



For Immediate Release
Wednesday, March 10, 2021

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LDF and the Impact Fund File Amicus Brief Clarifying Class Action Typicality Standard in Case Involving False Information in Credit Reports

Today, the NAACP Legal Defense and Educational Fund, Inc. (LDF) and the Impact Fund filed an amicus brief on behalf of 24 organizations in *TransUnion LLC v. Ramirez*, a case before the U.S. Supreme Court involving Article III standing for members of certified class actions. LDF and the Impact Fund's brief addresses a separate issue before the Court regarding the federal rule requiring class action representatives to have legal claims that are "typical" of the claims of the class members. The brief explains why TransUnion's effort to turn typicality into a tool to protect defendants is at odds with Federal Rule of Civil Procedure 23 and highlights how a ruling in favor of TransUnion would hinder civil rights cases challenging systemic discrimination.

"TransUnion seeks to turn Rule 23 typicality on its head, asking the high court to rewrite the rule to protect defendants rather than absent class members. Nothing in the language or purpose of the rule supports TransUnion's approach," explained Impact Fund Executive Director Jocelyn D. Larkin. "Policy concerns about statutory damages are appropriately addressed in other ways."

"The drafters of modern Rule 23 intended for it to enhance the private enforcement of civil rights laws," said LDF Senior Counsel Coty Montag. "Consistent with this principle, plaintiffs have successfully obtained class-wide injunctive relief and monetary damages in a wide variety of civil rights cases despite factual variations between the named plaintiff and putative class members. A ruling in favor of TransUnion would upend civil rights cases seeking class-wide treatment and impede the purpose of Rule 23 to remedy widespread, systemic discrimination that impacts communities of color and other vulnerable groups."

The case addresses TransUnion's practice of placing alerts on consumer reports of individuals whose names matched names identified as prohibited from doing business in the United States, based on a database maintained by the U.S. Treasury Department of people who are designated as "national security threats." TransUnion did little to confirm the accuracy of these alerts, and thousands of people—including class representative Sergio Ramirez—erroneously had an alert placed on their credit files. Mr. Ramirez learned about the alert on his file when he was denied a loan when seeking to purchase a new car. When he contacted TransUnion for more information, he received two letters: his credit file with no alert, and a second letter informing him that his name was a potential match to information in the Treasury database. Mr. Ramirez filed a class action lawsuit under the Fair Credit Reporting Act on behalf of himself and other affected consumers, challenging TransUnion's practice of placing the alerts on consumer files. The class members all had the same alert placed on their credit file, requested a copy of their file from the company, and received the same two letters.

The district court certified the case and awarded Mr. Ramirez and the class of over 8,000 consumers \$60 million in damages after a jury trial.

In addition to arguing that Mr. Ramirez had not shown sufficient class-wide injury, TransUnion asserts that Mr. Ramirez’s “atypically unpleasant” experience unduly influenced the jury in awarding excessive damages. The company also argues that Mr. Ramirez was unique and should not have been approved as a class representative.

As explained in the amicus brief, Mr. Ramirez satisfied the Rule 23(a)(3) typicality requirement as he is a member of the class and presents the same legal claims as the other class members. He and all other class members experienced precisely the *same* pattern of conduct from TransUnion, alleged the *same* causes of action, and sought the *same* relief. Nothing more is required under the Rule 23 typicality standard. Mr. Ramirez is a typical class representative, and class certification was appropriate.

LDF and the Impact Fund’s brief also explains why this case has important implications for civil rights class action cases. For decades, Rule 23 has played a powerful role in the private enforcement of civil rights laws in a range of areas, including employment, public accommodations, and housing. The changes that TransUnion seeks will make it harder to use class actions to enforce civil rights laws.

The case will be heard by the Supreme Court on March 30, 2021. Read the amicus brief [here](#).

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Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation’s first civil and human rights law organization. LDF has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. LDF’s Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF. Follow LDF on [Twitter](#), [Instagram](#) and [Facebook](#).

The Impact Fund was founded in December 1992 to help advance economic, environmental, racial, and social justice through the courts. Originally envisioned as a purely grantmaking organization, the Impact Fund has made 710 grants totaling \$7,972,656. Click here for [Grant Criteria](#) and information about [Grant Deadlines](#). Since its inception, the Impact Fund has grown to include both advocacy and education in its range of services. Today, the Impact Fund litigates a small number of cases directly, authors amicus briefs, provides a substantial amount of pro-bono consulting, and presents an annual conference for plaintiff-side class action practitioners, a training institute for budding public interest class action practitioners, and numerous seminars and webinars. Click here for the [2020 Annual Report](#). www.impactfund.org