



**Consumer Federation of America**

## Report

# Unwarranted: Small-Claims Court Arrest Warrants in Payday Loan Debt Collection

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*The Consumer Federation of America is a national organization of more than 250 nonprofit consumer groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education.*

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# Executive Summary

Every year, millions of cash-strapped, economically insecure Americans turn to payday, vehicle-title, and similar forms of high-cost debt. While frequently advertised as short-term financial solutions, research demonstrates that these triple-digit interest-rate loans routinely trap borrowers in long-term cycles of payment, default, and reborrowing. For most of American history, this type of credit was illegal in virtually every state. And today, an overwhelming majority of Americans support traditional usury laws that restrict the cost of consumer finance. Nevertheless, recent research documents lenders' growing use of the courts and, in particular, the criminal-justice system to collect debts from lower-income consumers. This report examines this nexus between what some have called a "debt-to-jail pipeline" and the most expensive loans permitted in America.

Building on prior research, this report presents an empirical study of high-cost debt-collection litigation in the small-claims courts of one state, in order to create a focal point of reference in the national debate over poverty and consumer protection in America. Specifically, this report presents a unique data set collected with original screen scraping software that harvested information on every small-claims court hearing scheduled in the state of Utah for one year. In addition to general findings on small-claims litigation initiated by high-cost lenders, this report also presents more detailed findings drawn from a statistically significant, representative sample of small-claims cases filed by high-cost lenders. A focus on Utah debt collection is nationally relevant because the state provides an example of the potential consequences of a lax regulatory environment.

This analysis includes several findings:

- **High-cost lenders dominated small-claims court dockets, accounting for over 68 percent of all small-claims court hearings.** The small-claims court system has evolved into a publicly subsidized debt-collection system for high-cost lenders that make unaffordable loans to vulnerable consumers.
- **High-cost lenders were the most aggressive plaintiffs in small-claims courts, suing over smaller amounts and litigating over longer durations than other plaintiffs.** The median high-cost lender sued their customer over a \$994 debt—nearly a third of the median \$2,875 sought by other plaintiffs. And high-cost lender lawsuits in small-claims court extend for an average of at least 14 months—over twice as long as lawsuits initiated by other plaintiffs. Many high-cost loan collection lawsuits go on for several years.

- **High-cost lenders routinely obtain arrest warrants against their customers from small-claims court judges.** Our study shows that nearly three in ten high-cost lender lawsuits result in a bench warrant for the arrest of the borrower for contempt of court. We estimate that Utah small-claims judges issue bench warrants for the arrest of over 3,100 high-cost borrowers per year and that 91 percent of all small-claims arrest warrants are issued in high-cost lending cases.

These findings indicate that small-claims courts—originally designed to improve access to justice for average Americans—are now primarily used by usurious lenders to aggressively collect triple-digit interest rates from poor, insolvent borrowers. While these empirical findings are limited to one state, the laws that have facilitated this outcome are not unique, suggesting similar practices may be occurring in other state small-claims court systems as well. Our findings are a reminder that policy makers have a responsibility to protect Americans from companies that have abandoned reasonable restraints on predatory lending.

# Report

## 1. Introduction

Every year, millions of cash-strapped, economically insecure Americans turn to payday, vehicle-title, and similar forms of high-cost debt. While frequently advertised as short-term financial solutions, research demonstrates that these triple-digit interest-rate loans routinely trap borrowers in long-term cycles of payment, default, and reborrowing. Effective annual interest rates on storefront payday loans nationwide are, on average, nearly 400 percent.<sup>1</sup> For many of these borrowers, payday, vehicle-title, and similar forms of high-cost installment lending can have profoundly harmful consequences. Consumers who find themselves in high-cost “debt traps” are frequently forced to forego basic living expenses such as rent, groceries, electricity, and healthcare in order to meet expensive and ever-extending loan payments.<sup>2</sup> Payday loans and similar forms of high-cost debt are strongly correlated with involuntary bank account closures and bankruptcy.<sup>3</sup> Borrowers who end up defaulting on their loans face aggressive debt-collection practices and often lose their only means of reliable transportation to repossession.<sup>4</sup> In recent years empirical research has linked payday lending to increased neighborhood crime rates.<sup>5</sup> And a growing body of research has found strong correlations between payday loans and poor health outcomes including stress, anxiety, weight gain, high blood pressure, and even suicide.<sup>6</sup>

High-cost lenders aggressively collect their debts and often sue consumers who struggle to repay.<sup>7</sup> Recent research has documented the growing use of the court system in collecting debts from lower income consumers. Harkening back to “Dickensian” debtors’ prisons, advocates have described this phenomenon as a “debt-to-jail pipeline” that can result in long-term psychological trauma, lost income, and other damaging effects on debtors and their families.<sup>8</sup> In most states, collection litigation over high-cost loans occurs in small-claims courts. Historically, the policymakers who established small-claims courts in the early twentieth century intended them to operate as less formal, lower-cost options that would serve the working public better than traditional courts.<sup>9</sup> While these courts were originally intended to benefit low- to moderate-income people, today, collection lawsuits in these courts pull some of the country’s most vulnerable into a system they are ill-equipped to navigate. Sued borrowers are still almost always unrepresented by counsel.<sup>10</sup> And they typically have limited experience with court procedures. Lower-income consumers drawn into debt-collection litigation also face language barriers, have limited literacy or numeracy, and may have deep fears of the judicial system. Many struggling borrowers have tenuous employment and cannot take time off from work to appear in court without limiting their income or even risking the loss of a job.<sup>11</sup> And, many lower-income consumers face childcare and transportation hurdles that make active participation in litigation extremely difficult or even impossible.

This report presents an empirical study of the nexus between the debt-to-jail pipeline and the most expensive loans permitted in America. Building on prior research, this report presents a study of high-cost debt-collection litigation in the small-claims courts of one state, in order to create a focal point of reference in the national debate over poverty and consumer protection in America. In particular, this report presents a unique data set collected with original screen scraping software that harvested information on every small-claims court hearing scheduled in the state of Utah for one year. In addition to general findings on small-claims litigation initiated by high-cost lenders, this report also presents more detailed findings drawn from a statistically significant, representative sample of 377 small-claims cases.

Focusing on high-cost debt collection in Utah is illustrative for two reasons. First, Utah's high-cost debt-collection exemplifies a *laissez-faire* approach to consumer finance regulation. Since the early 1980s, Utah has had no usury limits and includes only a handful of other mostly cosmetic consumer protections. The business-friendly state is an example of a destination at the end of the path many financial services industry lobbyists encourage policy makers to walk. Second, by leading other states in a regulatory race-to-the-bottom, Utah has become an important node in the financial services market.<sup>12</sup> Utah-based industrial banks and fintech companies increasingly attempt to use smart phone and web-based lending platforms to export Utah's laws and regulatory climate throughout the United States. A closer look at what Utah regulators and courts tolerate is of importance to not only local lawmakers, but to the national debate on the future of consumer finance in a digital world.

Overall, this report presents three findings. First, payday, vehicle-title, and similar high-cost lenders were the dominant plaintiffs in small-claims court, initiating two-thirds of all small-claims cases—more than every other type of litigant combined. In Utah's small-claims courts, nearly seven in ten scheduled hearings involve the collection of a high-cost loan. Second, high-cost lenders were the most aggressive small-claims court litigants, suing over smaller amounts in controversy and litigating for much longer periods of time than all other plaintiffs. And third, high-cost lenders routinely obtain arrest warrants against their customers from Utah small-claims judges. Our statistically significant, random sample of small-claims cases found that nearly three in ten high-cost lender lawsuits result in a bench warrant for the arrest of the borrower for contempt of court. Indeed, some borrowers face arrest on multiple occasions with respect to the same loan. We estimate that Utah small-claims judges issue bench warrants for the arrest of over 3,100 high-cost borrowers per year and that 91 percent of all small-claims arrest warrants are issued in high-cost lending cases. In Utah small-claims courts, lenders collecting payday loans and similar forms of credit obtain warrants for the arrest of defendants in their cases nearly nine times more frequently than all other small-claims plaintiffs combined.

This report begins with a brief background discussion of high-cost debt, small-claims court litigation procedures, and the laws that allow small-claims court judges to order the arrest of insolvent borrowers. Next, this report explains our empirical methods and presents our findings. We conclude with an analysis, directions for future research, and several public policy recommendations.

## 2. Background

From a long-term historical perspective, triple-digit interest rate consumer finance is anomalous and dangerously expensive. For most of American history, legislatures, courts, business leaders, and religious institutions have considered payday loans and similar forms of credit to be usurious and even criminal in many states. For example, Table 1 illustrates that all thirteen original American states imposed aggressive interventions in credit markets with simple, nominal annual interest rate caps of between five and eight percent. Every signatory to the Declaration of Independence and every delegate to the Constitutional Convention returned to states where a consensus existed regarding the need to protect citizens from high-cost loans. American leaders and the public were skeptical of high interest rate loans because of the potential for reducing citizens to poverty as well as their moral view, rooted in their Christian faith, that the taking of excessive interest is a grave sin.<sup>13</sup>

**Table 1. State usury limits at independence.**

State	Max. annual rate	Year adopted
Connecticut	6%	1718
Delaware	6%	1759
Georgia	8%	1759
Maryland	6% <sup>a</sup>	1692
Massachusetts	8%	1641
N. Hampshire	6%	1791 <sup>b</sup>
N. Jersey	7%	1738
N. York	7%	1737
N. Carolina	6%	1741
Pennsylvania	6%	1700
Rhode Island	6%	1767
S. Carolina	8%	1748
Virginia	5%	1734

<sup>a</sup>Loans payable in tobacco or other property were capped at 8%.

<sup>b</sup>N.H. adopted its first usury statute after independence.

Source: Tyler on Usury (1878); Christopher L. Peterson, *Usury Law, Payday Loans, and Statutory Sleight of Hand: Salience Distortion and American Credit Pricing Limits*, 92 MINN. L. REV. 1110 (2008).

At the beginning of the twentieth century, state legislatures began relaxing interest rate regulation to facilitate more credit availability for consumers. These relaxed usury limits generally took the form of a small-loan law which granted licensed lenders special permission to charge interest rates ranging between 18 percent and 42 percent per annum with a 36 percent cap being typical. Called special usury limits, laws of this nature remained in force in virtually every state in the union through the 1960s.<sup>14</sup> Individuals and companies that loaned money in excess of these limits were aggressively prosecuted in state and federal criminal investigations. For example, loans made by the New York City *La Cosa Nostra* organized crime families carried average annual interest rates of 250 percent per annum<sup>15</sup>—nearly half the current average payday loan interest rates in many states. In 1968 Congress adopted the Consumer Credit Protection Act which includes a criminal loan sharking statute establishing

a federal crime for extortionate lending at high interest rates.<sup>16</sup> Under this law, an annual interest rate of more than 45 percent is treated as evidence that a loan is extortionate.<sup>17</sup> And during the George W. Bush Administration, Congress adopted a national usury limit on loans to active duty military service members of 36 percent.<sup>18</sup> During all but the last years of the twentieth century, usury limits in this range were the accepted norm in American consumer protection and criminal law.

However, in a landmark 1978 decision, the U.S. Supreme Court held that when national banks make loans across state lines, the bank's home state usury law applies rather than the consumer's.<sup>19</sup> This sparked a race to the bottom where a handful of states including South Dakota, Delaware, and Utah eliminated interest rate limits altogether to attract financial services industry jobs.<sup>20</sup> With the two-hundred-year-old edifice of American usury law cracked, non-bank finance companies became increasingly effective at lobbying state legislatures for new exceptions to traditional consumer credit price limits that exceed the conservative historical American norms. While over a dozen states resisted these efforts by preserving their traditional usury limits, over thirty states eliminated all price caps or adopted new "deferred presentment" statutes.

Although these deferred presentment laws varied from state to state, in essence, the statutes allowed check-cashing companies to delay depositing post-dated personal checks that draw on consumers' own checking accounts. In a typical transaction, the borrower writes a check ordering the consumer's bank or credit union to pay the payday lender \$360. The consumer writes a date on the check that reflects the due date of the loan two weeks in the future. The lender then gives the borrower \$300 on the day of origination. The \$60 difference is, in effect, interest to be paid on the debt. Under this new breed of deferred presentment statutes, most states characterized the \$60 as a check cashing fee rather than an annual interest rate of 520 percent. Many states included a cap on the fee these nascent payday loan companies could charge. But these fee limits were wildly generous to lenders, and as a practical matter the deferred presentment laws legitimized lending to insolvent borrowers at effective interest rates in excess of 300 percent.<sup>21</sup>

The result was an explosion of extremely high-cost lending businesses unprecedented in American history. At the beginning of the 1990s, the best available estimate suggests that fewer than 200 business locations nationwide offered triple-digit interest rate payday or auto-title loans.<sup>22</sup> In Salt lake City, payday lending storefronts locations quintupled in six years, between 1994 and 2000.<sup>23</sup> In North Carolina, payday lending outlets roughly quadrupled in four years, growing from 307 in 1997 to 1204 in 2000.<sup>24</sup> Wyoming payday lenders tripled between 1996 and 1997.<sup>25</sup> Iowa's payday lenders increased from eight to sixty-four in two years.<sup>26</sup> In states where payday lending was once illegal under state law, bills purporting to regulate the industry in fact legitimized it, leading to astonishing growth nearly over night. For instance, after Mississippi began regulating payday lenders in 1998, the number of outlets in that state quickly tripled.<sup>27</sup> By 2001, there were over 12,000 payday loan outlets operating nationwide.<sup>28</sup> Growth of online lending is harder to track, but by 2011 internet-based payday lenders had captured a significant market share, originating about 35 percent of the total volume of payday and similar high-cost loans online.<sup>29</sup> Today there are approximately 16,000 storefront payday lenders around the country.<sup>30</sup> Every year, about 12 million Americans put

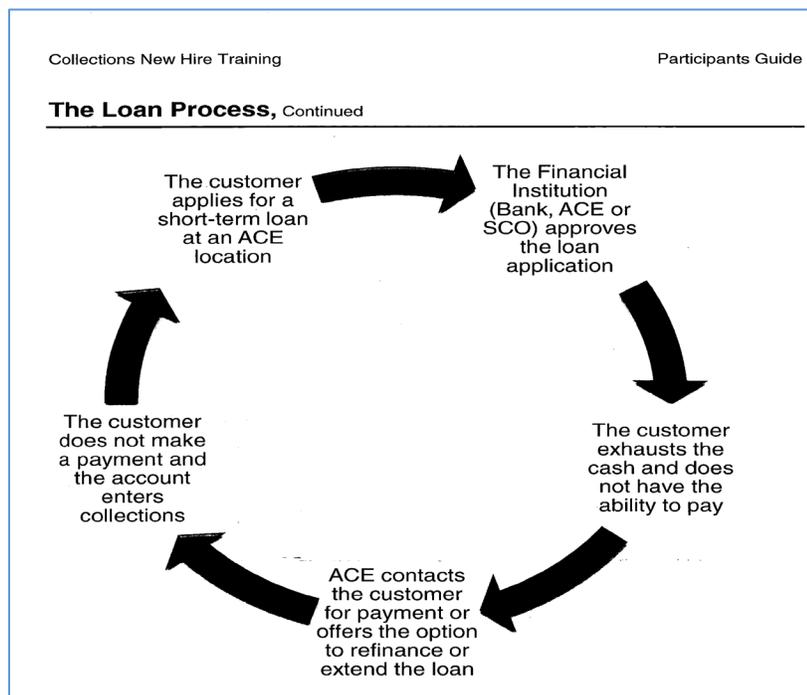
their financial well-being at risk with payday, vehicle-title, and similar forms of high-cost credit. Of these people, 52 percent are women; 12 percent are African Americans; and 13 percent are struggling through marital separation or divorce.<sup>31</sup> Millions of these consumers have young children.

Lenders defended their high interest rates by arguing that payday loans are a short-term form of credit, and therefore characterizing the price with an annual interest rate is misleading. On the other hand, consumers need a uniform yardstick to compare the price of different types of credit. The fact that the annual percentage rates of payday loans, vehicle-title loans and similar forms of credit are far higher than other forms of debt is not misleading, it is just math.

But perhaps even more fundamental, although the initial duration of any given payday loan was relatively brief—typically about two weeks—high-cost loans quickly proved to be long-term forms of credit. A high-risk debtor facing a cash shortfall in any given day is unlikely to have corrected their liquidity crisis two weeks later. As payday lending exploded in the 2000s, studies by industry-sponsored think tanks,<sup>32</sup> federal regulators,<sup>33</sup> state regulators,<sup>34</sup> private contractors hired by state governments,<sup>35</sup> consumer advocacy organizations,<sup>36</sup> and academics<sup>37</sup> proved that borrowers of single-payment, triple-digit interest rate loans tend to fall into reoccurring debt patterns. Because these loans carry such high prices, unless lenders use underwriting guidelines to determine borrowers' ability to repay in a timely manner, payday and vehicle-title loans typically compound for durations far beyond the initial one- or two-week due date. Looking past the boilerplate terms written into loan contracts, in the absence of effective underwriting, it is economically more accurate to think of payday and vehicle-title loans as medium- to long-term forms of debt. Across the country, average payday loan borrowers take out eight loans per year.<sup>38</sup> About 75 percent of all payday loan fees are attributable to consumers that borrow or renew their loans more than 10 times per year.<sup>39</sup> And, a large and comprehensive study conducted by the Consumer Financial Protection Bureau (CFPB) found that over 80 percent of payday loans are rolled over or followed by another loan within 14 days because borrowers were not able to pay back the loan and make it to their next payday without re-borrowing.<sup>40</sup>

The CFPB's law enforcement work also revealed that high-cost creditors are aware of these patterns and intentionally design their business models to keep low- and moderate-income consumers trapped in debt. For example, one of the largest payday lending industry chains in America included the image reproduced in Figure 1 within the manual the company used to train new employees.<sup>41</sup> In its "loan process" the business loaned money at triple digit interest rates to applicants, knowing that the customer would "exhaust the cash" and "not have the ability to pay." According to the training diagram the customer then enters collections and ultimately reborrows, starting the cycle all over again. For many consumers, this cycle begins anew after the borrower has already repaid nearly as much in fees and interest as they originally borrowed.<sup>42</sup> And, for borrowers in the most dire financial straits, renewal loans are also often for larger amounts than the loans they replace, leaving borrowers deeper in debt than when they started.<sup>43</sup>

**Figure 1. ACE Cash Express new hire training manual.**



The capacity of high-cost loans to entrap borrowers is not merely theoretical. Figure 2 reproduces a screenshot from the computer records of a national vehicle-title lending chain with storefront locations in about twenty states, including Utah.<sup>44</sup> At the time of the transaction, the borrower whose account is described in Figure 2 worked as a receptionist for \$11.00 per hour in Albuquerque, NM and is a proud, enrolled member of the Navajo Nation. When her partner did not receive as many hours at his place of employment, the couple fell behind on their bills. The borrower took out a \$1,971.05 vehicle-title loan with a 300 percent APR, secured by a lien on her pickup truck. Over the next eight months, she made \$4,635 in payments on her loan. Because she was only making \$11.00 per hour, scraping together the resources for these payments while meeting her other obligations and paying for food and shelter was a daily struggle. Yet despite the borrower's efforts—simply because of the extraordinarily high interest rate—the vehicle-title lender only applied \$1.16 out of her many payments to the loan's principal balance. After all of these months, the lender claimed she still owed \$2,422.05—more than the original principal balance of her loan. Moreover, the triple-digit interest rates disclosed to consumers at the outset of a transaction in fact dramatically understate the true costs associated with payday and vehicle-title loans. As borrowers fall into a default and reborrowing cycle, they frequently lose the ability to successfully manage their checking accounts, causing them to incur overdraft fees and insufficient funds penalties imposed both by their high-cost lender as well as by their bank or credit union.

*Figure 2. Vehicle-title lender account screenshot.*

Date	Transaction	Funds amount	Days late	Principal (before)	Balance (before)	Principal (applied)	Interest (applied)	Fees (applied)	Principal (after)	Balance (after)
04/23/2015	Payment received	\$100.00	4	1,971.05	2,538.06	(0.00)	(100.00)	0.00	1,971.05	2,438.06
04/30/2015	Payment received (renewal)	\$405.00	11	1,971.05	2,551.46	(0.00)	(405.00)	0.00	1,971.05	2,146.46
05/28/2015	Payment received (renewal)	\$500.00	9	1,971.05	2,600.07	(0.00)	(500.00)	0.00	1,971.05	2,100.07
06/23/2015	Payment received (renewal)	\$500.00	4	1,971.05	2,521.27	(0.00)	(500.00)	0.00	1,971.05	2,021.27
07/23/2015	Payment received (renewal)	\$500.00	4	1,971.05	2,507.28	(0.00)	(500.00)	0.00	1,971.05	2,007.28
09/01/2015	Payment received (renewal)	\$480.00	13	1,971.05	2,655.28	(0.00)	(480.00)	0.00	1,971.05	2,175.28
09/22/2015	Payment received	\$300.00	3	1,971.05	2,515.49	(0.00)	(300.00)	0.00	1,971.05	2,215.49
09/25/2015	Payment received (renewal)	\$200.00	6	1,971.05	2,264.09	(0.00)	(200.00)	0.00	1,971.05	2,064.09
10/22/2015	Payment received	\$200.00	3	1,971.05	2,501.50	(0.00)	(200.00)	0.00	1,971.05	2,301.50
10/29/2015	Payment received (renewal)	\$445.00	10	1,971.05	2,414.89	(1.16)	(443.84)	0.00	1,969.89	1,969.89
12/14/2015	Payment received (renewal)	\$500.00	25	1,969.89	2,714.67	(0.00)	(500.00)	0.00	1,969.89	2,214.66
01/27/2016	Payment received (renewal)	\$505.00	39	1,969.89	2,927.05	(0.00)	(505.00)	0.00	1,969.89	2,422.05
<b>Total</b>		<b>\$4,635.00</b>				<b>(1.16)</b>	<b>(4,633.84)</b>	<b>0.00</b>		

For this borrower and millions of Americans like her, the 300 percent interest rate loan in Figure 2 was a debt trap. Because the vast majority of consumers that take on these debts cannot afford to quickly repay without defaulting on other obligations or suffering from deprivation, this form of lending has the potential to pull consumers into long-term debt collection. When a borrower defaults on a loan, high-cost lenders often contact the borrower through phone calls or letters in order to make new payment arrangements. Vehicle-title lenders have the ability to repossess and sell the borrower’s car to satisfy the debt. But the sale of the vehicle does not always produce enough proceeds to cover the debt, especially if the car is no longer operational or has been in a traffic accident. Most states where vehicle-title lending is legal also allow the lender to collect this deficiency either directly from the borrower or through litigation.<sup>45</sup> About nine states treat high-cost vehicle-title loans as non-recourse—in effect prohibit the lender from collecting a remaining deficiency balance after foreclosure on the vehicle.<sup>46</sup> But even in these states, many borrowers neglect virtually every other obligation before giving up a working vehicle because it is their only way to commute to their place of employment.<sup>47</sup>

## *Small-Claims Courts and Forced Arbitration Agreements in High-Cost Debt Collection*

States created America’s first small-claims courts in the early twentieth century. At the time, reformers were attempting to push back on the excesses of the Gilded Age. Indeed, the leading advocates of creating small-claims courts were progressive activists and legal aid societies that were concerned about fair treatment of low-income people.<sup>48</sup> These progressive reformers believed that the traditional, formal court procedures of the adversary system out-priced those who most needed access to justice, because “the poor are unable to pay for such services.”<sup>49</sup> Leading the trend, Kansas formed the first small-claims court in 1912 and

Cleveland, Ohio followed the next year.<sup>50</sup> Soon after, every state in the Union established some form of a small-claims court.<sup>51</sup> While there is considerable variety in the rules and procedures that have come to govern contemporary small-claims courts, the most common characteristics have endured since their progressive-era origins. These features include simplified rules of evidence, the unavailability of declaratory judgments and class actions, and caps on the amount of damages plaintiffs can recover.<sup>52</sup> Today, plaintiffs are ordinarily limited to damage claims of between \$3,000 and \$15,000.<sup>53</sup>

As small-claims courts spread around the country, Congress was also concerned about the cost of litigation for businesses. In 1925, Congress adopted the Federal Arbitration Act (FAA) to promote faster and cheaper alternatives to the judiciary.<sup>54</sup> A key provision of the statute states: “An agreement in writing to submit to arbitration . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.”<sup>55</sup> Arbitration occurs in a private system before arbitrators that are typically retired judges or former partners at corporate law firms. Arbitration does not include a jury and there are typically no meaningful rights to appeal.<sup>56</sup> And like small-claims courts, class actions are not available in arbitration, because nearly all arbitration clauses prohibit victims of illegal activity from joining together in a class proceeding.<sup>57</sup> Many critics of arbitration argue that because arbitrators rely on repeat business for compensation, there is a tendency for these forums to be biased in favor of companies that deal with numerous consumer or employment cases.<sup>58</sup> And even if consumers win in arbitration, there are ordinarily no public records of outcomes or published opinions that allow victims of similar illegal conduct to rely on the precedent of previous cases.<sup>59</sup>

In the context of payday, vehicle-title, and similar high-cost loans, these features of arbitration give formidable tactical advantages to creditors. It is perhaps not surprising that a large and detailed CFPB study found that 98.5 percent of payday loan storefront locations include a forced arbitration clause in their contracts.<sup>60</sup> And yet, the CFPB also found that “many arbitration clauses contain small-claims court ‘carve-outs’ — generally enabling either the consumer or the company to use small-claims courts, rather than arbitration, for claims resolution.”<sup>61</sup> In particular, the CFPB found that 99.9 percent of the storefront payday loan market included small-claims court carve-outs within their arbitration clauses.<sup>62</sup>

If virtually every high-cost lender in America includes an arbitration clause in their agreements, but also includes a special exception for small-claims court cases, it raises important questions. First, why do nearly all payday lenders want the opportunity to sue borrowers in small-claims court, but also have the option of compelling arbitration? And second, what is happening to those borrowers that are sued by high-cost lenders in small-claims courts? After all, both arbitration and small-claims court cases can lead to resolution of fact disputes and enforceable money judgments.

And yet, in small-claims court, once a creditor obtains a money judgement, the debt collection experience of many borrowers may only have just begun. It is common throughout American state courts to allow judgement creditors to use the power of the court to help collect their judgment through a number of legal procedures, including seizing the funds in

borrowers' bank accounts, garnishing their wages, or having the sheriff seize and sell their property.<sup>63</sup> These court orders are ordinarily obtained through “supplemental proceedings.”<sup>64</sup> These procedures typically allow unsatisfied judgment creditors to petition the court for subpoenas, interrogatories, or hearings to identify debtors' property on which the creditor can execute his or her judgment.<sup>65</sup> Judges have considerable discretion and authority to oversee this process. As one legal treatise explains:

A court's power to enforce its orders and decrees where it has originally acquired jurisdiction of the parties is essential to an independent judiciary and the efficacy of its orders and decrees; such power springs from the constitution, not from the legislature. To deprive a court of power to execute its judgments is to impair its jurisdiction . . . . A court has the authority to remove obstructions to the enforcement of its judgments, and this authority extends to the issuance of such orders and writs as may be necessary to carry the judgments into effect and render the judgments binding and operative.<sup>66</sup>

These powers also include the authority to hold debtors in contempt of court either for failing to respond or, in some circumstances, refusing to pay.<sup>67</sup> While the terminology varies from jurisdiction to jurisdiction, many states recognize procedures allowing creditors to request the arrest of debtors who do not respond to ongoing supplemental collection proceedings. In some states the procedure is called a *writ of capias ad satisfaciendum*.<sup>68</sup> Other states use the term “body attachment” or simply authorize judges to issue a bench warrant for the borrower's arrest.<sup>69</sup> In essence, these procedures allow the court to punish borrowers for disobeying orders made during supplementary proceedings with fines or even incarceration.<sup>70</sup> Ordinarily, the prerequisites for contempt orders of this type include a finding that the debtor had knowledge of the order and willfully disobeyed it.<sup>71</sup> But many commentators have criticized debt-collection procedures as occurring in contexts where borrowers do not understand their rights or obligations and have little or no notice of court orders and proceedings.<sup>72</sup>

In Utah, debt collection rules tend to favor creditors but are in many respects comparable to laws found around the country. Like most states, Utah collection laws allow judgment creditors to seek writs of execution directing a sheriff or constable to seize the debtor's property and writs of garnishment ordering employers to send the borrower's wages directly to the lender.<sup>73</sup> Judgment creditors may petition courts to order the debtor to attend a hearing before the judge and answer under oath questions about the debtor's property.<sup>74</sup> Under these orders, debtors are ordinarily instructed to bring to the hearing all their records about employment, bank accounts, vehicles, real property, or business entities.<sup>75</sup> If a debtor fails to appear, the judgment creditor can petition the court to issue a warrant instructing law enforcement officers to arrest the borrower.<sup>76</sup>

These contempt arrests can be made by police officers—at a traffic stop for example. But more commonly, Utah judgment creditors hire constables to arrest debtors. In Utah, as in many other states, constable companies are for-profit businesses that employ private law enforcement officials to conduct court-related functions such as serving legal papers and providing judicial security for justice courts. Constable companies also often offer skip tracing

and private investigative services to the public. The authority of constables to arrest members of the public arises under state statutes that out-source this law enforcement function to private entities.<sup>77</sup>

Constables are authorized to—and do—arrest borrowers and book them into jail.<sup>78</sup> They are issued badges, carry fire arms and handcuffs, and wear uniforms that are required to be “clearly marked with the word ‘constable.’”<sup>79</sup> And when courts set an amount of money bail that borrowers can pay to secure their release from jail, some constables seize borrowers and demand payment of the bail money on the spot. For example, one Utah constable company explains on its website: “Constables and their Deputy Constables may give you the option to pay your arrest warrant bail upon contact in lieu of being booked into jail. This is generally referred to as remaining free on bail.”<sup>80</sup>

Moreover, for most borrowers, “bail” has come to represent not just an amount paid to the court to secure release from jail, but a payment extracted by their creditors on their delinquent debt. Ordinarily in the common understanding of bail money, it is paid to obtain “temporary release of a prisoner in exchange for security . . . given for the prisoner’s appearance at a later hearing.”<sup>81</sup> And usually, when a defendant pays money bail, “the defendant does receive their deposit or bail money back” after they appear in court as directed.<sup>82</sup> But, in 2014, the business-friendly Utah legislature amended the state’s money bail laws to require the courts to turn over a defendant’s bail money to the creditor at the creditor’s request in most circumstances.<sup>83</sup>

Although the Utah Constitution prohibits imprisonment for failure to pay debts, the Utah Supreme court has distinguished debtors’ prisons from courts issuing arrest warrants under their power to address contempt of court, which includes the authority to “punish[ ] an individual for disobeying an order, even if the order arises from civil proceedings.”<sup>84</sup> Historically, a majority of states required judges to issue a statement of facts upon which the court premised an arrest warrant for contempt.<sup>85</sup> The purpose of this requirement was “to enable the appellate court to determine, by an inspection of the record, whether a contempt has in fact been committed and whether the court had jurisdiction to punish it.”<sup>86</sup> Today, the Utah Administrative Office of the Courts provides a form template for arrest warrants that payday, vehicle-title, and other high-cost lenders themselves prepare for judges’ signatures.<sup>87</sup>

Given the power of small-claims courts to issue a warrant for a borrower’s arrest, have a constable seize bail money from a borrower, and then apply that bail money to the creditor’s judgment, it is no surprise that high-cost lenders prefer small-claims court to arbitration when attempting to collect debts. And as we demonstrate below, the availability of court-monitored supplemental proceedings has led high-cost lenders to dominate Utah’s small-claims courts. As one high-cost lender put it in a recent investigation: “[a]t this point, small claims court is in the model . . . [i]f we didn’t have that avenue . . . we could be out of business.”<sup>88</sup>

### 3. Methods

This study explores the intersection of the growth of payday, vehicle-title, and other high-cost loans with the routinized use of supplemental collection proceedings in small-claims court. To do so, we gathered an original data set on small-claims court supplemental proceedings in the state of Utah. Each day, the Utah courts publish on their website Adobe portable document format (pdf) files listing every upcoming hearing in every trial court statewide. These calendar documents provide the public with the date and time of hearings, as well as case numbers, case type, locations, party names, and attorney names if the parties are represented by counsel.<sup>89</sup> We wrote original screen scraping software to capture information from these scheduling documents. Our software automatically downloaded these pdf scheduling files each day and parsed the listed information into data fields using regular expressions.<sup>90</sup> From hundreds of thousands of pages of court schedules, we harvested data on every small-claims court hearing—21,653 hearings in all—scheduled in the state of Utah for an entire year.<sup>91</sup> From this hearing data we identified 17,008 active small-claims court cases with at least one hearing during the studied year by matching case numbers, the petitioners' names,<sup>92</sup> and the court location for each case.

To learn more about these cases, we used a random number generator to draw a representative sample. We chose a sample size of 377 out of the 17,008 cases which gave us a 95 percent confidence level with a confidence interval of 5.<sup>93</sup> Next, we used the state of Utah's online court-docketing system to analyze each of these 377 small-claims court cases in our representative sample to gather an additional 19 variables for each sampled case. Data fields included the dollar amount in controversy, court costs awarded, the dollar amount of a money judgment, if any, the number of hearings conducted, the starting date of the controversy, the total number of days each case was pending between filing of the original complaint and most recent substantive docket entry, and whether a small-claims court judge issued one or more warrants for the defendant's arrest.

Moreover, for each case in our representative sample, we also identified whether the case involved a "high-cost lender." For purposes of this study we defined high-cost lenders to include creditors collecting payday loans, vehicle-title loans, and similar installment loans or open-end lines of credit with effective periodic interest rates in excess of 36 percent APR. For most litigants, this classification is arguably apparent from the face of the pleadings because the lenders' name strongly suggests the business is a high-cost, small-dollar lender. For example, among the most common high-cost lenders litigating in Utah small-claims courts were businesses entitled: Mr. Money, Money 4 U, Fastbucks, Cash in Minutes, 1<sup>st</sup> Choice Money Center, and Tosh, Inc. d/b/a Check City.

To verify whether a petitioner was a high-cost, small-dollar lender, we consulted public license and registration databases created by the Utah Department of Financial Institutions and the Nationwide Multistate Licensing System. The Utah Department of Financial Institutions (DFI) is the state agency responsible for chartering, regulating, and supervising financial services, including consumer lending conducted by non-depository financial businesses.<sup>94</sup> The Nationwide Multistate Licensing System (NMLS) is "the system of record for non-depository, financial services licensing or registration" in the United States.<sup>95</sup> The

NMLS provides licensing and registration services for various state agencies tasked with regulating non-bank financial services providers.<sup>96</sup>

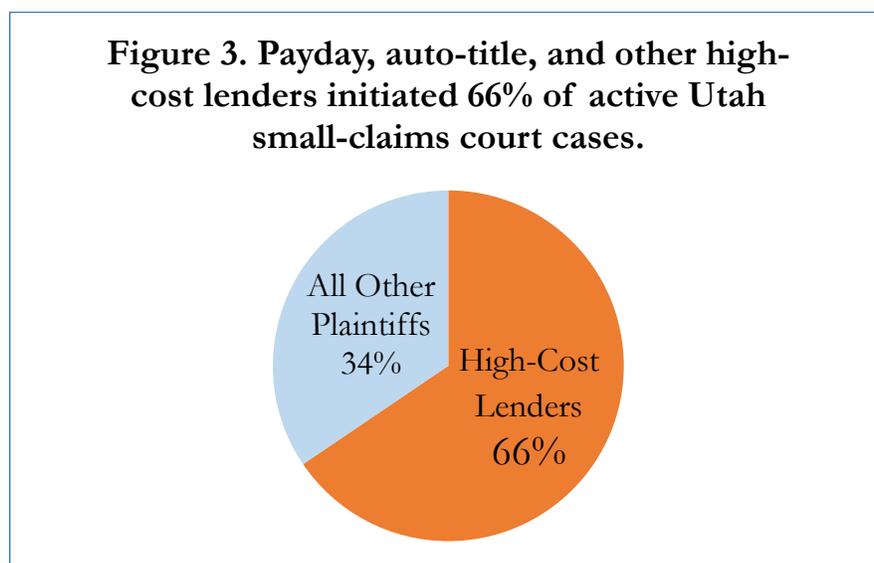
First, we cross-referenced the name of each petitioner with a list of “registered consumer lenders” published by the Utah DFI. This list included “approximately 1,205 consumer lenders who have notified the department that they are conducting business in Utah.”<sup>97</sup> We also consulted the NMLS consumer access database that allows “consumers to confirm that the financial-services company or professional with whom they wish to conduct business is authorized to conduct business in their state.”<sup>98</sup> Running a search of each small-claims court petitioner in the NMLS consumer access database allowed us to verify whether the petitioner was licensed to conduct lending activity in Utah and determine the type of lending activity the petitioner was licensed to conduct. We classified petitioners as high-cost lenders if they appeared in either the Utah DFI and NMLS databases, and, if they appeared in the NMLS database, whether they were licensed to conduct deferred-deposit or title lending. While the majority of petitioners classified as high-cost lenders held Utah licenses for deferred-deposit or title lending, not all high-cost lenders did. Several petitioners held similar licenses in other states, but still identified themselves to the Utah DFI as conducting business in Utah. We classified these petitioners as high-cost lenders only after verifying on their business websites that they do, in fact, offer high-cost, small-dollar loans to the public.

## 4. Results

Applying these methods leads to three empirical findings: (1) high-cost lenders dominated small-claims court dockets, accounting for a super-majority of all small-claims court lawsuits; (2) as a group, high-cost lenders were the most aggressive plaintiffs in small-claims courts, suing over smaller amounts of money and for longer periods of time than other litigants; and (3) high-cost lenders are far more likely to obtain warrants for the arrest of their customers than plaintiffs in other cases.

### *High-Cost Lenders Filed a Super-Majority of Small-Claims Court Lawsuits*

Figure 3 presents a simple pie chart reflecting a conservative estimate of the proportion of Utah small-claims court lawsuits initiated by high-cost lenders. From a representative sample of 377 small-claims court cases, the plaintiff in 247 matters was a high-cost lender suing a borrower to collect a debt. All other plaintiffs combined accounted for only 130 cases. Non-high-cost lenders included medical providers, credit unions, community banks, municipalities, debt-collection agencies, several construction subcontractors, two tire stores, a home furnishing retailer, and a handful of individual petitioners. In contrast, payday, vehicle-title, and other high-cost lenders accounted for nearly twice the number of cases initiated by every other type of plaintiff combined.



Because many small-claims court cases are brought by repeat litigants, we were able to reinforce and verify our sampling methods by conducting an additional, secondary analysis of a much larger group of small-claims court petitioners. From our unique dataset of screen-scraped court hearing information we identified the 139 petitioners who accounted for 80

percent of all small-claims court hearings scheduled throughout Utah during the studied year. Following the same method of consulting the public Utah DFI registered lender list and NMLS consumer database, we verified that 79 of these petitioners were payday, vehicle-title, or a similar type of high-cost lender. These high-cost lenders together account for 14,777 of 21,653 hearings scheduled across Utah small-claims court in the studied year. By themselves, these 79 litigants petitioned for 68 percent of all small-claims court hearings. This secondary analysis also confirms that litigation over high-cost loans is not limited to a handful of businesses. We identified over six-dozen different high-cost lending businesses that are actively suing their customers in small-claims court. These data verify that loans made by payday lenders, vehicle-title lenders, and other high-cost loan businesses have come to numerically dominate Utah small-claims courts.

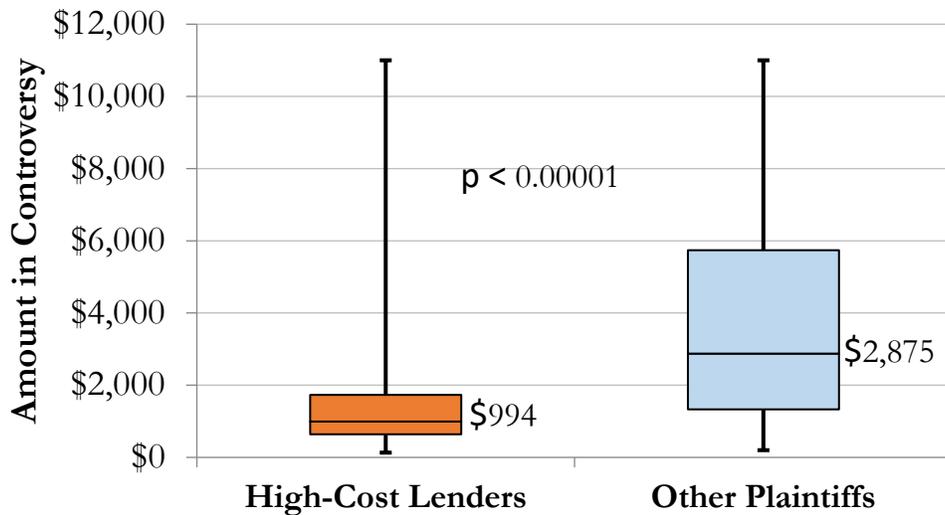
## *High-Cost Lenders Litigate More Aggressively than other Plaintiffs*

American small-claims courts typically restrict the authority of judges to hear only cases seeking monetary damages.<sup>99</sup> Utah law is typical in this regard, requiring that all small-claims court plaintiffs seek money damages and state a prayer for relief calling for a money judgment. Utah small-claims court cases are limited to lawsuits asking for damages of no more than \$11,000.<sup>100</sup> For every case within our sample, we identified the amount in controversy and generated the median and quartile estimates comparing high-cost lenders to all other plaintiffs.

High-cost loan collection cases skew toward smaller amounts. Figure 4 presents boxplot and whisker diagrams summarizing the distribution of the amount in controversy for high-cost lenders in comparison to all other plaintiffs. For each type of plaintiff, the lower “whisker” represents the distribution of the bottom quartile of cases ranked by the amount of damages plaintiffs sued for. The central box includes the second and third quartiles of plaintiff’s requested money damages and the upper whisker includes the top quartile of cases ranked by damages sought. The central line inside the box identifies the median amount in controversy for high-cost lenders and other plaintiffs respectively.<sup>101</sup>

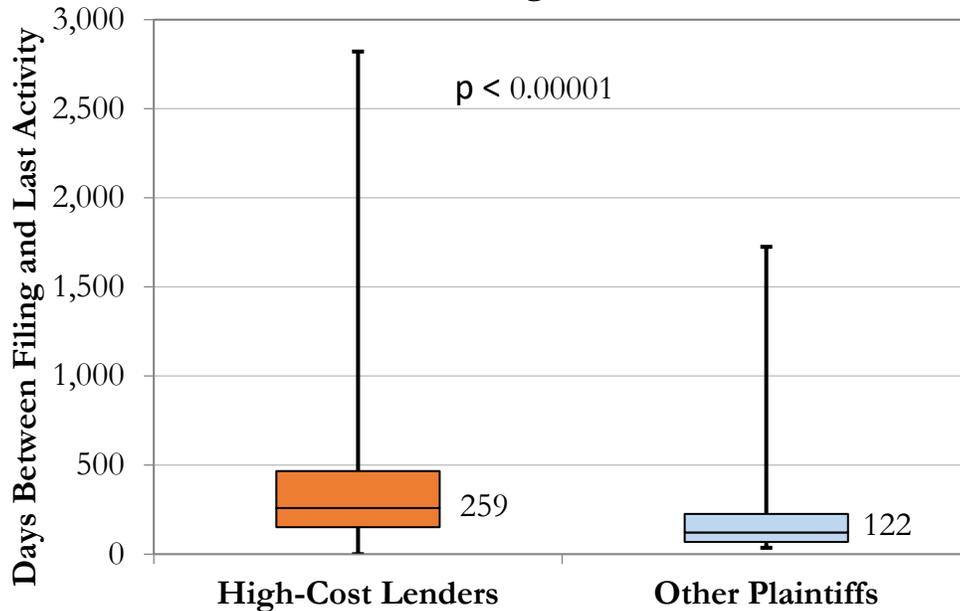
We found that the median high-cost lender sued their customer over a \$994 debt—nearly a third of the median \$2,875 sought by other plaintiffs. Moreover, high-cost lenders skew toward suing over relatively small amounts. In the bottom quartile of high-cost lender cases the lenders sued their customers over \$640 or less. Because there are more high-cost lenders that sued to collect relatively small amounts the lower whisker was considerably shorter than the upper one. In contrast, the lower quartile of other plaintiffs sued for \$1330.50 or less—over twice as much as high-cost lenders. Similarly, 75 percent of high-cost lenders sue for \$1,731 or less. This was nearly a third of the 75<sup>th</sup> percentile amount in controversy of \$5,738 for all other plaintiffs. Altogether, Utah payday, auto-title, and other high-cost lenders sued in small-claims courts for almost three times less than all other plaintiffs.

**Figure 4. Utah payday, auto-title, and other high-cost lenders sued in small-claims courts for almost three times less than other plaintiffs.**



However, even though high-cost lenders sue their customers over smaller amounts than other plaintiffs, high-cost debt collection lawsuits last nearly twice as long as other cases. High-cost lenders were more likely to engage in lengthier small claims litigation than other types of petitioners, as measured by the number of days between the date of filing and the lawsuit’s date of last activity. In this respect we defined the date of last activity as the date of the most recent substantive entry listed in the case’s docket, such as a hearing, filing, or court decision. As depicted in Figure 5, the median number of days between filing and the most recent activity in high-cost lender cases was 259 days (roughly eight-and-a-half months), compared to 122 days (roughly four months) for cases brought by other petitioners, and 209 days in all cases. These boxplots present quartiles of cases ranked by duration. These time frames represent conservatively short estimated durations because many active cases were not conclusively resolved at the time of our study.<sup>102</sup>

**Figure 5. Utah small-claims court cases initiated by payday, auto-title, and other high-cost lenders last more than twice as long as all other cases.**



The data show that obtaining a judgment of liability was ordinarily only the very beginning of a typical high-cost lender small-claims court lawsuit. After trial, or much more commonly a default judgment, high-cost lender cases routinely morph into a lengthy process of court-facilitated debt collection. Based on the average number of days between filing and last activity, high-cost lenders demonstrated a willingness to litigate for an average of 14 months—over twice as long as the roughly six months other petitioners spent litigating in small-claims court.

The progressive social reformers that originally championed small-claims courts in the early twentieth century argued that prompt resolution of cases would lower costs and allow poor citizens to participate. For example, in his seminal book, *Justice and the Poor*, Reginald Heber Smith of the Boston Legal Aid Society proselyted for expansion of a handful of early small-claims courts because “in these courts delay is entirely absent.”<sup>103</sup> Small-claims courts were “created primarily to avoid wasteful litigation and to reduce to a minimum costs of trial in cases where the demands are small.”<sup>104</sup> The hope was that small-claims courts would “dispose of a vast number of cases and at small overhead cost” and thereby “assist poor persons” by lowering barriers to justice.<sup>105</sup> A hundred years later, our research indicates that these hopes have not been realized in at least one state. Rather than prompt resolution, we found high-cost lending cases that extended for many years. Our study identified small claims lawsuits dating as far back as 2010, and our sample contained high-cost lender cases with initial filing dates in every year from 2010 through 2018. For each of these cases, small claims judges were continuing to hold hearings at the behest of high-cost lenders during the study period. The lower costs of small-claims court allow high-cost lenders to extend the duration of their

collection efforts because their expected marginal utility of collection exceeds the cost of maintaining each suit.

For example, a lender called Mr. Money filed a lawsuit against a female borrower in May of 2011 resulting in a total judgment of \$237.00. Mr. Money continued to actively sue her for over seven years in Ogden, Utah’s small-claims court. Figure 6 is a screenshot of an example installment loan taken from Mr. Money’s website that provides context on the type of loans at issue in the case. In the form contract that Mr. Money itself holds out as representative of its business practices, the lender makes year-long installment loans with interest rates of about 520 percent. The contract also provides for late payment penalties of 5 percent of the unpaid principal or \$30, whichever is greater. Under the projected term of the loan, typical borrowers are expected to repay at least five times the original balance. And if they are unable or refuse to continue making payments, our data show that Mr. Money uses the public court system to enforce repayment in multi-year litigation. The most recent activity in the 2011 Ogden lawsuit was a petition by Mr. Money seeking a warrant to have the customer arrested for failing to appear at another hearing in the seven-year-old case. At the conclusion of our study, the lawsuit—then 2,716 days old—was still ongoing.

**Figure 6. “Mr. Money” sample Truth in Lending Act disclosure form.**

Example Agreement Based on \$100 Installment Loan

**Mr Money**

Borrower's Name: \_\_\_\_\_ Loan Number: 12345-1  
 Co-Borrower's Name: \_\_\_\_\_ Date: XX/XX/20XX

Federal Truth-in-Lending Statement			
<b>ANNUAL PERCENTAGE RATE</b> The cost of your credit as a yearly rate. <b>518.90%</b>	<b>FINANCE CHARGE</b> The dollar amount the credit will cost you. <b>\$172.17</b>	<b>Amount Financed</b> The amount of credit provided to you or on your behalf. <b>\$100.00</b>	<b>Total of Payments</b> The amount you will have paid after you have made all payments as scheduled. <b>\$272.17</b>
<b>Your payment schedule will be:</b>			
<b>No. of Payments:</b>	<b>Amount of Payments:</b>	<b>When Payments are Due:</b>	
1	\$15.45	First Payment on 10/14/2016	
22	\$11.15	Weekly Beginning 10/21/2016	
1	\$11.42	Final Payment on 3/24/2017	
<p><b>LATE CHARGE:</b> The undersigned promises to pay a delinquency charge of the greater of 5% or \$30 on any interest or principal payment which has remained unpaid 10 days past the scheduled due date.</p> <p><b>PREPAYMENT:</b> If you pay off this loan early you will not have to pay a prepayment penalty, and you may be entitled to a refund of part of the finance charge.</p> <p>See the contract (below) for any additional information about nonpayment, default, any required repayment in full before the scheduled date and the prepayment refunds and penalties.</p>			

Mr. Money was not alone among high-cost lenders in engaging in multi-year debt collection lawsuits in Utah small-claims court. The maximum number of days between date of filing and date of last activity in high-cost lender cases was 2,821 (about eight years), while the maximum number of days among all other types of cases was 1,725 (about five years). Although some non-high-cost lending cases extended for longer durations, overall lenders that

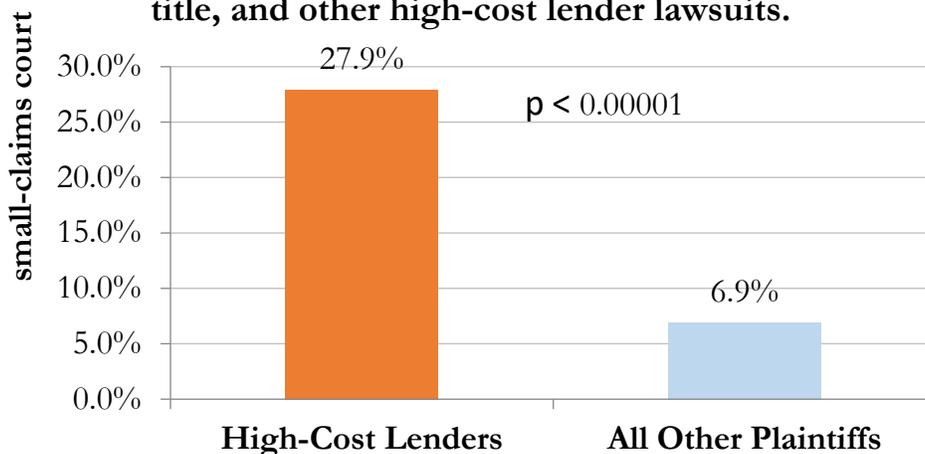
make payday, vehicle-title, or other high-cost loans were much more likely to engage in multi-year small-claims court collections litigation. As illustrated in Figure 5's side-by-side boxplots, the 25<sup>th</sup> percentile (151 days), median (259 days), and 75<sup>th</sup> percentile (466 days) of high-cost lender lawsuit durations were all roughly *double* those in other lawsuits. Moreover, it is worth noting that these time frames all substantially understate the actual length of cases because they measure the length of the lawsuits from their filing to their most recent activity—rather than the end of the case. Most of the lawsuits in our sample were still pending at the end of the studied year.

The empirical literature on high-cost lending has long shown that payday and vehicle-title loans are medium- to long-term debts. Our study adds an additional troubling dimension to this literature by proving that where allowed by law to do so, these loans also lead to long-term, multi-year debt collection lawsuits. High-cost lenders in Utah were frequently willing to harass borrowers in small-claims court lawsuits lasting for half-a-decade or more over debts worth less than the latest iPhone.<sup>106</sup> Instead of lowering the civil justice system's barriers for access to justice, Utah's small-claims courts have made long-term debt collection litigation against low income consumers cost-effective for predatory lenders.

## *High-Cost Lenders Systematically Obtained Warrants to Arrest their Borrowers*

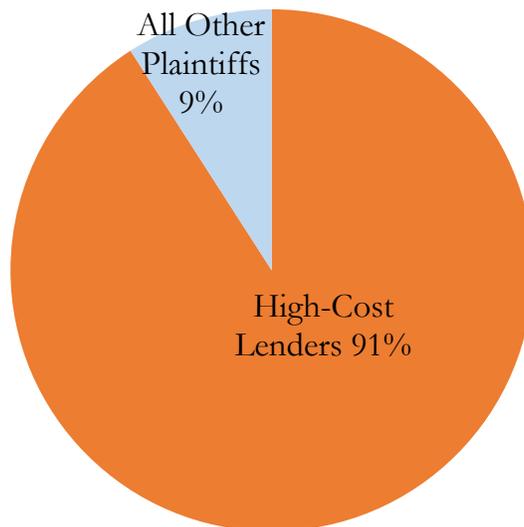
The data show high-cost lenders obtained warrants to arrest their borrowers far more frequently than plaintiffs in other cases. Figure 7 shows the percentage of small-claims court lawsuits in which judges issued one or more arrest warrants. Our data show that payday, vehicle-title, and other high-cost lenders obtained arrest warrants in about 28 percent of their lawsuits. In contrast, all other small-claims court plaintiffs obtain arrest warrants in only about 7 percent of their cases. This means that for every ten payday loan borrowers sued in Utah small-claims court, nearly three will have at least one warrant issued for their arrest.

**Figure 7. Utah small-claims courts issue arrest warrants four times more often in payday, auto-title, and other high-cost lender lawsuits.**



Moreover, because high-cost lending is so predominant in Utah small-claims court, judges issue nearly all of their bench warrants to arrest debtors with triple-digit interest rate loans. As shown in Figure 8, 91 percent of all small-claims court arrest warrants are obtained by payday, vehicle-title, and similar high-cost lenders. In contrast, every other type of litigant combined—including hospitals, physicians, non-high-cost debt collection agencies, credit unions, banks, landlords, retailers, and municipal governments—generated only 9 percent of small-claims court arrest warrants. Payday, vehicle-title, and similar high-cost loans generate over *nine times* more Utah small-claims court arrest warrants than all other litigation combined.

**Figure 8. Ninety-one percent of all Utah small-claims court arrest warrants are issued in payday, auto-title, or other high-cost lender lawsuits.**



These small-claims court arrest warrants affect thousands of low- and moderate-income consumers every year. Table 2 presents data on the number of people affected by high-cost-lender arrest warrants in Utah. Our data show with 95 percent confidence that between 14.7 percent and 22.5 percent of Utah small-claims court lawsuits shared two characteristics: they were initiated by high-cost lenders and a judge issued at least one warrant for the defendant’s arrest. Out of 17,008 cases, we estimate at a standard 95 percent confidence level that small-claims court judges issued warrants for the arrest of between 2,502 and 3,832 consumers. Based on the Adjusted Wald Method, our best estimate is that 3,141 high-cost borrowers had warrants issued for their arrest in small-claims court lawsuits that were active during the study period.<sup>107</sup> And in a state with a modest population, over 3,000 arrest warrants is substantial. By way of comparison, high-cost lender small claims lawsuits led to more arrest warrants than all 2018 Utah police department arrests for forgery, counterfeiting, fraud, embezzlement, and receipt of stolen property combined.<sup>108</sup>

**Table 2. Utah high-cost debtors facing small-claims court arrest warrants per year, 2017-2018.**

	<i>All plaintiffs</i>	<i>Payday, auto-title, &amp; similar high-cost loan plaintiffs</i>	<i>All other plaintiffs combined</i>
Utah active small-claims court cases statewide	17,008	11,225	5,783
Sample <i>n</i>	377	247	130
% of sample cases	100%	66%	34%
Sample cases with arrest warrant(s)	78	69	9
% of all sample cases with arrest warrant(s)	20%	18%	2%
Best est. of Utah cases per year with arrest warrant(s)	3544	3141	406

Source: University of Utah/Consumer Federation of America analysis of all scheduled hearings in all Utah small-claims courts and analysis of a randomly drawn representative sample of 377 small-claims court dockets. Estimated cases per year based on the Adjusted Wald Method with 95 percent confidence level and a 5 percent margin of error.

Moreover, in many lawsuits, high-cost lenders obtained arrest warrants on more than one occasion. For example, a high-cost installment lender petitioned for eight different post-judgment hearings in an Orem small-claims court case leading to three different arrest warrants for the borrower. A high-cost lender called “Raincheck” initiated a 2016 lawsuit in the rural town of Vernal that led to five post-judgment hearings and three arrest warrants for a borrower with a \$1,050 payday loan. Money 4 U’s 2015 lawsuit in Salt Lake City to collect a triple-digit interest rate loan of \$1,170 led to years of litigation and four arrest warrants. And, in a West Valley City case, Mr. Money sued to collect a mere \$160.50 in 2014. After obtaining a judgment of \$225.50, the lender continued to litigate for nearly half a decade, repeatedly demanding the borrower’s presence in court to answer questions about employment, bank accounts, and other assets. Utah small-claims court judges issued five separate warrants for the borrower’s

arrest, all in relation to the original triple-digit interest rate loan of \$160. And like so many other cases we studied, at the end of the study period the post-judgment collection litigation in this lawsuit was still ongoing.

## 5. Analysis

More affluent Americans and our policy makers may struggle to understand why borrowers might not simply choose to repay these relatively small debts. Moreover, high-cost lenders, and the small-claims court judges that serve them, are likely to point out that these arrest warrants are issued for contempt of court rather than a failure to repay. But, the business model of payday, vehicle-title, and similar high-cost creditors focuses on *ex-post* debt collection rather than *ex-ante* predictive underwriting. After years of study, the United States government concluded that:

“consumers who take out these loans appear to lack the ability to repay them and face one of three options when an unaffordable loan payment is due: Take out additional covered loans (“reborrow”), default on the covered loan, or make the payment on the covered loan and fail to meet basic living expenses or other major financial obligations.”<sup>109</sup>

This study proves that, where allowed to do so by law, the consequences of the second option, default, include exposure to long-term lawsuits. In these cases, about three in ten borrowers will face a warrant for their arrest and many borrowers will be arrested on multiple occasions for a single loan. The United States purportedly banned imprisonment for failure to repay debt long ago. But when high-cost lenders account for over nine times more small-claims court arrest warrants than all other litigants combined, it blurs the line between arrest for civil contempt and arrest for insolvency.<sup>110</sup>

Indeed, most payday lenders are fully aware their debtors are likely insolvent at the time they extend ruinously expensive loans. In Utah, as in about twenty other states, the minimum wage is currently set at \$7.25 per hour. A minimum wage worker would need about 31 hours of employment to pay off a \$225.50 judgment—the amount at issue in Mr. Money’s half-decade lawsuit in which Utah courts issued five separate warrants to arrest the borrower. For an employee working full-time, this small judgment represents over 75 percent of the worker’s weekly take-home pay.<sup>111</sup>

Moreover, most low-wage workers have very minimal flexibility in their work hours and are often unable to appear at court hearings scheduled by small-claims court judges without jeopardizing their employment.<sup>112</sup> Many low-wage workers have slow internet services that are vulnerable to technical problems, are primarily accessed through mobile phones, and are frequently cut off due to their inability to pay.<sup>113</sup> Millions of American low-wage employees hold down multiple jobs in order to pay for shelter, food, and transportation.<sup>114</sup> These busy workers struggle to obtain child care because child care is often more expensive per-hour than their expected wages and may be unavailable during court scheduled hearings.<sup>115</sup> And they are often not entitled to vacation or sick-leave and may have little or no functional access to dental or other health care. “One in three low-wage workers do not have a car and in many cities bus and subway services stop running at night or don’t reach poor neighborhoods. For many,

taking a job comes down to whether a ride is available.”<sup>116</sup> And, “[i]n a typical year, almost 1 in 5 poor renting families nationwide missed payments and received a disconnection notice from their utility company.”<sup>117</sup> Because low-wage workers have difficulty affording stable housing they are forced to relocate frequently and in ways that strain tenuous employment relationships, interfere with their own and their dependents’ educational opportunities, and impose long commuting times.<sup>118</sup> Frequent relocation can lead to systematic problems notifying borrowers about pending court dates particularly when small-claims court litigation goes on for years. For many high-cost lending lawsuit defendants, the decision of whether to appear at a small-claims court hearing in a location they did not choose and at time they cannot control can come down to either neglecting the children they borrowed money to care for or risking the job they are working at to repay the loan.

This study also points to a drawback of high-cost, usurious debt that has been largely overlooked in the academic literature studying payday loans and similar forms of credit. Extending high-cost loans to borrowers that cannot afford to repay risks the debasement of our civil justice system. Social reformers conceived of small-claims courts as tribunals to promote justice for ordinary working Americans.<sup>119</sup> But where allowed by law to do so, high-cost lenders have largely converted a state’s small-claims court system into public debt-collection agencies where a super-majority of all litigation is oriented toward coercing revenue from poor, insolvent borrowers with high-cost loans that were illegal throughout America for over two hundred years.<sup>120</sup> Many Americans are likely to conclude that courts and law enforcement agencies have gone awry when they routinely permit the arrest of low-income single-mothers, war veterans, and struggling seniors over triple digit interest-rate loans. While thousands of struggling Utah debtors are harassed in the public court system, Utah’s regulatory agencies, political leaders, and faith community have done virtually nothing to protect these vulnerable families and consumers.<sup>121</sup>

These results also point to an explanation of why virtually every payday, vehicle-title, and similar high-cost lender includes both a forced arbitration clause and a small-claims court carve-out in their boilerplate contracts. If consumers seek to band together to protect themselves from illegal practices or unconscionable behavior, lenders force consumers into confidential, individual arbitrations—all conducted outside the orbit of state power. But when lenders themselves want to enlist public institutions to collect, they can use small-claims courts to compel repayment of accrued interest and fees far in excess of borrowers’ original debts. And, if borrowers do not submit, predatory lenders routinely enlist small-claims court judges to order for-profit constable companies to arrest and potentially incarcerate borrowers. A wealth-maximizing, rational predatory lender will play defense in arbitration and offense in small-claims court. So long as the Federal Arbitration Act continues to allow businesses to compel arbitration in consumer claims, legal reform efforts oriented toward reducing the cost of litigation in public courts should be treated with considerable skepticism.<sup>122</sup> Lowering litigation costs in small-claims court is likely to increase the incentive of debt collectors to

pursue protracted small-claims court litigation by lowering the threshold of a positive expected return on pursuing marginal supplemental proceedings.

Moreover, although this report presented a study of Utah small-claims court cases, it is likely that similar practices occur in other states as well. The laws that facilitate small-claims court debt collection and arrest warrants are not unique to Utah. Even though a super-majority of Americans in both red and blue states support traditional usury limits capping interest rates, over thirty state governments have ignored public opinion on this issue.<sup>123</sup> Many high-cost lenders have proven adept at redesigning their products to generate high returns on their assets and actively evade consumer protection laws when governments allow them to do so.<sup>124</sup> All fifty states have small-claims courts. And supplemental proceedings to collect small-claims court judgments—including writs to garnish wages, seize bank account assets, and arrest defendants for failure to appear—are common across the country. Although future research is needed to verify whether consumers in other states face the same abusive practices, at the federal level banking regulators, the Federal Trade Commission, the CFPB, and members of Congress have a responsibility to protect Americans in states that have abandoned reasonable restraints on predatory lending. Moreover, the Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency are currently considering new rules that would make it easier for internet-based financial companies to export the regulatory environments of Utah and similar states into jurisdictions that currently prevent these forms of lending.<sup>125</sup> Accordingly, this study's findings are relevant to every federal and state policy maker concerned with the well-being of American consumers.

## 6. Conclusion

In the popular imagination of small-claims court, charismatic reality television judges swiftly dispense justice between aggrieved acquaintances. While “Judge Judy” doles out stern words and no-nonsense rulings, she never orders the arrest of low-income single mothers or war veterans struggling to repay 400 percent interest rate loans with minimum wage jobs. Unfortunately, our empirical research points to a more banal and troubling off-screen reality. By far, the most common small-claims court hearings were initiated by high-cost lenders engaging in a drawn-out process of routinized, professional, court-facilitated collection of triple-digit interest-rate loans. In Utah, high-cost lender cases so predominate small-claims courts that it might be more appropriate to rename the tribunals: “payday loan court.” High-cost lenders with names like Mr. Money, Money 4 U, Fastbucks, USA Cash Services, Fast Track Loans, and Check City initiate a super-majority of all small-claims court lawsuits. Their cases are more trivial than other lawsuits in terms of the dollar amount of relief sought but are paradoxically more prolonged in the time the judiciary spends on them. Instead of promoting access to justice for low-income consumers, the low costs of small-claims court allow predatory lenders to engage in long-term litigation against desperately poor borrowers because lenders’ expected utility of collection exceeds the marginal cost of maintaining each lawsuit. And the studied high-cost lenders are overwhelmingly responsible for intertwining the criminal-justice system in small civil disputes by petitioning for arrest warrants nine times more often than all other small-claims plaintiffs combined. Utah lenders that offer payday, vehicle-title, and similar forms of high-cost loans routinely and systematically seek warrants to arrest their customers—successfully obtaining contempt arrest warrants over 3,100 times in cases that were active during the studied calendar year. Nearly three of every ten borrowers sued in these small-claims court collection lawsuits will face at least one warrant for their arrest during the case. About 91 percent of all arrest warrants issued by small-claims courts benefited lenders that made high-cost payday, vehicle title or similar loans. States created small-claims courts to provide tribunals that low- and middle-income people could afford to use. Instead, Utah—and likely other states as well—has allowed these courts to become low-cost, publicly subsidized, quasi-criminal debt collection agencies for predatory lenders.

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<sup>1</sup> Consumer Fin. Protection Bureau, *What is a payday loan?* (Jun. 2, 2017), <https://www.consumerfinance.gov/ask-cfpb/what-is-a-payday-loan-en-1567/>. Web-based payday lending is ordinarily even more expensive, with online payday loan effective annual interest rates averaging around 650 percent. Pew Charitable Trusts, *Fraud and Abuse online: Harmful Practices in Internet Payday Lending* 3 (Oct. 2014), [http://www.pewtrusts.org/~media/assets/2014/10/payday-lending-report/fraud\\_and\\_abuse\\_online\\_harmful\\_practices\\_in\\_internet\\_payday\\_lending.pdf](http://www.pewtrusts.org/~media/assets/2014/10/payday-lending-report/fraud_and_abuse_online_harmful_practices_in_internet_payday_lending.pdf).

<sup>2</sup> Brian T. Melzer, *The Real Costs of Credit Access: Evidence from the Payday Lending Market*, 126 Q. J. ECON. 517 (2011); Michael A. Stegman & Robert Faris, *Payday Lending: A Business Model that Encourages Chronic Borrowing*, 17 ECON. DEV. Q. 8 (2003).

<sup>3</sup> Dennis Campbell, F. Asis Martinez-Jerez, & Peters Tufano, *Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures*, 36 J. OF BANKING & FIN. 1224, 1224 (2012); Nathalie Martin & Koo Im Tong, *Double Down-and-Out: The Connection Between Payday Loans and Bankruptcy*, 39 S.W. L. REV. 785 (2010); Paige Skiba & Jeremy Tobacman, *Do Payday Loans Cause Bankruptcy?* Vanderbilt Law and Economics Research Paper No. 11–13 (November 9, 2009), <https://ssrn.com/abstract=1266215>.

<sup>4</sup> CONSUMER FIN. PROTECTION BUREAU, SINGLE PAYMENT VEHICLE TITLE LENDING (2016) (finding one-in-five borrowers have their vehicle seized, and more than half of vehicle-title loans become long-term debt burdens).

- <sup>5</sup> Jaeyoon Lee, *Credit Access and Household Well-being: Evidence from Payday Lending* (2019), <https://ssrn.com/abstract=2915197>; Charis E. Kubrin & John R. Hipp, *Do Fringe Banks Create Fringe Neighborhoods? Examining the Spatial Relationship between Fringe Banking and Neighborhood Crime Rates*, 33 JUSTICE Q. 755 (2016); Charis E. Kubrin, et al., *Does Fringe Banking Exacerbate Neighborhood Crime Rates? Investigating the Social Ecology of Payday Lending*, 10 CRIMINOLOGY & PUB. POL'Y 437, 457 (2011).
- <sup>6</sup> Jerzy Eisenberg-Guyot et al., *From Payday Loans to Pawnshops: Fringe Banking, The Unbanked, And Health*, 37 HEALTH AFF. 429 (2018); Elizabeth Sweet, Christopher W. Kuzawa, & Thomas W. McDade, *Short-term Lending: Payday Loans as Risk Factors for Anxiety, Inflammation and Poor Health*, 5 POP. HEALTH 114 (2018); Lucie Kalousova<sup>1</sup> & Sarah A. Burgard, *Debt and Foregone Medical Care*, 54 J. HEALTH & SOC. BEH. 204 (2013); see also Yunqiao Wang et al., *A Population-Based Longitudinal Study of Recent Stressful Life Events as Risk Factors for Suicidal Behavior in Major Depressive Disorder*, 19 ARCH. SUICIDE RES. 202 (2015); Howard Meltzer et al., *Personal Debt and Suicidal Ideation*, 41 PYSCH. MED. 771 (2011); Simon Hatcher, *Debt and Deliberate Self Poisoning*, 164 BRITISH J. OF PSYCHIATRY 111 (1994).
- <sup>7</sup> Paul Kiel, *When Lenders Sue, Quick Cash Can Turn Into a Lifetime of Debt*, PROPUBLICA (Dec. 13, 2013, 11:46 AM), <https://www.propublica.org/article/when-lenders-sue-quick-cash-can-turn-into-a-lifetime-of-debt> (finding that “[s]ince the beginning of 2009, high-cost lenders have filed more than 47,000 suits in Missouri”).
- <sup>8</sup> AM. CIV. LIBERTIES UNION, *A POUND OF FLESH: THE CRIMINALIZATION OF PRIVATE DEBT* (2018), [https://www.aclu.org/sites/default/files/field\\_document/022318-debtreport\\_0.pdf](https://www.aclu.org/sites/default/files/field_document/022318-debtreport_0.pdf).
- <sup>9</sup> Eric H. Steele, *The Historical Context of Small-Claims Court*, 6 AM. BAR FOUNDATION RES. J. 239, 318–19 (1981).
- <sup>10</sup> Deborah L. Rhode, *Whatever Happened to Access to Justice?*, 42 LOY. L.A. L. REV. 869, 878 (2009).
- <sup>11</sup> 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>.
- <sup>12</sup> Kate Rooney, *Small Banks You've Never Heard of are Quietly Enabling the Tech Takeover of the Financial Industry*, CNBC (Feb. 15, 2019), <https://www.cnbc.com/2019/02/15/small-banks-youve-never-heard-of-quietly-power-the-booming-fintech-industry-.html>; Rachel Witkowski, *Are Fintechs Better off Taking the ILC Route to Banking?*, AM. BANKER (Jan. 21, 2019), <https://www.americanbanker.com/news/are-fintechs-better-off-taking-the-ilc-route-to-banking>; Jacob Andra, *Offering Options: Niche Lending and Fintech Cross Paths in Silicon Slopes*, UTAH BUS. (Dec. 12, 2017), <https://www.utahbusiness.com/offering-options-niche-lending-fintech-cross-paths-silicon-slopes/>.
- <sup>13</sup> About a dozen Biblical passages suggest that usurious lending, especially to the poor, is a grave sin. For example, the first reference to usury in the Bible states: “If thou lend money to any of my people that is poor by thee, thou shalt not be to him as an usurer, neither shall thou lay upon him usury.” Exodus 22:25 (King James). See also Ezekiel, 18:8-17; Ezekiel 22:16-22; Jeremiah, 15:10; John 2:14-15; Leviticus, 25:35-37; Luke 6:33-35; Mathew 5:42; Neh. 5:1-13; Proverbs 28: 6-9; Psalm 15: 1, 4-5. The Biblical condemnation of usurious lenders is closely related to the deep and consistent message of the Bible demanding kind and just treatment of poor and vulnerable members of society. Deuteronomy demands “thou shalt not oppress an hired servant that is poor and needy, whether he be of thy brethren, or of thy strangers that are in thy land within thy gates.” Deut., 24:14. The Bible commands Christians to “[e]xecute true judgment, and shew mercy and compassion every man to his brother; and oppress not the widow, nor the fatherless, the stranger, nor the poor....” Zechariah 7:9-10.
- <sup>14</sup> BARBARA A. CURRAN, *TRENDS IN CONSUMER CREDIT LEGISLATION* 158-66 (1965); see also Christopher L. Peterson, *Usury Law, Payday Loans, and Statutory Sleight of Hand: Salience Distortion and American Credit Pricing Limits*, 92 MINN. L. REV. 1110 (2008).
- <sup>15</sup> SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 103 (2005); Comment, *Syndicate Loan-Shark Activities and New York's Usury Statute*, 66 COLUM. L. REV. 167, 167 (1966).
- <sup>16</sup> Consumer Credit Protection Act, Pub. L. No. 90-321, § 202(a), 82 Stat. 146, 15962 (1968) (codified as amended at 18 U.S.C. §§ 891-896 (2010)).
- <sup>17</sup> 18 U.S.C. § 892.
- <sup>18</sup> 10 U.S.C. § 987.
- <sup>19</sup> *Marquette Nat. Bank v. First of Omaha Service Corp.*, 439 U.S. 299, 310–12 (1978).
- <sup>20</sup> James J. White, *The Usury Trompe l'Oeil*, 51 S.C. L. REV. 445, 447–48, 464–65 (2000); Elizabeth R. Schiltz, *The Amazing, Elastic, Ever-Expanding Exportation Doctrine and Its Effect on Predatory Lending Regulation*, 88 MINN. L. REV. 518, 619–20 (2004). In 2016, a super majority of South Dakota voters reversed the legislature's 1978 law by reestablish a traditional 36 percent per annum usury limit. *South Dakota Payday Lending Initiative, Initiated Measure 21*, BALLOTPEDIA (2016), [https://ballotpedia.org/South\\_Dakota\\_Payday\\_Lending\\_Initiative,\\_Initiated\\_Measure\\_21\\_\(2016\)](https://ballotpedia.org/South_Dakota_Payday_Lending_Initiative,_Initiated_Measure_21_(2016)) (reporting 75.58 percent voting “in favor of placing an interest rate cap of 36 percent on short-term loans.”).
- <sup>21</sup> Peterson, *Salience Distortion*, *supra* note 14, at 1138–1142.
- <sup>22</sup> JOHN P. CASKEY, *THE ECONOMICS OF PAYDAY LENDING* 3 (2002).

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<sup>23</sup> Christopher L. Peterson, Note, *Failed Markets, Failing Government, or Both? Learning from the Unintended Consequences of Utah Consumer Credit Law on Vulnerable Debtors*, 2001 Utah L. Rev. 543, 560–61.

<sup>24</sup> OFF. OF THE COMM’R OF BANKS, REPORT TO THE GENERAL ASSEMBLY OF PAYDAY LENDING, 5 (Feb. 22, 2001).

<sup>25</sup> CONSUMER FEDERATION OF AM., THE GROWTH OF LEGAL LOAN SHARKING: A REPORT ON THE PAYDAY LOAN INDUSTRY 3 (Nov. 1998), [http://www.consumerfed.org/The\\_Growth\\_of\\_Legal\\_Loan\\_Sharking\\_1998.pdf](http://www.consumerfed.org/The_Growth_of_Legal_Loan_Sharking_1998.pdf).

<sup>26</sup> *Id.*

<sup>27</sup> Jimmie E. Gates, *Check-Cashing Businesses Rolling out the Dough*, CLARION LEDGER, Feb. 6, 2005.

<sup>28</sup> CONSUMER FEDERATION OF AM. & U.S. PUB. INTEREST RESEARCH GROUP, RENT-A-BANK PAYDAY LENDING: HOW BANKS HELP PAYDAY LENDERS EVADE STATE CONSUMER PROTECTIONS 2 (Nov. 2001).

<sup>29</sup> Jessica Silver-Greenberg, *Major Banks Aid in Payday Loans Banned by States*, N.Y. TIMES (Feb. 23, 2013), <https://www.nytimes.com/2013/02/24/business/major-banks-aid-in-payday-loans-banned-by-states.html>.

<sup>30</sup> Consumer Fin. Protection Bureau, Payday, Vehicle-title, and Certain High-Cost Installment Loans: Final Rule; Official Interpretations, 82 Fed. Reg. 54472, 54480 (Nov. 17, 2017) (*hereinafter* CFPB Payday Lending Final Rule).

<sup>31</sup> Pew Charitable Trust, *Payday Lending in America: Who Borrows, Where They Borrow, and Why?*, THE PEW CHARITABLE TRUSTS, [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes\\_assets/2012/pewpaydaylendingreportpdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/pewpaydaylendingreportpdf.pdf) (last accessed Nov. 12, 2018).

<sup>32</sup> Gregory Elliehausen and Edward C. Lawrence, *Payday Advance Credit in America: An Analysis of Demand*, GEO. U. McDONOUGH SCHOOL OF BUS. CREDIT RESEARCH CNTR., 39 (2001) (finding that about 40 percent of borrowers rolled over more than five times in preceding year, about 20 percent of borrowers who renewed existing loans nine times or more, 10 percent renewed 14 times or more).

<sup>33</sup> U. S. OFF. OF THE COMPTROLLER OF THE CURRENCY, FACT SHEET: EAGLE NATIONAL BANK CONSENT ORDER 2 (2002) (discovering payday loan employee compensation incentives for promoting repeat borrowing); Mark Flannery & Katherine Samolyk, *Payday Lending: Do the Costs Justify the Price?*, FDIC Center for Financial Research Working Paper No. 2005–09, 16–17 (2005), <https://www.fdic.gov/bank/analytical/cfr/2005/wp2005/2005-09.pdf> (finding that high frequency borrowers are more profitable because they generate lower loss ratios and lower operating costs).

<sup>34</sup> Paul Chessin, *Borrowing from Peter to Pay Paul: A Statistical Analysis of Colorado’s Deferred Deposit Loan Act*, 83 DENVER U. L. REV. 387 (2005) (discussing official Colorado statistics); Indiana Dept. of Fin. Institutions, *Summary of Payday Lender Examination*, 1–2 (finding that 77 percent of payday loans are extensions of previously existing contracts); ; North Carolina Off. of the Comm’r of Banks, Rep. to the Gen. Assembly on Payday Lending, (finding that 87 percent of borrowers roll over payday loans more than once with each individual lender); Wash. State Dept. of Fin. Inst., Payday Lending Report 3 (2003) (finding that over thirty percent of borrowers borrow more than ten times per year, almost ten percent borrow twenty times or more per year); Survey, Iowa Div. of Banking (2000) (finding an average of 12.5 loans per customer per year); Rep. of the Uniform Consumer Credit Code Rev. Comm. and Action of the Colorado Comm. on Consumer Credit 16 (Nov. 4, 1999) (reporting instances of as many as thirteen or more refinances); Ill. Dept. of Fin. Inst., Short Term Lending: Final Report 30 (1999) (explaining that average payday loan customer borrows thirteen times per year and remains indebted for at least six months).

<sup>35</sup> VERITEC SOLUTIONS, FLORIDA TRENDS IN DEFERRED PRESENTMENT: STATE OF FLORIDA DEFERRED PRESENTMENT PROGRAM (2005) [http://www.veritecs.com/FL\\_trends\\_sep\\_2005.pdf](http://www.veritecs.com/FL_trends_sep_2005.pdf) (average Florida customer borrows 7.9 times per year, 25 percent of borrowers borrow 12 or more times per year); VERITEC SOLUTIONS, OKLAHOMA TRENDS IN DEFERRED DEPOSIT LENDING: OKLAHOMA DEFERRED DEPOSIT PROGRAM (2005), [http://www.veritecs.com/OK\\_trends\\_11\\_2005.pdf](http://www.veritecs.com/OK_trends_11_2005.pdf) (average Oklahoma borrower borrows 9.4 times per year and 26.8 percent of borrowers borrowing 12 times or more per year, accounting for about 62 percent of all transactions)

<sup>36</sup> OREGON STATE PUBLIC INTEREST RESEARCH GROUP, PREYING ON PORTLANDERS: PAYDAY LENDING IN THE CITY OF PORTLAND (2005) (three out of four payday loan borrowers are unable to pay their loan when it comes due); JEAN ANN FOX AND ED MIERZWINSKI, CONSUMER FEDERATION OF AM. & U.S. PUBLIC INTEREST RESEARCH GROUP, SHOW ME THE MONEY: A SURVEY OF PAYDAY LENDERS AND REVIEW OF PAYDAY LENDER LOBBYING IN STATE LEGISLATURES 8 (2000).

<sup>37</sup> Michael A. Stegman & Robert Faris, *Payday Lending a Business Model that Encourages Chronic Borrowing*, 17 ECON. DEV. Q. 8 (2003); Creola Johnson, *Payday Loans: Shrewd Business or Predatory Lending*, 87 MINN. L. REV. 1, 55–76 (2002).

<sup>38</sup> PEW CHARITABLE TRUSTS, PAYDAY LENDING IN AMERICA: WHO BORROWER, WHERE THEY BORROW, AND WHY 4 (2012).

<sup>39</sup> CONSUMER FIN. PROTECTION BUREAU, PAYDAY LOANS AND DEPOSIT ADVANCE PRODUCTS A WHITE PAPER OF INITIAL DATA FINDINGS 22 (Apr. 24, 2013), [https://files.consumerfinance.gov/f/201304\\_cfpb\\_payday-dap-whitepaper.pdf](https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf).

<sup>40</sup> Consumer Fin. Protection Bureau, *CFPB Data Point: Payday Lending* 4 (Mar. 2014).

<sup>41</sup> *In re* ACE Cash Express, Inc., CFPB No. 2014-CFPB-0008, at 7 (Jul. 10, 2014), [http://files.consumerfinance.gov/f/201407\\_cfpb\\_consent-order\\_ace-cash-express.pdf](http://files.consumerfinance.gov/f/201407_cfpb_consent-order_ace-cash-express.pdf); *see also* Jim Puzanghera, *ACE*

*Cash Express to Pay \$10 Million over 'Cycle of Debt' Allegations*, L.A. TIMES (Jul. 10, 2014), <https://www.latimes.com/business/la-fi-ace-cash-express-payday-lender-consumer-financial-protection-bureau-20140710-story.html>.

<sup>42</sup> See Paige Marta Skiba & Jeremy Tobacman, *Payday Loans, Uncertainty & Discounting: Explaining Patterns of Borrowing, Repayment, and Default* (Aug. 21, 2008), [https://economics.sas.upenn.edu/sites/default/files/filevault/event\\_papers/AppliedMicro011020080.pdf](https://economics.sas.upenn.edu/sites/default/files/filevault/event_papers/AppliedMicro011020080.pdf) (finding (1) over half of payday borrowers in data sample default on a payday loan within one year of their first such loan, and (2) that defaulting borrowers have on average already repaid or serviced five payday loans, making interest payments of 90 percent of their original loan's principal); see also Uriah King & Leslie Parrish, *Payday Loans, Inc.: Short on Credit, Long on Debt*, CNTR. FOR RESPONSIBLE LENDING, at 9–10 (Mar. 31, 2011) (finding 37 percent of payday borrowers in sample experienced default in the first year of borrowing, and 44 percent experienced default within the first two years of borrowing).

<sup>43</sup> *Payday Loans, Inc.*, *supra* note 42, at 9–10.

<sup>44</sup> See *Ending Debt Traps in the Payday and Small Dollar Credit Industry: Hearing before the H. Comm. on Fin. Servs. Subcomm. on Consumer Protection and Fin. Inst.'s*, 116<sup>th</sup> Cong. (Apr. 30, 2019), <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=403646> (prepared statement of Christopher L. Peterson, Director of Financial Services and Senior Fellow, Consumer Federation of America).

<sup>45</sup> UNIF. COM. CODE § 9-615(d)(2); CFPB Payday Lending Final Rule, *supra* note 30, at 54,491. In all states the borrower is theoretically entitled to any surplus proceeds from the sale. But as a practical matter evidence suggests vehicle-title lenders rarely return a meaningful surplus to borrowers. Nathalie Martin & Ozymandias Adams, *Grand Theft Auto Loans: Repossession and Demographic Realities in Title Lending*, 77 MO. L. REV. 41, 87 (2012) (“We know from our phone interviews and from data other scholars have collected that lenders loan at somewhere between 20 and 55 percent of a vehicle's value. We know from the self-reported data that lenders return somewhere between \$12 and \$68 in surplus per loan to customers. So where is the rest of the value in these vehicles?”).

<sup>46</sup> See CFPB Payday Lending Final Rule, *supra* note 30, at 54,491 n.189. In a non-recourse loan, the lender generally does not seek further compensation beyond repossessing collateral when the value of the collateral is insufficient to retire the full loan balance.

<sup>47</sup> See, e.g., Serwin Chat, et al., *Determinants of Mortgage Default and Consumer Credit Use: The Effects of Foreclosure Laws and Foreclosure Delays*, Fed. Reserve Bank of N. Y. Staff Reports, no. 732, at 17, 29 (Jun. 2015), [https://www.newyorkfed.org/medialibrary/media/research/staff\\_reports/sr732.pdf](https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr732.pdf) (data showing consumers prioritize auto loan debt over home equity lines of credit when the home equity line of credit is in default).

<sup>48</sup> REGINALD HEBER SMITH, JUSTICE AND THE POOR 242 (1919).

<sup>49</sup> *Id.* at 241.

<sup>50</sup> Bruce Zucker & Monica Her, *The Peoples Court Examined: A Legal and Empirical analysis of the Small-Claims Court System*, 37 U. SAN FRAN. L. REV. 315, 317 (2003); Samuel Schwarcz, *Should a Lawyer be Allowed in Small-Claims Court? Some Empirical Light*, 39 AM. ECONOMIST 65, 65 (1995).

<sup>51</sup> For general descriptions of small-claims court procedures that emerged by the mid-twentieth century, see John C. Ruhnka & Steven Weller, *Small-Claims Courts: A National Examination*, NAT'L CTR. FOR STATE COURTS (1978), <https://ncsc.contentdm.oclc.org/digital/collection/civil/id/0/>; Josephine Y. King, *Small Claims Practice in the United States*, 52 ST. JOHN'S L. REV. 42 (1977).

<sup>52</sup> CONSUMER FIN. PROTECTION BUREAU, ARBITRATION STUDY: REPORT TO CONGRESS, at § 4, p. 20 (2015) (*hereinafter* CFPB ARBITRATION STUDY).

<sup>53</sup> *50-State Chart of Small-Claims Court Dollar Limits*, NOLO.com, <https://www.nolo.com/legal-encyclopedia/small-claims-suits-how-much-30031.html> (last visited Dec. 19, 2019).

<sup>54</sup> DEE PRIDGEN, JEFF SOVERN, & CHRISTOPHER L. PETERSON, CONSUMER LAW CASES AND MATERIALS 1073 (2020).

<sup>55</sup> 9 U.S.C. § 2.

<sup>56</sup> PRIDGEN, SOVERN, & PETERSON, *supra* note 54, at 1073–74.

<sup>57</sup> CFPB ARBITRATION STUDY, *supra* note 52, at § 2, p. 44 (2015).

<sup>58</sup> David Horton & Andrea Cann Chandrasekher, *After the Revolution: An Empirical Study of Consumer Arbitration*, 104 GEO. L.J. 57, 123 (2015); David S. Schwartz, *Enforcing Small Print to Protect Big Business: Employee and Consumer Rights Claims in an Age of Compelled Arbitration*, 1997 WIS. L. REV. 33, 61 (1997). See also Wells Fargo Advisors, LLC v. Watts, Mem. of Decision and Order, 2012 WL 831878 (W.D.N.C. Dist Ct. March 2012) (“Because of its constant and prolific participation in FAA arbitration, the claimant bank enjoys a clear advantage over the individual employee or customer. That is, the arbitration company or arbiter knows that the bank will participate in hundreds of arbitrations a year, whereas an individual employee or customer may participate in arbitration only once in their lifetime, if ever. The bank will know from experience, then, which arbiters are the most likely to favor the bank; therefore, the bank will naturally choose that arbiter to arbitrate the bank's case.”).

<sup>59</sup> CFPB ARBITRATION STUDY, *supra* note 52 at § 1, pp. 51–52.

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<sup>60</sup> *Id.* at § 2, pp. 7–8.

<sup>61</sup> *Id.* at § 1, p. 8.

<sup>62</sup> *Id.* at § 2, pp. 33–34.

<sup>63</sup> 30 AM. JUR. 2d Executions § 2.

<sup>64</sup> *Id.*, at § 463.

<sup>65</sup> *See, e.g.*, *In re Badger Lines, Inc.*, 224 Wis. 2d 646, 590 N.W.2d 270 (1999) (Wisconsin example); *In re Hill*, 332 B.R. 835 (Bankr. M.D. Fla. 2005) (Florida example).

<sup>66</sup> 30 AM. JUR. 2d Executions § 2 (citations omitted).

<sup>67</sup> Lea Shepard, *Creditors' Contempt*, 2011 B.Y.U. L. REV. 1509, 1543 (2011).

<sup>68</sup> *See, e.g.*, *Marshall v. Matthei*, 327 N.J. Super. 512, 744 A.2d 209 (App. Div. 2000) (New Jersey example).

<sup>69</sup> *See, e.g.* COLO. R. CIV. P. 69(e) (allowing a creditor to subpoena a debtor for a post-judgment discovery hearing and mandating that the subpoena “shall include on its face a conspicuous notice” stating “Failure to Appear Will Result in Issuance of a Warrant for Your Arrest.”); NEV. R. CIV. P. 64 (“all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances . . . the remedies thus available include arrest [and] attachment”).

<sup>70</sup> 30 AM. JUR. 2d Executions, § 558.

<sup>71</sup> *Id.*, at § 559.

<sup>72</sup> Shepard, *supra* note 67, at 1517–18, 1558–59.

<sup>73</sup> UTAH R. CIV. P. § 64E (“A writ of execution is available to seize property in the possession or under the control of the defendant following entry of a final judgment or order requiring the delivery of property or the payment of money.”); *Id.* at § 64D (“A writ of garnishment is available to seize property of the defendant in the possession or under the control of a person other than the defendant. A writ of garnishment is available after final judgment or after the claim has been filed and prior to judgment.”). Like most states, Utah has an exemption statute that prohibits judgment creditors from seizing items included on narrow list exempt property including burial plots, health aids, veterans’ benefits, or family photos. UTAH CODE § 78B-5-505.

<sup>74</sup> UTAH R. CIV. P. 64(c)(2).

<sup>75</sup> *Id.*

<sup>76</sup> UTAH CODE § 78B-6-303.

<sup>77</sup> *Id.* at § 17-25-1 *et seq.*

<sup>78</sup> *See, e.g.*, Unified County Constables Office, *FAQ: Can I be arrested in a civil case?*, <https://ucco.co/faq> (last visited Dec. 13, 2019) (Answer: “Yes. An individual may be held by a judge in contempt and jailed for failing to comply with various court orders. Additionally, a warrant may be issued for an individual that fails to comply with an order of the court such as an order to appear or failing to comply or appear pursuant to a subpoena.”).

<sup>79</sup> UTAH CODE § 17-25-6.

<sup>80</sup> Unified County Constables Office, *FAQ: A Constable or Deputy Constable asked me to pay my warrant bail to them while at my home or work. Is this normal?*, <https://ucco.co/faq> (last visited Dec. 13, 2019).

<sup>81</sup> MERRIAM-WEBSTER’S DICTIONARY, *Bail* (2019).

<sup>82</sup> SHIMA BARADARAN BAUGHMAN, *THE BAIL BOOK: A COMPREHENSIVE LOOK AT BAIL IN AMERICA’S CRIMINAL JUSTICE SYSTEM* 157 (2018).

<sup>83</sup> S.B. 159, Utah Legislature, 2014 General Session, *codified at* Utah Code 78B-6-311 (Chief Sponsor Sen. Scott K. Jenkins). The provision states:

Upon receipt of a request by a judgment creditor, the court shall require the judgment debtor to provide either proof of payment or good cause why the court should not order the forfeiture of bail to then be paid to the judgment creditor. The court shall find that good cause exists if the judgment debtor provides admissible evidence that the bail was paid by a third party.

*Id.*

<sup>84</sup> *Von Hake v. Thomas*, 759 P.2d 1162, 1168 (Utah 1988) (upholding issuance of a bench warrant against judgment debtor under the court’s contempt power after the debtor failed to appear at a supplemental proceeding.) The Utah Supreme Court reasoned that the warrant was justified in part because the debtor’s “failure to appear directly and immediately interfered with the court’s ability to conduct the hearing.” *Id.* at 1171.

<sup>85</sup> 154 A.L.R. 1227 (Originally published in 1945 & cum. supp.).

<sup>86</sup> *Id.*

<sup>87</sup> Utah Courts, *How To: Bench Warrant Document* (last visited Dec. 13, 2019), [https://www.utcourts.gov/howto/judgment/Supplemental\\_Proceedings/docs/1306DC\\_Bench\\_Warrant.doc](https://www.utcourts.gov/howto/judgment/Supplemental_Proceedings/docs/1306DC_Bench_Warrant.doc).

<sup>88</sup> Tsui, *supra* note 11.

<sup>89</sup> *See generally* Court Calendars, Utah Courts, <https://www.utcourts.gov/cal/> (providing public access to court calendars in all district and justice courts in Utah) (last visited Mar. 30, 2019).

<sup>90</sup> For a discussion of regular expressions in software programming see JAN GOYVAERTS, REGULAR EXPRESSIONS: THE COMPLETE TUTORIAL (2007), <https://www.princeton.edu/~mlovett/reference/Regular-Expressions.pdf>.

<sup>91</sup> Our study period ran from September 15, 2017 through September 14, 2018.

<sup>92</sup> Plaintiffs in Utah's small-claims courts are referred to as petitioners.

<sup>93</sup> Our actual sample size of 377 conservatively exceeds a minimum sample size,  $n$ , of 373 observations using the standard

formula:  $n = \frac{z^2(p)(1-p)}{1 + \left(\frac{z^2(p)(1-p)}{e^2 N}\right)}$  where  $N$  = the total population of 17008 cases;  $z$  = a  $z$ -score of 1.96 for a 95% confidence level;  $e$  = a 5% margin of error, and  $p$  is a conservatively presumed worst case standard deviation of 0.5.

<sup>94</sup> *Mission Statement*, Utah Dept. of Fin. Institutions, <https://dfi.utah.gov/about-us/mission-statement/> (last visited Mar. 30, 2019).

<sup>95</sup> The Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) created the NMLS in January 2008 to facilitate compliance with the federal the *Secure and Fair Enforcement for Mortgage Licensing Act of 2008* ("SAFE Act"). See About NMLS, Nationwide Multistate Licensing Sys., <https://mortgage.nationwidelicencingsystem.org/about/Pages/default.aspx> (last visited Mar. 30, 2019).

<sup>96</sup> *Id.*

<sup>97</sup> *Registered Consumer Lenders List*, Utah Dept. of Fin. Institutions, <https://www.utah.gov/dfi/ConsumerLending.html> (last visited Mar. 30, 2019).

<sup>98</sup> *NMLS Consumer Access Database*, NMLS Consumer Access, <http://www.nmlsconsumeraccess.org/> (last visited Mar. 30, 2019).

<sup>99</sup> Zucker & Her, *supra* note 50.

<sup>100</sup> Utah Code § 78A-8-102 (1) ("The judgment in a small claims action may not exceed \$11,000 including attorney fees, but exclusive of court costs and interest.").

<sup>101</sup> Neither boxplot includes upper-end outliers because of the small-claims court jurisdictional limit. See *id.*

<sup>102</sup> Of 377 cases sampled, 125 resulted in some sort of formal conclusion at the time of our study. The other 252 cases were still pending at various stages of litigation. With respect to this point, we deemed a case to have concluded when its most recent disposition reflected one of the following circumstances: dismissal, satisfaction of judgment, or settlement. We deemed a case "dismissed" when the most recent docket entry reflected an order from the court dismissing the case. Cases resulting in dismissal were either dismissed voluntarily on motion from the plaintiff, or dismissed by the court for a substantive reason, such as failure to properly serve the defendant according to Utah Rule of Civil Procedure 4(b). See UTAH R. CIV. P. § 4(b) (requiring "a copy of the summons and complaint in an action" to be "served no later than 120 days after the complaint is filed" and explaining that "[i]f the summons and complaint are not timely served, the action against the unserved defendant may be dismissed without prejudice").

<sup>103</sup> SMITH, *supra* note 48, at 52.

<sup>104</sup> *Hughes v. Municipal Court*, 252 P. 575, 576 (Cal. 1926).

<sup>105</sup> SMITH, *supra* note 48, at 52.

<sup>106</sup> See *Buy iPhone Xs*, Apple, <https://www.apple.com/shop/buy-iphone/iphone-xs> (last visited Mar. 30, 2019) (pricing the new iPhone X at \$999).

<sup>107</sup> See generally Douglas G. Bonett & Robert M. Price, *Adjusted Wald Confidence Interval for a Difference of Binomial Proportions Based on Paired Data*, 37 J. OF EDUC. AND BEHAVIORAL STATISTICS 479, 481 (2012) (comparing the Adjusted Wald Method to other confidence interval population parameter point estimates); James R. Lewis & Jeff Sauro, *When 100% Really Isn't 100%: Improving the Accuracy of Small-Sample Estimates of Completion Rates*, 1 J. OF USABILITY STUDIES 136, 139 (2006) (same). MeasuringU.com has a helpful online calculator for confidence interval providing best point estimates and low/high confidence intervals based on the Adjusted Wald Method. See Confidence Interval Calculator for a Completion Rate, Measuring U (2019), available at: <https://measuringu.com/wald/>.

<sup>108</sup> Excluding juvenile cases, all Utah police departments made 663 arrests for forgery and counterfeiting, 947 arrests for fraud, 27 arrests for embezzlement, and 906 arrests for buying receiving or possessing stolen property for a combined total of 2,543 arrests. UTAH DEP'T OF PUB. SAFETY, CRIME IN UTAH 2018 at 77 (Sept. 23, 2019).

<sup>109</sup> CFPB Payday Lending Final Rule, *supra* note 30, at 54,472.

<sup>110</sup> Moreover, while "indigent defendants have a Sixth Amendment right to a court-appointed lawyer in criminal cases involving incarceration, indigent debtors in state and local courts have no one to defend them against the error and abuse that characterizes debt collection litigation." Michael Shindler, *Private Creditors Can Put You in Jail*, The American Conservative (Sept. 17, 2018), <https://www.theamericanconservative.com/articles/the-travesty-of-private-creditors-putting-people-in-jail/>.

<sup>111</sup> This figure assumes the employer is not engaging compensation shaving strategies that are surprisingly common in low-wage employment. See, e.g., ANNETTE BERNHARDT, ET AL., BROKEN LAWS, UNPROTECTED WORKERS, VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA'S CITIES (2009), <https://www.nelp.org/wp->

content/uploads/2015/03/BrokenLawsReport2009.pdf (representatives survey of 4,387 low-wage workers in New York, Los Angeles, and Chicago finding “[m]ore than two-thirds (68 percent) of our sample experienced at least one pay-related violation in the previous work week. The average worker lost \$51, out of average weekly earnings of \$339. Assuming a full-time, full-year work schedule, we estimate that these workers lost an average of \$2,634 annually due to workplace violations, out of total earnings of \$17,616. That translates into wage theft of 15 percent of earnings.”).

<sup>112</sup> See BETH SHULMAN, *THE BETRAYAL OF WORK: HOW LOW-WAGE JOBS FAIL 30 MILLION AMERICANS AND THEIR FAMILIES* 87 (2011).

<sup>113</sup> Victoria Rideout & Vikki Katz, *Opportunity for All? Technology and Learning in Lower-Income Families*, The Joan Ganz Cooney Center at Sesame Workshop, at 8 (2016), [http://joanganzcooneycenter.org/wp-content/uploads/2016/01/jgcc\\_opportunityforall.pdf](http://joanganzcooneycenter.org/wp-content/uploads/2016/01/jgcc_opportunityforall.pdf) (“Our findings indicate that cost remains the primary explanation for why families are less connected than they would like to be—or why they are not connected at all.”); Ina Fried, *Low-Income Americans Face Internet Access that is Slow, at Risk of Disruption*, VOX (Feb. 2, 2016), <https://www.vox.com/2016/2/2/11587522/low-income-americans-face-internet-access-that-is-slow-at-risk-of>.

<sup>114</sup> Rideout & Katz, *supra* note 113, at 37. See also Pedro Nicolaci da Costa, *More Americans Need a 2<sup>nd</sup> Job to Make Ends Meet—And it’s Sending a Troubling Message About the Economy*, BUSINESS INSIDER (Aug. 8, 2017), <https://www.businessinsider.com/more-americans-working-more-than-one-job-to-make-ends-meet-2017-8>.

<sup>115</sup> NATIONAL WOMEN’S LAW CENTER & MS. FOUNDATION FOR WOMEN, *LISTENING TO WORKERS: CHILD CARE CHALLENGES IN LOW WAGE JOBS 4-6* (Jun. 2014), [https://www.nwlc.org/sites/default/files/pdfs/listening\\_to\\_workers\\_child\\_care\\_challenges\\_in\\_low-wage\\_jobs\\_6.20.14.pdf](https://www.nwlc.org/sites/default/files/pdfs/listening_to_workers_child_care_challenges_in_low-wage_jobs_6.20.14.pdf)

<sup>116</sup> SCHULMAN, *supra* note 112, at 29.

<sup>117</sup> MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 15 (2016).

<sup>118</sup> See Matthew Desmond, Carl Gershenson, & Barbara Kiviat, *Forced Relocation and Residential Instability Among Urban Renters*, 89 SOC. SERV. REV. 227 (2015).

<sup>119</sup> SMITH, *supra* note 48, at 241–242.

<sup>120</sup> Peterson, *Salience Distortion*, *supra* note 14, at 1117–1123.

<sup>121</sup> We were unable to identify a single law enforcement action taken by either the Utah Department of Financial Institutions or the Utah Attorney General’s office challenging the high-cost lender collection practices identified in this research during the study period. *But see* Letter from the States of West Virginia, Alabama, Arizona, Arkansas, Georgia, Kansas, Michigan, Montana, Nevada, North Dakota, Ohio, South Carolina, Texas, Utah, and Wisconsin on eliminating burdensome and illegal regulations by strengthening the Administrative Procedure Act, July 11, 2016, available at: <https://attorneygeneral.utah.gov/wp-content/uploads/2016/07/Regulatory-reform-letter-c1.pdf> (letter signed by Utah Attorney General Sean Reyes urging Congress to make it more difficult for federal consumer protection agencies to enact payday lending regulatory reform).

<sup>122</sup> Some have argued that lowering the cost of small-claims court litigation does not have public policy risks because, “if the parties don’t like the ruling, they can always appeal—it’s a de novo appeal from small-claims court in Utah to . . . district court.” Deno Himonas, *Utah’s Online Dispute Resolution Program*, 122 DICK. L. REV. 875, 882 (2018). This is false. High-cost lenders bring a super-majority of all cases in small-claims court and virtually all of these lenders have arbitration clauses with small-claims court carve-outs that allow them to compel arbitration if a consumer attempts to appeal a case in a district court. The combination of the Federal Arbitration Act and ubiquitous boilerplate contracts in the high-cost lending industry virtually never provide payday, vehicle-title, or other high-cost loan borrowers a meaningful right to appellate review. If a consumer seeks to appeal a small-claims court ruling and the high-cost lender compels arbitration, then the Federal Arbitration Act allows only a “grudgingly narrow” basis for appeal. *Eljer Mfg. Inc. v. Kowin Dev. Corp.*, 14 F.3d 1250, 1253 (7th Cir. 1994)). Federal law allows a reviewing court to vacate an arbitration award only “in limited circumstances” including “[w]here the award was procured by corruption, fraud or undue means”; “[w]here there [exists] evident partiality or corruption [by] the arbitrators”; where there existed specified misconduct by the arbitrators; or “[w]here the arbitrators exceeded their powers.” *Bowles Fin. Group, Inc. v. Stifel, Nicolaus & Co., Inc.*, 22 F.3d 1010, 1012 (10th Cir. 1994) (internal citations omitted). See also Schwartz, *supra* note 58 (“Arbitration is ‘despotic decision making’ in the sense that the governing law makes arbitrator’s decisions virtually unreviewable while accepting procedural and substantive results that would be considered unfair in a judicial setting.”).

<sup>123</sup> All neutral public polling shows overwhelming support for traditional usury limits among Republican, Democratic, and independent voters. See Morning Consult, *Interest Rate Cap Polling Results January 2020*, [https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/poll-morningconsult-interestratecaps-jan2020\\_0.pdf](https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/poll-morningconsult-interestratecaps-jan2020_0.pdf) (poll of 9,962 registered voters finding “Seventy percent (70%) of voters support a 36% annual interest rate cap on payday and consumer installment loans.”); Timothy E. Goldsmith & Nathalie Martin, *Interest Rate Caps, State Legislation, and Public Opinion: Does the Law Reflect the Public’s Desires?* 89 CHICAGO-KENT L. REV. 115, 120–122 (2014) (collecting polling and ballot measure evidence of public opinion). See also Aamer Madhani, *Bernie Sanders, AOC*

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*Unveil Legislation to Cap Credit Card Interest at 15%*, USA TODAY (May 9, 2019), <https://www.usatoday.com/story/money/2019/05/09/aoc-bernie-sanders-want-cap-credit-card-interest-15/1150746001/> (“Ninety percent of consumers said that they wanted a cap on credit card interest rates, according to a recent survey by CompareCards.com.”). In every public ballot referendum ever conducted on the issue, Americans overwhelmingly voted in favor of traditional usury limits on the interest rates of consumer loans. Recent ballot measures on usury limits have occurred in Arizona, Colorado, Montana, Ohio, and South Dakota. The public voted overwhelmingly in favor of usury limits in all of these states. *See* Ballotpedia, Colorado Proposition 111, Limits on Payday Loan Charges Initiative (2018), [https://ballotpedia.org/Colorado\\_Proposition\\_111,\\_Limits\\_on\\_Payday\\_Loan\\_Charges\\_Initiative\\_\(2018\)](https://ballotpedia.org/Colorado_Proposition_111,_Limits_on_Payday_Loan_Charges_Initiative_(2018)), (reporting 77.25 percent voting in favor of reducing “the loan costs on a payday loan to a maximum APR of 36 percent . . . regardless of whether payday lenders have a physical location in the state, they may not offer higher cost loans via electronic or U.S. mail, the internet, or telemarketing.”); Ballotpedia, South Dakota Payday Lending Initiative, Initiated Measure 21 (2016), [https://ballotpedia.org/South\\_Dakota\\_Payday\\_Lending\\_Initiative,\\_Initiated\\_Measure\\_21\\_\(2016\)](https://ballotpedia.org/South_Dakota_Payday_Lending_Initiative,_Initiated_Measure_21_(2016)) (reporting 75.58 percent voting “in favor of placing an interest rate cap of 36 percent on short-term loans.”); Tom Jacobson, Op-ed., GREAT FALLS TRIB. (Great Falls, MT), Jan. 6, 2011 (“Ballot Initiative 164, which took effect Jan. 1, capped the annual interest rates on payday and car title loans at 36 percent. . . . The measure passed with 72 percent of the vote statewide. It won in every county and House district . . . .”); Marian McClure & Debbie McCune Davis, Op-ed., *Let’s Make Sure the Sun Sets on Arizona Payday Loans*, ARIZ. REPUBLIC, Nov. 21, 2009, at B5 (“60 percent of Arizona voters soundly rejected 400 percent annual interest rates on payday loans, when 1.2 million Arizonans rejected the payday lenders’ Proposition 200. The lenders spent more than \$14 million trying to fool the people. The voters saw through their scam.”); Editorial, *Ohio Voters Prove that a Good Idea Can Beat \$22 Million*, AKRON BEACON J. (Ohio), Nov. 6, 2008 (“Voters handed the industry a deservedly humiliating defeat, rejecting one of the slickest and most misleading campaigns in the state this election season by a ratio of roughly 2-to-1. The defeat of the lenders is particularly gratifying, as their efforts carefully concealed the industry’s goal to regain the license to charge excessive interest rates to borrowers desperate for quick loans.”).

<sup>124</sup> CFPB Payday Lending Final Rule, *supra* note 30, at 54,485; Diane Standaert & Brandon Coleman, *Ending the Cycle of Evasion: Effective State and Federal Payday Lending Enforcement*, Center for Responsible Lending Policy Brief at 7 (Nov. 2015), [https://www.responsiblelending.org/payday-lending/research-analysis/crl\\_payday\\_enforcement\\_brief\\_nov2015.pdf](https://www.responsiblelending.org/payday-lending/research-analysis/crl_payday_enforcement_brief_nov2015.pdf).

<sup>125</sup> *See, e.g.*, Rachel Stone, *Formal guidance on bank-fintech partnerships is coming, FDIC’s McWilliams says*, S&P GLOBAL MARKET Intelligence (Nov. 5, 2019), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/55258773> (interviewing FDIC chairwoman Jelena McWilliams about the possibility of partnerships between banks and fintech companies); OFF. OF THE COMPTROLLER OF THE CURRENCY, *EXPLORING SPECIAL PURPOSE NATIONAL BANK CHARTERS FOR FINTECH COMPANIES* (2016), <https://www.occ.gov/publications-and-resources/publications/banker-education/files/pub-special-purpose-nat-bank-charters-fintech.pdf> (discussing the possibility of extending national bank charters to “marketplace lenders providing loans to consumers and small businesses”).