accountability to the debt collectors. These reforms include such provisions as:

- Requiring debt collectors to verify and document basic facts before contacting consumers, filing a lawsuit, or requesting judicial action;
- Requiring debt collectors to verify the debtor's correct identity and current address and use that information for the summons and the case statements;⁵³
- Requiring an additional notice upon filing of a complaint, sent by the court using a verified address and explaining in simple, nontechnical language the essential information about a pending lawsuit or hearing;
- Requiring debt collectors to show "proof of debt," such as an account number, the names of the original creditor and debtor, the chain of ownership of the debt, and the delinquent amount, with authenticated evidence, before a default judgment is entered;
- Adopting and enforcing a policy that limits the economic impact of debt-collection judgments by placing affordable upper limits on the number of add-ons allowed in debt collection suits, such as interest, costs, and attorneys' fees;

- Enacting or adopting a fee-shifting rule that makes debt collectors liable for attorney's fees and court costs of defendants who win their cases at trial or have a judgment vacated;
- Establishing strict time limits on how long after the original transaction a debt collector can pursue a debt in or out of court;
- Prohibiting by state law, regulation, or judicial rule any rule or precedent that allows intervening events, such as a partial payment, to restarting a statute of limitations or revive a timed-out claim;
- Allowing individuals to recover damages and the courts to collect fines from debt collectors for misleading or fraudulent activities or evading rules regarding required verification of information, proof of debt, and time limitations;
- Enacting ceilings (through legislation) on how much a debt collector can collect on any debt the original creditor has written off.⁵⁴

3 FUND JUDICIARY CAPACITY TO PRODUCE DATA ON DOCKETS AND OUTCOMES

Just one state, Texas, regularly reports all the case data needed to document case flows and outcomes, define problems, and inform and monitor reform. Only a dozen states produce any data about debt cases in their courts. Even that limited data shows the tremendous scope and impact of the flood of debt collections cases.

Philanthropy can address this information gap.

Robust data on debt cases in the state and local courts is needed to fully understand the debt collection story, including the racial disparities, the costs to the court, and the harm to millions of people in the community.

The research will serve two purposes. First, it should help to define the need and drive advocacy for reforms to be enacted by the justice system or the legislature. Once reforms are in place, this data is a strong tool to monitor and support improvements to the system.

4 PROTECT MORE INCOME AND ASSETS FROM JUDGMENT CREDITORS

Many states already protect more income and assets from debt collection than required by the federal minimum protections, but philanthropy can fund advocacy to make the case for additional measures to foster equitable and balanced justice and prevent household crises and debt spirals. This funding thus advances reform, creates equity, and restores economic security, community by community.

State-enacted statutes and regulations provide economic protection regardless of the quality of justice provided by the courts. They apply even in default judgment cases, and they apply regardless of the history of the debt or its collection.

A higher amount of wages, for example, can be protected from garnishment. North Carolina protects all wages from garnishment in collections for most kinds of debt.⁵⁵ Further, because the federal wage protection law is calibrated to the minimum wage (set at a minimum of 30 times the minimum wage), state-level increases in the minimum wage will also increase the minimum protection from wage garnishment.

Bank accounts should also be protected at some level, to make sure people are left with enough to pay their current bills. Income protections on checks should be applied to direct-deposited funds, and banks should be required by state regulation or statute to apply the protection without being asked or ordered to do so.

Other assets should also be protected to guard an individual's ability to earn a living or function in the community, such as business tools and equipment, cell phones and computers, and homesteads. A strong general "wild card" exemption that protects assets not specified elsewhere in the law would also strengthen protections for debtors.⁵⁶

Conclusion

For each set of systemic reforms proposed here, philanthropy is needed to shift the system, restore balance, and promote greater economic stability.



Funders can support the efforts of state judicial oversight groups, such as the state's Chief Justice, the Access to Justice Commission, or the state's Attorney General (or county's top attorney), to conduct research, establish data collection practices, design pilot and demonstration programs, and produce evaluations to innovate and improve justice in debt collection litigation.⁵⁷ Philanthropy can also support advocacy and organizing that learns from and engages individuals impacted by debt, university research to identify problems and evaluate pilots, and messaging to drive narrative change and create a pathway for systemic change. The racial justice aspects of debt collection and related court reforms also need explicit, focused support.

This brief is an ambitious call to action. Accomplishing reform will require many layers of activity, including

advocacy at the federal, state, and local levels and at all three branches of government. Change involves increasing legal representation, experimenting with pilot programs,⁵⁸ collecting and monitoring data, engaging in research and support for implementation, and ensuring ongoing monitoring and constant improvement. Because they can be relatively flexible in what and how they fund, grantmakers can play a unique role in boosting access to justice and accountability and beginning to mitigate the racial wealth inequities embedded in this system.

None of this change happens spontaneously. It requires organizing and advocacy and public education and narrative change. These are all important components of change that funders, particularly local funders who know their advocacy communities, are uniquely, and indispensably, positioned to support.

Endnotes

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be accompanied by reforms to ensure the accountability of debt collectors.

- 54 For a wide range of ideas and proposals for reform of court-based debt collection and increased consumer protections, see the list of materials at *Debt Collection*, National Consumer Law Center, <https://www.nclc.org/issues/debt-collection.html>. Specifically, see *What States Can Do to Help Consumers: Debt Collection*, National Consumer Law Center, https://www.nclc.org/images/pdf/debt_collection/fact-sheets/fact-sheet-debt-collection-state-reform.pdf.
- 55 *Garnishments in North Carolina*, North Carolina Department of Labor, <https://www.labor.nc.gov/workplace-rights/employee-rights-regarding-time-worked-and-wages-earned/garnishments-north-carolina>.
- 56 National Consumer Law Center, *supra* note 544.
- 57 Hannaford-Agor & Kauffman, *Preventing Whack-a-Mole Management of Consumer Debt Cases*, contains a summary of comprehensive New York and Massachusetts reforms (pp. 11–12), and a more comprehensive set of recommendations for courts to adopt for management of the consumer debt docket (pp. 18–24).
- 58 For example, a powerful pilot is the foundation-supported debt-buying justice fund, RIP Medical Debt, which buys debt for pennies on the dollar, entirely ending the debt and the collections process for individuals harmed. See RIP Medical Debt, <https://ripmedicaldebt.org/>.

Graph Sources

- FIGURE 1** Texas Office of Court Administration, “Annual Statistical Report for the Texas Judiciary, Fiscal Year 2018” (2018), <https://www.txcourts.gov/media/1443455/2018-ar-statistical-final.pdf>; Texas Office of Court Administration, “Annual Statistical Report for the Texas Judiciary Fiscal Year 2014” (2014), <https://txcourts.gov/media/885306/Annual-Statistical-Report-FY-2014.pdf>
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- FIGURE 3** T. Feltner, J. Barnard, and L. Stifler, “Debt by Default: Debt Collection Practices in Washington 2012-2016” (2019), <https://www.responsiblelending.org/research-publication/debt-default-debt-collection-practices-washington-2012-2016>; P.A. Holland, “Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers” (2014), <https://core.ac.uk/download/pdf/56360427.pdf>; Legal Services Corp., “Fiscal Year 2019 Budget Request” (2018), <https://www.lsc.gov/media-center/publications/fiscal-year-2019-budget-request>; M. Spector, “Debts, Defaults and Details: Exploring the Impact of Debt Collection Litigation on Consumers and Courts” (2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1975121; L. Stifler, T. Feltner, and S. Sajadi, “Undue Burden: The Impact of Abusive Debt Collection Practices in Oregon” (2018), <https://www.responsiblelending.org/research-publication/undue-burden-impact-abusive-debt-collection-practices-oregon>; C. Wilner et al., “Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers” (2010)



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