

# The Consumer Debt Litigation Index

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**About the National Center for Access to Justice** – The National Center for Access to Justice (<https://ncaj.org>) works to advance the principle that everyone should have a meaningful opportunity to be heard, secure their rights, and obtain the law’s protection. We use research, data and analysis to expose how the justice system fails to live up to that ideal and how all too often it functions as a source of oppression. We identify and promote policies that can improve access to justice, and we measure existing laws and policies against those goals. Our flagship project, the Justice Index, ranks states on their adoption of selected best laws and policies. NCAJ makes its home at Fordham University School of Law, where it helps to guide the school’s Access to Justice Initiative.

**About the Consumer Debt Litigation Index** – In 2023, NCAJ carried out a project to build the Consumer Debt Litigation Index, an online resource that would rank the 50 states and the District of Columbia on their adoption of best policies promoting fairness in consumer debt litigation. Completed in 2024, the new Index is the latest component to come on-line as part of NCAJ’s multi-year project to create and sustain the Justice Index, an online resource that ranks the states on multiple dimensions of policy governing fairness in state legal systems. In this Report, NCAJ describes the creation of the Consumer Debt Litigation Index, its leading findings, and the opportunities for using its findings to educate the public about consumer debt litigation and to improve the policies that enable people to have access to justice. The new Index was created by NCAJ’s Executive Director David Udell; Legal & Policy Director Lauren Jones; Special Projects Director Judy Mogul; and Justice Index Director, Jamie Gamble, in partnership with many additional attorneys, experts, students, court officials, and other volunteers.

**Acknowledgements** – NCAJ thanks Judy Mogul, NCAJ’s Special Projects Director, who, serving fully pro bono, helped to guide and support the Consumer Debt Litigation Index through its many phases, including literature review, benchmark design, expert interviews, research initiative, quality review, report drafting, and final website review. Judy’s commitment, brilliance, and high standards enabled NCAJ to bring the Consumer Debt Litigation Index to life, assure its high quality, and establish its capacity to improve our American legal system. NCAJ is also grateful to all who contributed to this project, including:

- Pro bono teams of attorneys who carried out the essential research initiative, including from the firms: DLA Piper LLP, Hughes Hubbard & Reed LLP, Morgan Lewis & Bockius LLP, Ropes & Gray LLP, Simpson Thacher & Bartlett LLP, White & Case LLP, and a team from UBS;
- NCAJ’s talented legal interns, Carolyn Gillett, Athena Karavasilis, Jane Kim, and Ryan Pollock;
- National policy expert April Kuehnhoff and the National Consumer Law Center for providing their great expertise and also free access to their excellent publications for use by our researchers;
- The experts who participated in NCAJ’s expert advisory group, and the additional experts with whom NCAJ consulted in carrying out the project. See *infra* at n.5;
- The Pew Charitable Trusts for providing essential financial support for the project.

**Views are NCAJ’s Alone** – At NCAJ we are grateful to all who contributed to creating the Index, but note that the views expressed in the Index and in this report are those of NCAJ alone and do not necessarily reflect the views of other contributors to the project.

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## Introduction

Consumer debt litigation presents a crisis for low-income individuals and state courts across the country. At the individual level, millions of economically struggling Americans are sued annually by creditors and debt buyers. In an overwhelming number of these lawsuits, in some jurisdictions estimated to be more than 70%,<sup>1</sup> those sued do not respond to or defend against the suits, sometimes forgoing valid defenses.

As a result, courts routinely enter default judgments against individuals without assessing the legitimacy, merits or accuracy of the claims, subjecting the individuals to sometimes erroneous seizure of money and assets, burdensome post-judgment hearings, crippling fees and interest, onerous payment plans, and other destabilizing collection efforts that can include imprisonment, all of which perpetuate and deepen cycles of debt that keep millions of Americans struggling to meet their most basic needs.

On the institutional side, courts are inundated with debt collection cases, over-taxing court personnel and resources. In some states, debt collection actions account for almost half of the matters on the civil docket.<sup>2</sup> While the volume of these cases alone presents enormous challenges to the court systems, those burdens are exacerbated by the fact that although virtually all plaintiffs in these cases are represented, consumer debt-collection defendants are almost universally unrepresented, requiring courts to adjudicate disputes without the benefit of counsel on both sides.<sup>3</sup>

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<sup>1</sup> <https://www.pewtrusts.org/en/research-and-analysis/articles/2022/10/24/to-reform-debt-collection-litigation-courts-need-better-data>

<sup>2</sup> <https://www.pewtrusts.org/en/research-and-analysis/articles/2023/09/18/debt-collection-cases-continued-to-dominate-civil-dockets-during-pandemic>.

<sup>3</sup> See, e.g., Clare Johnson Raba, *One-Sided Litigation: Lessons from Civil Docket Data in California Debt Collection Lawsuits*, University of Illinois Chicago School of Law Debt Collection Lab (Jul. 2023), <https://debtcollectionlab.org/docs/OneSidedLitigation.pdf>.

In recent years, some states have begun to enact laws to improve consumer debt litigation proceedings, resulting in fairer treatment and outcomes for individuals who are sued, and in some states a substantial reduction in case filings. To spur continuing progress toward greater fairness in consumer debt lawsuits, the National Center for Access to Justice at Fordham Law School has created this Consumer Debt Litigation Index (the “Index”).

## **I. Index Goals**

The Index creates incentives for change by ranking the 50 states and the District of Columbia (hereinafter, the report treats DC as included in the phrase “the states”) based on each state’s progress in establishing, as official law or policy, a set of expert-endorsed best policies for improving the fairness of consumer debt litigation in state courts. The Index also promotes change by collecting and citing these selected best policies where they have been adopted. This makes laws that are often difficult to find—and harder still to parse—accessible to reformers, who can use the findings (1) as a diagnostic tool to see deficiencies in their own state’s policies; (2) as a way to find models from other states that have better policies in place; and (3) as an educational tool for community members, reporters, and lawmakers alike.

The Consumer Debt Litigation Index works in tandem with NCAJ’s broader Justice Index by extending the Justice Index’s established methodology to the specific context of consumer debt litigation. As with other NCAJ indexes, the Consumer Debt Litigation Index is not an exhaustive compendium of relevant laws. Rather, by focusing on a small set of benchmarked policies that serve as a proxy for the whole system, NCAJ’s indexing approach allows people to understand the system more easily than through a comprehensive examination. It also enables them to consider real world examples of laws that, if adopted in their respective states, would increase the fairness of consumer debt litigation.

## II. Methodology – Benchmark Development and Research

### A. Consumer Debt Defined

NCAJ defines consumer debt to include any obligation (or alleged obligation) of an individual (as distinct from a business) to pay money arising from a transaction involving money, property, insurance or service used primarily for personal, family or household purposes<sup>4</sup> Consumer debt includes personal credit card debt; store financing; personal lines of credit and personal loans (including car loans and some student loans), amounts owed for residential rent or utilities; medical debt; and personal legal fees. Examples of debt excluded from this definition are alimony; child support, traffic or parking tickets; criminal restitution; criminal court fines or fees; personal guarantees; taxes and other money owed to the government (including some student loans); and any business-related loans or expenses including rent, mortgage, credit, legal fees, or taxes.

### B. Benchmark Creation

In creating the Index, NCAJ conducted an extensive literature review and consulted with experts in the field<sup>5</sup> to identify the major problems for

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<sup>4</sup> This definition is similar to the definitions used by states that have enacted consumer debt protection statutes. See, e.g., [NY Courts Website, https://ww2.nycourts.gov/rules/ccr/index.shtml](https://ww2.nycourts.gov/rules/ccr/index.shtml).

<sup>5</sup> NCAJ brought together some experts in an expert advisory group to help with the process of selecting best policies, formulating benchmarks, and assigning weights to benchmarks: Advocates (Caroline Coffey, Mobilization for Justice (NY); April Kuehnhoff, National Consumer Law Center; Lisa Stifler, NC General Assembly, former Director for State Policy, Center for Responsible Lending); Scholars (Dalie Jimenez, Professor at University of California, Irvine, School of Law; Claire Johnson Raba, Assistant Professor, University of Illinois, Chicago, School of Law); Court Officials (Nathanael Player, Court Self-help Official, Utah Courts; Katie Hennessey, National Center for State Courts, former Counsel to Michigan State Bar); Consultants (Neil Steinkamp of Stout; Jeffrey Reichman, January Advisors). NCAJ also consulted with additional experts, including: Judge Ed Havas, Pro Temps (volunteer) Judge, Small Claims Court, Utah; Bonnie Hough, Principal Managing Attorney (retired), Judicial Council of California’s Center for Families, Children & Courts; Frederick Wherry, Professor of Sociology, Princeton Debt Collection Project details); David Reid, General Counsel, Receivables Management International (RMI); Don Maurice, Counsel (to RMAI), Maurice Wutscher Law Firm; Pamela Bookman, Professor of Law, Fordham University Law. See also

unrepresented defendants in debt collection litigation, and the most promising policy solutions to increase fairness in both litigation process and outcomes.

Through an iterative process of research, consultation and analysis, NCAJ developed a final set of metrics for the Index defined by the nine categories: states should (1) help people know when they are being sued and where to find help; (2) make it easier to respond to a lawsuit; (3) require the creditor to provide evidence of a valid debt claim; (4) require consumer debt collection actions to be brought within a reasonable time of non-payment; (5) prohibit attorneys' fee shifting and cap interest; (6) reduce the likelihood that consumer debt collection actions will leave people homeless, impoverished, or perpetuate a cycle of debt; (7) eliminate debtors' prison; (8) prevent government from undue intervention on behalf of creditors; and (9) collect data to improve the system.

Within each of these nine issue areas, NCAJ selected a set of benchmarked policies that would have the greatest impact on access to justice in the courts, either because they would help a large number of litigants by correcting or ameliorating a widespread problem or have a profound impact on a smaller group of individuals by reducing or eliminating a source of extreme injustice. NCAJ sought to ensure that the policies it selected would not deter meritorious debt collection lawsuits or unduly hamper collection of legitimate judgments where the debtor has a genuine ability to pay. It also selected policies that were viable and realistic, and would not place excessive additional burdens on already overburdened state courts. NCAJ then converted the policies into formalized benchmarks to guide the research on whether the policy was embodied in a researchable, state-wide law, regulation, rule, practice or precedent. Here are the nine issue areas and 24 benchmarks that NCAJ ultimately selected (denoted by their short titles):

**Issue I: Help people know when they are being sued and where to find help.**  
1 – Does the government provide notice of lawsuits?

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About the Justice Index, at <https://ncaj.org/state-rankings/consumer-debt/about-justice-index> (scroll down to IV. Teams & Stakeholders > F. Consulting Experts > 6) Consumer Debt Litigation Index).

2 – Does the government provide guidance on finding help?

**Issue II: Make it easier to respond to a lawsuit.**

3 – Does the government provide a simplified answer form?

4 – Does the state eliminate the requirement of a notarized answer?

5 – Does the state eliminate the fee to answer?

**Issue III: Require the creditor to provide evidence of a valid debt claim.**

6 – Does the state impose a pleading requirement?

7 – Does the state require authenticated records to obtain a default judgment?

**Issue IV: Require consumer debt collection actions to be brought within a reasonable time of non-payment.**

8 – Burden on plaintiff to allege timeliness?

9 – Four year statute of limitations?

10 – Prohibit revival of time-barred claims?

**Issue V: Prohibit attorneys' fee shifting, and cap interest.**

11 – Prohibit attorneys' fees shifting?

12 – Interest caps?

**Issue VI: Reduce the likelihood that consumer debt collection actions leave people homeless, or perpetuate a cycle of debt.**

13 – Require court order to garnish or attach?

14 – Garnishment exemptions are self-executing?

15 – Essential exemptions?

16 – Require prior notice of garnishment?

**Issue VII: Eliminate debtors' prison.**

17 – Prohibit incarceration for failure to obey court order to pay consumer debt?

18 – Prohibit incarceration for failure to obey a court order to appear at a debtor's examination, unless nonappearance was willful?

19 – Provide right to counsel?

**Issue VIII: Prevent government from undue intervention on behalf of creditor.**

20 – Prohibit collaboration between creditors and prosecutors?

21 – Prohibit paying bail/bond to creditor?

22 – Limit frequency of examinations?

**Issue IX: Collect data to improve the system.**

23 – Data collection: number of lawsuits?

24 – Data collection: disposition of lawsuits?

### **C. Weighting of Benchmarks**

Finally, using a scale of 100 points, NCAJ assigned weights for each benchmark. The highest weight (10 points) went to those benchmarks that would help reduce filings and default judgments in fraudulent, unsubstantiated, or otherwise faulty claims, and inform defendants and judges about the potentially dispositive facts in those cases that are filed:

**Benchmark 6:** Does the state require consumer debt complaints to allege all of the



following:

- a. Name of original creditor;
- b. Basis of plaintiff's standing (e.g. chain of ownership of debt); and
- c. Itemization of amount sought including debt principal, interest, fees, costs, and other charges to date?

**Benchmark 7:** Does the state require the following be established before a default judgment can be granted:

- a. Proof of Service
- b. Validity of debt through authenticated business records (e.g. contract, account statements, or other evidence of obligation); and
- c. Amount of judgment through authenticated business records, itemizing damages, court fees, attorneys' fees, and interest?

The lowest weights (2 points) went to benchmarks that would improve the overall terrain of consumer debt litigation but would not alone substantially resolve an underlying problem. For example, NCAJ designated 2 points to Benchmark 3 (“Does the state provide a simple Answer process by making available an Answer form for use by unrepresented persons in consumer debt lawsuits?”) because a form Answer is a tool that could help lower the bar to people answering a complaint, not a solution in and of itself to the problem of default. Similarly, NCAJ designated two points to Benchmark 14 (“Does state law require in consumer debt lawsuits that garnishment exemptions for bank accounts are self- executing?”) because that policy makes it more likely that people will access exemptions to which they are entitled, but it does not alone ensure that people will be able to retain sufficient resources to remain above the poverty line, housed, and able to care for their families.

In the middle, NCAJ assigned some benchmarks five points and others three points. The assigned weights reflected our assessment of each benchmarked policy's importance relative to the other benchmarks, taking into account such factors as the extent of harm sought to be addressed, the number of people likely to be affected by the policy, and the extent to which that policy would alter the overall trajectory of litigation and the impact on individuals. The full set of issues, benchmarks (with short and full titles), weights can be viewed in the Index's data visualizations, at <https://ncaj.org/state-rankings/justice-index/consumer-debt>. NCAJ has also posted on the Index, in the introduction to the data visualizations,

a memo setting forth this same set of Index elements, accompanied by explanations of the importance and scope of each benchmark. See *Benchmarks Explained*, [https://ncaj.org/sites/default/files/2024-02/Benchmarks%20Explained%2C%202-16-24\\_3.pdf](https://ncaj.org/sites/default/files/2024-02/Benchmarks%20Explained%2C%202-16-24_3.pdf).

#### **D. State by State Research and Quality Assurance**

In a process extending over the course of eight months, more than 70 lawyers from seven law firms and a corporate legal department carried out the research in a comprehensive pro bono initiative that included painstaking investigation to identify and collect state policies pertinent to each benchmark in the 50 states and the District of Columbia. For each benchmark the researchers determined whether or not the state had adopted the policy at issue, and sought to provide citations to and quotations from state statutes, judiciary rules, court forms and/or case law. The volunteer lawyers, and the NCAJ staff each separately conducted a quality assurance process to review the provisional research findings for accuracy and consistency of results. Additionally, The Pew Charitable Trusts, which has funded this project, recruited two experts in the field who were not involved in either the benchmark development process, or the research, to review NCAJ's methodology and research findings. Finally, officials in each state were provided the complete research findings for their respective states, and were afforded an opportunity to offer comments to or proposed corrections on those findings. NCAJ incorporated input from all these expert sources where appropriate.

### **III. The Consumer Debt Litigation Index**

The combined, quality reviewed research findings, establishing whether each state has or has not adopted each benchmark, constitute the Consumer Debt Litigation Index. The Index shows whether and where each benchmark has been adopted, and each state's score (the sum of the points for each benchmark for which the state received credit), and ranking relative to the other states.

## A. Top Findings from the Consumer Debt Litigation Index

We encourage interested persons to explore the findings in depth. Here is a brief introduction to some patterns revealed by the Index:

**1. Notably, overall, every state has room to improve:** Washington, D.C. ranked highest with a score of just 53 out of a possible 100 points. Although some states have made significant progress, there is much more that is needed in all states. No state should consider that its work reforming consumer debt litigation is done.

**2. No Evident Political Pattern Among States:** In a finding that suggests best policies can potentially be established in a wide range of states, preliminary analysis appears to indicate that political leanings—or composition of state government—had little to no effect on how states fared in the Consumer Debt Litigation Index. The top states are a mix of blue (New York, Delaware, and Washington), red (Texas and Alabama), and purple (Pennsylvania) states. They are also geographically diverse. The same is true for the states at the bottom.

**a) The top dozen states are:**

1	Washington, DC (53)
2-3 (tie)	Delaware and New York (46)
4	Alaska (39)
5-6 (tie)	Pennsylvania and Texas (37 pts)
7-8 (tie)	Maryland and Washington (36 pts)
9	Alabama (32 pts)
10	Wisconsin (30 pts)
11	New Jersey (29 pts)
12	California (28 pts)

**b) The bottom dozen states are:**

40-46 (tie)	Colorado, Kansas, Michigan, Minnesota, South Dakota, Utah and Wyoming (14 points)
47	Nevada (13 points)
48	Rhode Island (9 pts)
49-51 (tie)	Hawaii, Louisiana, and Montana (7 pts)

**3. Most of the benchmarked policies have been adopted in at least one state:** Although the overall landscape of consumer debt litigation law is bleak,

there is a ray of hope: 22 of the 24 benchmarked policies have been established as law in at least one state, meaning that a state seeking to improve its policies need not reinvent the wheel. Rather, it can look to the laws of other states as a model, and it can easily identify these states in the Index.

**4. Some states do not have best policies in place that many states do:**

- a) 3 states **still require a defendant to have an answer notarized**, which creates a barrier to responding to consumer debt lawsuits: Georgia, North Carolina, Tennessee. (48 states fixed this policy, per Benchmark 4).
- b) 7 states **still allow garnishment and attachment without a prior court order**: Hawaii, Iowa, Maine, Minnesota, Nevada, New York, South Dakota. (44 states fixed this policy, per Benchmark 13).
- c) 15 states **still charge a fee to answer** a consumer debt complaint: Arizona, California, Colorado, Georgia, Idaho, Illinois, , Louisiana, Minnesota, Montana, Nevada, New Jersey, North Dakota, Oregon, Rhode Island, South Dakota (36 states fixed this policy, per Benchmark 5)
- d) 25 states **still fail to provide an Answer form** to unrepresented persons in consumer debt lawsuits: Alabama, Arkansas, Georgia, Florida, Idaho, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Missouri, Mississippi, Montana, Nebraska, New Mexico, Ohio, Oklahoma, Oregon, South Carolina, Washington, Wyoming, Texas, West Virginia, Wisconsin, Virginia (26 states fixed this policy, per Benchmark 3).
- e) 30 states **still fail to prohibit incarceration for contempt** for failure to obey a court order to pay a consumer debt judgment: Alaska, Arizona, Arkansas, Colorado, Hawaii, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Maine, Michigan, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming (21 states fixed this policy, per Benchmark 17)

**5. Some sound policies are not yet in place in the majority of states:**

- a) 51 states **still do not require creditors to plead facts showing timeliness** of their consumer debt complaints (0 states have adopted this policy, per Benchmark 8).
- b) 51 states **still do not prohibit using bail or bond to pay a creditor** (0 states have adopted this policy, per Benchmark 21).
- c) 50 states **still do not cap pre- and post-judgment interest at 7% and 5%**, respectively (only 1 state, New York, has adopted this policy, per Benchmark 12).
- d) 50 states **still do not prohibit collaboration between creditors and**

**prosecutors** that facilitates debt collection (only 1 state, Oregon, has adopted this policy, per Benchmark 20).

- e) 46 states **still fail to provide a notice to the debtor, prior to act of garnishment**, that explains the following: a) potential exemptions, b) how to challenge the order, and c) how to assert exemptions (only 5 states provide this prior notice, Indiana, New Jersey, New Mexico, Massachusetts, Ohio, per Benchmark 16).

**6. Some policies improve efficiency, cost little, yet are not in place:**

- a) 0 states **require plaintiffs to plead facts establishing timeliness** (per Benchmark 8).
- b) Only 3 states **limit the frequency of debtor’s examinations to no more than once per year (absent good cause)** (Maryland, Mississippi, Virginia, per Benchmark 22).
- c) Only 10 states **prevent revival of a time-barred consumer debt claim** if the person makes a subsequent payment towards the debt (Alabama, Arizona, California, District of Columbia, Florida, Maryland, Mississippi, Nevada, New York, Washington, per Benchmark 10).

**7. Most states will still jail people in a consumer debt collection case:**

- a) 30 states **still fail to prohibit incarceration for contempt** for failure to obey a court order to pay all or part of a consumer debt judgment (the remaining 21 have fixed this policy, per Benchmark 17).
- b) 36 states **still jail a person for missing a debtor’s examination** without the court first finding that the nonattendance was willful (the other 15 require a finding of willfulness, per Benchmark 18).
- c) 25 states **still fail to provide a lawyer without charge** when a person in a consumer debt lawsuit could face incarceration (26 states provide counsel, per Benchmark 19).

**8. Very few states track and report data on consumer debt litigation**

- a) Only 4 states **publish data on the number of consumer debt lawsuits**, and only 2 **publish data on the types of dispositions**, making it difficult to diagnose problems and solve them (per Benchmarks 23 and 24, respectively).

**B. Data Visualizations**

We encourage interested persons to engage with the data visualizations contained in the Index. Here is a brief introduction to each visualization and what

it offers to the public:

**1. View State Reports.** This visualization allows stakeholders to see NCAJ's consumer debt findings, scores and rankings in a presentation that is specific for each state. Thus, a stakeholder focused on a specific state can readily obtain an overview of (1) the state's score, (2) its ranking relative to other states, and (3) its progress or lack of progress in adopting each of the benchmarked policies.

**2. Compare State Scores.** This visualization shows stakeholders how each state compares (its "ranking") alongside all others. Overall, it also indicates that no state scored higher than 53 on the Index's 100 point scale.

**3. Benchmarks: Weights and Trends.** This visualization shows for each policy the extent to which it has (or has not) been adopted in the 50 states and the District of Columbia.

**4. Benchmarks by State.** This visualization shows stakeholders the geographic distribution of where benchmarked policies have been established, and also shows NCAJ's explanation for why a state does or does not meet the benchmark, including citations to underlying law. So, for example, "choose a benchmark" highlights on a 50 state map the states in which the policy has been adopted as law. Then, clicking on any state will summon the explanation of why the state does or does not meet the policy. Clicking through this visualization by policy illuminates the national picture of progress to date, and the distance states still need to travel, to establish more just consumer debt litigation laws in the United States.

**5. Download the Source Data.** Clicking this visualization, ("Download the Source Data"), allows visitors to download a spreadsheet containing the full set of all Justice Index findings currently posted on the Justice Index website, including at Tab 9, all Consumer Debt Litigation Index findings. For scholars and others who are carrying out research using the findings, the

spreadsheet presentation makes all Index findings readily accessible, sortable, and copyable.

**6. Justice Index Option for Integrating three Sub-index Scores into Overall Rankings.** NCAJ has also created an option to view Justice Index overall rankings by integrating three categories of scores now posted within the Justice Index website. Thus, by clicking the small boxes contained on the Justice Index’s main landing page, within the Compare State Scores data visualization, <https://ncj.org/state-rankings/justice-index>, , the viewer can opt to combine the different sub-index scores to reveal combined rankings based on the following combinations:

- The traditional four Justice Index categories: attorney access, self- representation, language access, and disability access (data from 2021).
- The traditional four Justice Index categories (data from 2021) combined with the fines & fees findings (data from 2023).
- The traditional four Justice Index categories (data from 2021) combined with the consumer debt litigation index findings (data from 2024)
- The traditional four Justice Index categories (data from 2021) combined with the fines & fees findings (data from 2023) combined with the consumer debt litigation findings (data from 2024)

Clicking, and unclicking, the dedicated boxes posted for this purpose will allow site visitors to shift back and forth between each state’s average score on the four indexes v. the state’s average score including either, or both, the Fines

and Fees findings, and Consumer Debt Litigation Index findings.<sup>6</sup> NCAJ invites stakeholders to use the Index's check-the-box combination options to explore possible correlations or other patterns in the performance of state legal systems for securing access to justice based on the Justice Index sub-index categories. Importantly, NCAJ also cautions that any such comparisons are complicated by significant factors that may include, for example, differences in when the underlying research was carried out, differences in methodology, differences in researchers, and other distinctions and considerations that are unique to each sub-index database.

#### **IV. Caveats**

In producing the Consumer Debt Litigation Index, we are mindful of the pitfalls that exist for researchers in any close examination of state laws governing debt collection. These are not trivial, and those who use the new Index are encouraged to be mindful of them, as follows:

**A. Complexity.** The law governing consumer debt litigation in state courts is complicated and often hard to locate. Consumer debt goes by a multitude of names, and the laws and policies governing consumer debt litigation are not uniform across categories, nor consistent in their terminology, even within a state, let alone across multiple states. To a great extent, the consumer debt law is codified, but it may be incorporated into multiple and diverse sections of state

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<sup>6</sup> Comparing states' rankings across sub-index categories is made possible by normalizing scores to a base of 100. More specifically, the Consumer Debt Litigation Index and the Fines and Fees Index both offer a total of 100 points, thus the score for each state on each Index is the number of earned points on that Index out of 100. By contrast, the original Justice Index's four categories (attorney access, self-help access, language access, disability access) have total point values greater than 100, thus NCAJ normalizes those Index results to a base of 100 by dividing the number of points earned in each Index by the number of points offered in that Index, and multiplying by 100. It then becomes possible to compare any state's average score (across one or more indexes) to all states' average scores (in the same indexes) by relying on the normalized scores for each state in whichever index categories are to be compared, and then dividing by the number of selected index categories. To compare the states average performance across multiple index categories, the site visitor then checks the dedicated boxes to select the index categories to be combined: a) the traditional four indexes, b) the traditional four indexes plus Fines and Fees or Consumer Debt Litigation, or c) all six indexes.



law depending on particular factors (such as when the law was established, whether the state treats consumer law as distinct from other types of debt, and whether the state treats consumer law as distinct from other laws such as those governing contempt). The consumer debt law may also exist in judiciary rules or in caselaw, and sometimes the important policies are a product of administrative practices in the courts, e.g., a particular court-recommended notice or court-recommended form may be modified by a municipal court, or used only by some of the courts. Some policies are applicable in state courts of general jurisdiction, but not in the state's small claims courts (or, the reverse). NCAJ credited states for establishing benchmarked policies only where the policies were applicable statewide, in all courts, for all forms of consumer debt. NCAJ invites comments and input from all stakeholders as we work to maintain the Consumer Debt Litigation Index and to confirm its accuracy, including in the form of recommendations to modify answers, requests to recognize laws and policies not already in the Index, and/or suggestions for other changes. Inquiries may be emailed to [NCAJ@fordham.edu](mailto:NCAJ@fordham.edu).

**B. Law on the Books v. Law as Applied.** The law in some states may be protective of individuals' rights as codified, but only partially implemented and/or enforced. The Index is a useful source of information about law on the books, but does not focus directly on law as applied, in part because of the difficulties in researching how the law is applied. Codified law is important; in its absence, the rule of law is invisible, if it exists at all. If you live in a jurisdiction where the law is on the books, but not fully effectuated, the Index is intended to be useful to you in holding officials and parties in litigation accountable to the law's formal requirements.

**C. "Selected" benchmarks.** The Consumer Debt Collection Index is not a compendium of all important laws and policies. Rather, it profiles certain selected benchmarks as a means of producing a clear picture of a large and complex system, relying on the premise (common in a multitude of indexing

models) that a score on the selected measures is a proxy for overall performance. Some states may have opted to establish alternative policies, also helpful, but not selected as a measure for inclusion in the Index. On balance, states that do a better job on access to justice are likely to rank higher in the Index than those who do not, even if they have not established all the selected policies as law, and even if they have adopted other rights-protective policies not recognized in the Index.

## V. Practical Applications of the Index Findings

This Index offers a new resource to consumer debt reformers. We encourage every advocate, practitioner, legislator, and court official concerned about the fairness of debt collection litigation to make use of the Index's rankings and data. Those uses include:

### A. Diagnosing Important Issues of Fairness in Consumer Debt Litigation

**Policies.** The State Reports allow viewers to see a snapshot of how a given state fared on all 24 benchmarks. The Benchmarks By State data visualization allows viewers to see explanations for why the state did (or did not) receive credit for each benchmark, including citations. That same visualization allows users to see which states did meet the benchmark, read about the policies they have in place, and find the laws on the books. Together, these scores and short explanations can help reformers identify laws in their own state that are ripe for change, as well as laws in place in other states that may serve as a model for reform.

### B. Educating Lawmakers, Journalists, and Community Members About

**Important Issues of Fairness in Consumer Debt Litigation Policies.** The Benchmarks By State visualization provides short explanations of state law that are accessible to non-legal audiences. In combination with the state report, the state score, and the state ranking, these data points can provide a valuable snapshot of how a state is doing on consumer debt litigation policy, and short explainers of often very complex laws.

**C. Fostering Competition Among States to Improve Access to Justice in Consumer Debt Litigation Policies.** Perhaps the most powerful use of the Index is to promote a race to the top. National competition—or sometimes competition with neighboring states—can draw attention to the need for change, and spur reform. Here is an example about how findings in NCAJ’s Justice Index can help to prompt change. This example is drawn from NCAJ’s Fines and Fees Index:

### **Delaware**

At the time of the publication of the Fines and Fees Index release, NCAJ ranked Delaware 47th, which the ACLU of Delaware, the Campaign to End Debtor’s Prison, and others cited in press releases, op-eds, and talking points with legislators and journalists to underscore the urgent need for reform. The legislator who introduced an omnibus bill on fines and fees similarly cited the Justice Index to argue for the need to make fines and fees reform a top priority. NCAJ analyzed how proposed legislative reforms would change the state’s score and ranking, and local advocates then incorporated this analysis into their talking points. In 2022—just over a year after the initial publication of the Index—the Governor signed HB 244, which moved Delaware from 47th to 23rd on the Index.

The Consumer Debt Litigation Index can serve the same role, spurring states to improve their policies, raise their scores, and increase access to justice in their courts.

## **Conclusion**

We hope this project helps our legal system fulfill its promise of equal justice for the vast numbers of people affected annually by consumer debt collection litigation.

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