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CROWD-FUNDAMENTALS: BALANCING RAPIDLY ADVANCING CROWDFUNDING INNOVATION WITH PROTECTIONS FOR CONSUMERS

INTRODUCTION

The future of America is online. The Internet's ability to connect people across large distances has allowed for new ideas to prosper. But the Internet has also allowed for old ideas to find a renewed use. Enter crowdfunding, a method of fundraising with roots stretching back hundreds of years.¹ Recently, crowdfunding has gained new significance on the Internet. For those less tech-savvy, crowdfunding is a method of fundraising by using "small amounts of capital from a large number of individuals to finance a new business venture . . . mak[ing] use of the easy accessibility of vast networks of people through social media and crowdfunding websites to bring [donors] together."² Though crowdfunding has been successful in seeing new ideas, charities, and ventures come to fruition, it also requires that users be wary of substantial legal issues. In fact, the intersection of law and crowdfunding is so rife with legal landmines that some have called it a "legal disaster waiting to happen."³ This paper posits that while crowdfunding has the ability to revolutionize American markets and the economy, it also can be used to harm people. Looking at both equity crowdfunding and crowdfunding fraud, this paper concludes that developers have moved too fast in innovating and must take a step back to fix crowdfunding's issues. Developers and the government must find a way to incentivize this kind of innovation, but also balance protections to vulnerable consumers.

¹ See *The Statue of Liberty and America's crowdfunding pioneer*, BBC NEWS, Apr. 25, 2013, <http://www.bbc.com/news/magazine-21932675>.

² Crowdfunding, INVESTOPEDIA, <http://www.investopedia.com/terms/c/crowdfunding.asp> (last visited Feb. 26, 2017).

³ Lucas E. Buckley et. al., *The Intersection of Innovation and the Law How Crowdfunding and the on-Demand Economy Are Changing the Legal Field*, WYO. LAW., 36, 40 (Aug. 2015) (citation omitted), <http://hkwyolaw.com/wp-content/uploads/2015/09/Crowdfunding-story-Wyoming-Lawyer-Aug-2015.pdf>.

I. CROWDFUNDING HISTORY

Though the crowdfunding concept has been around for a long time, it only recently took off in America in its online form.⁴ The first popular crowdfunding site, ArtistShare, launched in 2003.⁵ ArtistShare focused on facilitating crowdfunding for musicians and consequently popularized the idea of offering rewards for donations, which could increase based on how much money donors spent on the project.⁶ In the wake of ArtistShare's success, other rewards-based crowdfunding sites were created—Indiegogo launched in 2008 and Kickstarter launched in 2009—and made reward-based crowdfunding huge.⁷ For example, in the six years between its launch and 2015, Kickstarter has acted as facilitator for over 265,000 crowdfunding campaigns and 95,200 of the successful campaigns have raised \$1.76 billion.⁸ To remain viable in the rewards-based market, crowdfunding sites have had to offer more specific types of projects. For instance, Teespring offers custom t-shirts while Experiment.com focuses on funding scientific research.⁹

Seeing the success of the rewards-based system, types of crowdfunding have begun to split as well. Now, crowdfunding types include debt-based crowdfunding, which “lets individual borrowers apply for unsecured loans . . . then pay it back with interest,” and donation-based crowdfunding, in which platforms act as hubs for charity donations.¹⁰ These other crowdfunding forms have become equally popular to rewards-based crowdfunding, as evidenced by GoFundMe donation totals reaching \$1 billion between its 2010 launch and 2015.¹¹

Lastly, crowdfunding types have further expanded to include equity crowdfunding, which is regulated by the United States Government through the Securities and Exchange Commission (SEC). 2009 marked the beta launch of the first equity crowdfunding platform, Grow VC Group.¹² Grow VC Group

⁴ David M. Freedman and Matthew R. Nutting, *A Brief History of Crowdfunding Including Rewards, Donation, Debt, and Equity Platforms in the USA* at 1, <http://www.freedman-chicago.com/ec4i/History-of-Crowdfunding.pdf> (last updated Nov. 5, 2015).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 3, 5.

¹¹ *Id.* at 5.

¹² Sajid Rahman, *History, Myths and a Comparison of Equity Crowdfunding*, STARTUPGRIND (Feb. 20, 2017), <https://www.startupgrind.com/blog/history-myths-and-a-comparison-of-equity-crowdfunding/>.

was followed by ProFounder in 2011, but SEC regulations eventually forced the platform to shut down.¹³ Equity crowdfunding is the next large leap in crowdfunding innovation, but it took until 2016 for the United States to begin providing ways for it to grow in the country. The United States' actions regarding equity crowdfunding are discussed below.

II. EQUITY CROWDFUNDING

A. *JOBS Act Background*

In April 2012, Congress enacted, and President Obama signed into law, the Jumpstart Our Business Startups Act, also known as the JOBS Act.¹⁴ The new law, cleverly named, was meant to “facilitate access to capital for startups and small businesses, give more people the ability to participate in investment opportunities, and ultimately, create more jobs and stimulate economic growth.”¹⁵ In other words, the JOBS Act took a bottom-up approach to strengthening the United States' economy and business. The Act was meant to increase and benefit small businesses, giving them the opportunity to flourish and grow, instead of the common tactic of solely focusing the already-large and successful businesses.¹⁶ The bill consists of four main “titles,” each aimed at benefiting small businesses, including giving various benefits to “emerging growth companies,” companies with less than \$1 billion before going public; ending a ban on general solicitation and advertising in private offerings; increasing the amount of assets to qualify as a company mandated to report to the SEC;¹⁷ and amending other SEC regulations “to facilitate intrastate and regional securities offerings.”¹⁸

¹³ *Id.*

¹⁴ Amy Wan, *Title III Crowdfunding Became Legal on May 16: What it Does & What's Still Lacking*, CROWDFUND INSIDER (May 17, 2016), <https://www.crowdfundinsider.com/2016/05/85696-title-iii-crowdfunding-became-legal-on-may-16-what-it-does-whats-still-lacking/>.

¹⁵ *Id.*

¹⁶ See generally Andrew Soergel, *Report: Government Aid Favors Big Business*, U.S. NEWS (Oct. 20, 2015), <http://www.usnews.com/news/articles/2015/10/20/report-government-aid-favors-big-business> (reporting that “large businesses actually command the lion’s share of government-issued economic development incentives”).

¹⁷ Nate Nead, *Summary of Jobs Bill and Update*, INVESTMENTBANK <http://investmentbank.com/summary-of-jobs-bill-and-update/> (last visited Feb. 26, 2017).

¹⁸ Press Release, Securities and Exchange Commission, SEC Adopts Rules to Permit Crowdfunding; Proposes Amendments to Existing Rules to Facilitate Intrastate and Regional Securities Offerings (Oct. 30, 2015), <https://www.sec.gov/news/pressrelease/2015-249.html>.

However, the flagship section of the JOBS Act was Title III, which allowed equity crowdfunding for small businesses.¹⁹ Equity crowdfunding is the act of “issuers . . . rais[ing] funds online from ordinary people for investment purposes.”²⁰ This act is significant because it marks the first time United States’ “securities laws will be updated to recognize modern modes of online capital raising.”²¹

Before the JOBS Act, the Securities Act of 1933 covered all issuance of stock for companies. The over 80 year-old law prohibited companies from “offering or selling securities to the public unless (a) the offering is registered with the SEC, or (b) there is an available exemption from registration.”²² Now, after the SEC and drafters of the JOBS Act recognized that “crowdfunding is an evolving method of raising capital that has been used to raise funds through the Internet for a variety of projects,” they wrote Title III to apply this innovation to selling securities.²³ Title III of the JOBS Act works as a new exemption to the Securities Act of 1933, permitting “companies to offer and sell securities through crowdfunding.”²⁴

B. Title III Effect

Economic and crowdfunding experts say that allowing equity crowdfunding “will open up the investor pool to over 300 million potential investors,” thus making small business growth significantly attainable.²⁵ Yet, there are many rules that companies and investors will have to follow to use the new equity crowdfunding opportunities. In general, the rules impose restrictions on how much money can be made through equity crowdfunding, limit ways to receive funds and increase disclosure requirements relating to

¹⁹ Wan, *supra* note 14 (Although signed in 2012, the Act didn’t take effect until over three and a half years later. In the meantime, state lawmakers started passing similar laws to benefit local businesses. By 2015 at least twenty-two states passed equity crowdfunding laws which substantially opened the fundraising markets.); see Stacey Cowley, *Tired of Waiting for U.S. to Act, States Pass Crowdfunding Laws and Rules*, NEW YORK TIMES (June 3, 2015) https://www.nytimes.com/2015/06/04/business/smallbusiness/states-pass-crowdfunding-laws-for-small-businesses.html?amp;_r=3 (Texas’ laws gave “entrepreneurs access to around 20 million potential investors” and Vermont laws gave access to around 500,000 investors.).

²⁰ *Id.*

²¹ *Id.*

²² Tanya Prive, *Inside the JOBS Act: Equity Crowdfunding*, FORBES (Nov. 6, 2012) <http://www.forbes.com/sites/tanyaprive/2012/11/06/inside-the-jobs-act-equity-crowdfunding-2/#2d99ea3b6163>.

²³ *Supra* note 18.

²⁴ *Id.*

²⁵ Wan, *supra* note 14.

equity crowdfunding.²⁶ Specifically, the rules can be broken up into three categories: fundraising, disclosure, and platforms used.²⁷

First, the rules limit equity fundraising and investing to different amounts depending on whether the participant is a company looking for funds or an individual looking to invest.²⁸ A company is only allowed to crowdfund \$1million maximum in aggregate throughout the course of 12 months.²⁹ In contrast, rules for investors are more restrictive and more complicated: If an individual's "annual income or net worth is less than \$100,000," then the maximum aggregate that person can invest is "the greater of . . . \$2,000 or . . . 5 percent of the lesser of their annual income or net worth."³⁰ But, if an individual's net worth and annual income are both greater than or equal to \$100,000, then they can only invest in aggregate a maximum of "10 percent of the lesser of their annual income or net worth."³¹

However, this system is complicated and onerous. It is a chore to both parse out the statute's language and to actually follow its instructions. First, an individual will have to find out his annual income, or net worth. If *both* are \$100,000 or more, then he may only spend 10 percent annual income or net worth, whichever is the lesser, on equity crowdfunding. However, if *either* his net worth *or* annual income is less than \$100,000, then he must find out which is the lesser. If 5 percent of the lesser number is greater than \$2,000, then he may invest up to that 5 percent within a 12-month period. If that 5 percent is less than \$2,000, then he may only invest up to \$2,000 in a 12-month period. The final rule covering investors is that "the aggregate amount of securities sold to an investor through all crowdfunding offerings may not exceed \$100,000" in a 12-month period.³² These rules are likely aimed at preserving the JOBS Act's goal to help small businesses, rather than allowing a large company to raise money which it is able to receive in other ways.

The rules regarding disclosure and platforms are, thankfully, less complex. Companies making an equity crowdfunding offering must disclose standard information to the SEC like price of securities, target amount, whether the company will accept investments over said target amount, financial statements,

²⁶ *Supra* note 18.

²⁷ *See id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

and descriptions of the business itself and its financial condition.³³ Then, Title III both allows websites to be created to act as portals for equity crowdfunding and mandates equity crowdfunding only occur through those portals.³⁴ To become legitimate, a portal must “register with the [SEC] on new Form Funding Portal, and become a member of a national securities association.”³⁵ Other portal rules require the service to provide “educational material” explaining how to equity crowdfund on its website as well as, vaguely, “take certain measures to reduce the risk of fraud.”³⁶

C. *Issues with Title III*

The JOBS Act and Title III clearly have good intentions, but the law’s implementation and execution leave much to be desired. Reportedly, SEC regulators were “scrambling” to write and release the final rules right up to the date Title III went into effect (three and a half years after President Obama signed the JOBS Act).³⁷ The result is a somewhat messy crowdfunding system that may act more as a disincentive than an incentive for small businesses.

In particular, Title III’s issues stem from an improperly balancing complicated regulations with the maximum benefits of crowdfunding. Simply, a \$1 million maximum in a 12 month period is not a lot of money when a small business will also have to pay “bills in the tens of thousands of dollars . . . for legal and accounting services,” to comply with the intense and complicated regulations and “ongoing reporting requirements.”³⁸ A representative from NextGen, “an equity crowdfunding research and advocacy organization,” stated that a small business using Title III crowdfunding for “a \$100,000 raise could cost a small business \$75,000,” after “platform fees, financial audits, and ongoing filings required by the SEC.”³⁹

In addition, the JOBS Act drafters may have incorrectly assumed that using non-accredited investors was a desirable strategy for small businesses. For example, Crista Freeman, who started her own ice cream company operated out of her Brooklyn apartment (the platonic ideal of small business) explained

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Wan, *supra* note 14.

³⁸ *Id.*

³⁹ Jeremy Quittner, *Why the Most Significant Part of the JOBS Act Has Yet to Catch On*, FORTUNE (Sep. 19, 2016), <http://fortune.com/2016/09/19/fixing-the-jobs-act/>.

she “prefers soliciting only accredited investors . . . because it aligns with her long-term strategy” to eventually seek “professional venture capital or private equity investment.”⁴⁰ Freeman’s reasoning is that ““private equity companies do not want to invest in a business with non-accredited businesses in their [capitalization] table.””⁴¹ Here, it seems that the interest to make a business successful directly conflicts with using Title III crowdfunding, which would be a serious miscalculation on the government’s part. On the other hand, Shriram Bhashyam, founder of EquityZen, a website connecting private companies to small-time investors, argues that Title III might change the definition of “accredited” investor.⁴² Currently, accredited investor means investors with more \$1 million in net worth or over \$200,000 in annual income.⁴³ But, Bhashyam believes that equity crowdfunding will “broaden [the] scope” accredited investors. Bhashyam suggests that “you might see people with certain financial credentials like CFAs included regardless of the income level or net worth.”⁴⁴

D. A Solution

The general consensus among those watching Title III’s effect is that the law “needs a bit of streamlining, simplifying, and cost-reduction to get off the ground.”⁴⁵ Luckily, legislators have already begun to respond to Title III’s weakness, and drawn up proposals to fix it. In March, 2016⁴⁶ Representative Patrick McHenry of North Carolina introduced HR 4855, the “Fix Crowdfunding Act,” to the House of Representatives.⁴⁷ Importantly, the bill proposed to increase the annual fundraising aggregates to \$5 million from \$1 million.⁴⁸ This change should make equity crowdfunding more useful when compared to the previously discussed transaction costs. In addition, HR 4855 proposed a novel “Test the Waters” provision to decrease risk for companies.⁴⁹

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Connie Loizos, *Why Silicon Valley is High-fiving over Trump’s SEC pick*, TECHCRUNCH (Jan. 26, 2017), <https://techcrunch.com/2017/01/26/why-silicon-valley-is-high-fiving-over-trumps-sec-pick/>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Quittner, *supra* note 39.

⁴⁶ Chance Barnett, *The House Passes Fixes to Equity Crowdfunding Laws*, FORBES (July 18, 2016, 1:13 PM), <http://www.forbes.com/sites/chancebarnett/2016/07/18/the-house-passes-fixes-to-equity-crowdfunding-laws/#5b8beaa96afa>.

⁴⁷ Anthony Zeoli, *The Fix Crowdfunding Act. What it Fixes & What it Does Not*, CROWDFUND INSIDER (July 28, 2016, 5:45 PM), <https://www.crowdfundinsider.com/2016/07/88536-fix-crowdfunding-act-fixes-not/>.

⁴⁸ Barnett, *supra* note 46.

⁴⁹ *Id.*

The provision would allow companies “to gauge investor interest before spending time and money involved in officially launching an equity crowdfunding campaign,” since the “upfront costs” are so large.⁵⁰ The Fix Crowdfunding Act passed in the House of Representatives on July 5th, 2016.⁵¹ The bill has been awaiting Senate approval since July 6th, 2016⁵² and cannot become effective until the Senate votes on it. The Senate should strongly consider enacting this bill. There is no shame in acknowledging that law can be a work in progress and equity crowdfunding is such a new tool that it will need updating.

III. CROWDFUNDING FRAUD

However, no matter how useful equity crowdfunding becomes, participants should be extremely wary of fraud. For all the good crowdfunding can do, there will always be people who try to twist innovation to their own selfish and harmful goals. In her article for *Consumer Reports*, Catherine Fredman argues that crowdfunding platform are “ripe for fraud” because they are “built on trust.”⁵³ Fredman contrasts traditional business methods with crowdfunding, pointing out that in the former, “a network of friends and family [can] vouch for [the seller’s] credibility,” but in crowdfunding, the sellers “are only as reliable as their promises. And those promises don’t always deliver.”⁵⁴

Unfortunately, the legal and regulatory framework in the United States has made it very easy for fraudulent crowdfunding users to escape any sort of punishment even after being discovered. The overarching issue is that the federal government has imposed no formal regulations upon crowdfunding platforms like Kickstarter or GoFundMe.⁵⁵ Even Title III of JOBS Act only regulates equity crowdfunding and not the common rewards-based form of

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Fix Crowdfunding Act, H.R. 4855, 114 Cong. (2016).

⁵³ Catherine Fredman, *Fund Me or Fraud Me? Crowdfunding Scams Are on the Rise*, CONSUMER REP., <http://www.consumerreports.org/cro/money/crowdfunding-scam> (last updated Oct. 5, 2015).

⁵⁴ *Id.* (Fredman’s article cites to three different instances of crowdfunding fraud. First, one woman used funds raised from a yarn-dyeing crowdfunding campaign to pay for moving to another state. Second, founders of a crowdfunded smartwatch never actually delivered the product after receiving \$1.5 million from their crowdfunding campaigns. Third, a woman used GoFundMe to raise money to pay for “her daughter’s cancer treatments, when in fact the child was healthy.”).

⁵⁵ Jay H. Ganatra, *When a Kickstarter Stops: Exploring Failures and Regulatory Frameworks for the Rewards-Based Crowdfunding Industry*, 68 RUTGERS U.L. REV. 1425, 1469–70 (2016).

crowdfunding.⁵⁶ So, backers are largely left to fend for themselves by taking legal action, but there are large obstacles prevent this from being a viable course of action.⁵⁷

First of all, the nature of the legal system lends itself heavily to getting taken advantage of by fraudulent crowd funders. Litigation is expensive and most duped backers likely do not find litigation worth recouping the fairly minimal amount of money they put into a particular crowdfunding campaign.⁵⁸ For comparison, Kickstarter backers pledge, on average, \$70 to campaigns “and the most frequent pledge amount is \$25;” yet, “the median cost of contract litigation is \$91,000.”⁵⁹ Since winning any litigation is never an assured prospect, it simply is not a viable option for most people who realize they will not get a return on their crowdfunding investment.

However, disparity in cost of investment and litigation does not prevent everyone from suing. Though lawsuits from backers are extremely infrequent, an incident in 2011 marked the first instance a Kickstarter campaign backer brought a lawsuit against a project creator.⁶⁰ Neil Singh sued Kickstarter project creator Seth Quest for failing to deliver an innovative iPad mount Quest invented.⁶¹ Fitting in with the average backer, Singh invested \$70 into the Kickstarter, for which he never saw any form of compensation.⁶² Singh’s lawsuit ultimately forced Quest to file for bankruptcy.⁶³

Yet, Singh forcing Quest into bankruptcy reveals another problem with litigation against crowdfund fraud: Even if the backers win, the project creators likely will not even have the money to pay the proper damages. To begin with, project creators likely do not have many funds to pay for litigation or for refunds considering they needed to use a crowdfunding platform in the first place.⁶⁴ Also, there is nothing stopping project creators to the crowdfunds on purchases unrelated to the campaign, leaving them with nothing to refund to

⁵⁶ Christopher Moores, *Kickstart My Lawsuit: Fraud and Justice in Rewards-Based Crowdfunding*, 49 U.C. Davis L. Rev. 383, 421 (2015).

⁵⁷ Ganatra, *supra* note 55.

⁵⁸ See Moores, *supra* note 56, at 416.

⁵⁹ *Id.*

⁶⁰ Charles Luzar, *Why This Jilted Kickstarter Backer Decided to Sue—& Why He Was Right*, VENTUREBEAT (Jan. 22, 2013), <http://venturebeat.com/2013/01/22/why-this-jilted-kickstarter-backer-decided-to-sue-why-he-was-right>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See Moores, *supra* note 56.

backers.⁶⁵ Whether it is due to bad business decisions or pure self-interest, once project creators spend the money, the money is gone.

Issues with the law's inability to adequately deal with crowdfunding fraud does not stop at backers suing the project creators. Indeed, a recent, and particularly abhorrent, instance of crowdfunding fraud revealed that crowdfunding platforms maintain vast protections from accusations of fraud on the part of their users.⁶⁶ In 2013, a crowdfunding campaign commenced on the platform GiveForward allegedly raising money for medical payments for treating an 8-year old boy's heart condition.⁶⁷ In reality, the boy did not have any heart condition and the campaign was started by the boy's estranged father.⁶⁸ Once the child's mother, Kena Hodges, caught wind of the fraudulent campaign, she contacted GiveForward, who subsequently took down the campaign and refunded donors' money.⁶⁹ However, Hodges followed up by suing GiveForward, attempting to hold them responsible as "part of the project."⁷⁰ The ensuing case, *GiveForward, Inc. v. Hodges*, was filed in the Maryland District Court.⁷¹

In *GiveForward v. Hodges*, the parties fought over whether the Communications Decency Act ("CDA") granted GiveForward immunity from the role it played in the fraudulent crowdfunding scheme.⁷² The relevant portion of the CDA, section 230(c) (1) provides, "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."⁷³

Consequently, the Court had to decide whether GiveForward was actually an information content provider.⁷⁴ Hodges argued that GiveForward is an information content provider because it exerted "influence over the fundraiser

⁶⁵ *Id.*

⁶⁶ JD Alois, *Recent Lawsuit May Show Big Liability Risk for Crowdfunding Platforms*, CROWDFUND INSIDER (Aug. 26, 2015), <https://www.crowdfundinsider.com/2015/08/73378-recent-lawsuit-may-show-big-liability-risk-for-crowdfunding-platforms>.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Giveforward, Inc. v. Hodges*, No. JFM-13-1891, 2015 WL 4716046, at *1 (D. Md. 2015).

⁷² *Id.* at *2.

⁷³ *Id.* at *3 (citing 47 U.S.C. § 230(c)(1)).

⁷⁴ The statute defines information content provider as "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." *Id.* (citing 47 U.S.C. § 230(f)(3)).

posted on its site.”⁷⁵ Hodges reasoned that since GiveForward “collects a portion of each donation made,” giving it an incentive to “[offer] support and tips to fundraisers,” it should, consequently, “be responsible for the content of the fundraisers.”⁷⁶ Specifically, Hodges pointed to GiveForward offering advice from fundraising coaches, suggesting that the fraudulent users “opened and read these emails [from the coaches] and followed the instructions contained therein to shape the content of the . . . fundraiser.”⁷⁷ In response, Give Forward cited depositions from the fraudulent users avowing that they never contacted the coach or responded to the emails, “delet[ing] them upon receipt.”⁷⁸ GiveForward argued that this testimony, along with the fact that the emails from coaches are “automatically generated . . . [and] were sent after the creation of the [fraudulent] fundraiser,” means they did not actually influence the fundraiser.⁷⁹ In the end, the Court found no “genuine dispute of material fact” around this issue, reasoning that there was “simply no evidence that GiveForward created the content at issue.”⁸⁰

After this holding, the Maryland District Court judge explained that since GiveForward is not an information content provider, they could not be liable for the fraudulent fundraiser’s text.⁸¹ *GiveForward v. Hodges*, shows that the CDA presents another obstacle jilted backers and others harmed by fraudulent crowdfunding must overcome to receive some form of recompense. The ruling effectively blocks lawsuits against Kickstarter or Indiegogo for poorly vetting campaigns. Though the CDA protections are probably necessary protections for crowdfunding platforms in a risky market, people must look elsewhere for a savior.

A. *Action and Reaction*

However, not all hope is lost in the fight against crowdfunding fraud. The fraud has run so rampant that independent activists are trying to find creative way to counter it. After unsuccessfully trying to take down a fraudulent animal welfare crowdfunding campaign, Adrienne Gonzalez launched the website GoFraudMe, as a parody of the crowdfunding platform GoFundMe and an

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at *3–4.

⁷⁸ *Id.* at *4.

⁷⁹ *Id.*

⁸⁰ *Id.* at *5.

⁸¹ *Id.* at *7.

educational resource for crowdfunding fraud.⁸² The website features posts and helpful links on topics like “scam prevention resources” and reports on new instances of crowdfunding fraud.⁸³ GoFraudMe’s tactic is education and information over litigation.

In addition, there is reason for some optimism within the United States consumer protection laws at both the federal and state level. The Federal Trade Commission (“FTC”) recently brought a case against a crowdfunding campaign for the first time in the FTC’s history.⁸⁴ The FTC is an agency meant to protect consumers from “abuses by merchants that the common law could not remedy,” and it has the “authority to protect consumers from “unfair and deceptive trade practices.”⁸⁵ The FTC’s action came out of Erik Chevalier’s Kickstarter campaign to produce a board game.⁸⁶ The project ended up raising over \$122,000, about four times the original funding goal of \$35,000.⁸⁷ However, according to the FTC’s complaint, instead of actually making and delivering the board game, Chevalier “used the consumers’ funds for miscellaneous personal equipment, rent for a personal residence, and licenses for a separate project.”⁸⁸ Since the backers were never refunded after Chevalier announced that the board game project would not be completed, the FTC brought an action against Chevalier’s “deceptive tactics.”⁸⁹ Ultimately, Chevalier decided to settle with the FTC, resulting in an obligation to pay \$111,793.71.⁹⁰ According to an FTC press release, this case arose out of an ongoing FTC effort “to protect consumers taking advantage of new and emerging financial technology.”⁹¹

Lastly, even states have entered the fight to eliminate crowdfunding fraud and started bringing lawsuits. In response to the perception that the FTC is an ineffective means of protecting consumers, states enacting their own protection

⁸² *For Reporters*, GOFRAUDME.COM, <http://gofraudme.com/mediacheatsheet/>, (last visited Feb. 26, 2017).

⁸³ *In the News*, GOFRAUDME.COM, <http://gofraudme.com/in-the-media/> (last visited Feb. 26, 2017).

⁸⁴ Buckley, *supra* note 3.

⁸⁵ Ganatra, *supra* note 55, at 1456.

⁸⁶ Press Release, Federal Trade Commission, Crowdfunding Project Creator Settles FTC Charges of Deception (Jun. 11, 2015), <https://www.ftc.gov/news-events/press-releases/2015/06/crowdfunding-project-creator-settles-ftc-charges-deception>.

⁸⁷ Complaint for Plaintiff at 3, *FTC v. Chevalier*, (D. Or. 2015) (No. 3:15-cv-01029-AC), 2015 WL 3776613, <https://www.ftc.gov/system/files/documents/cases/150611chevaliercmpt.pdf>.

⁸⁸ *Id.* at 8.

⁸⁹ *Supra* note 85.

⁹⁰ *Id.* Though, because Chevalier is unable to pay (as in the discussion above about fraudsters’ inability to pay damages), the money judgment has been suspended.

⁹¹ *Id.*

laws.⁹² Now, state attorneys general may bring cases against unfair trade practices, including crowdfunding fraud.⁹³ In 2014, Washington's Attorney General Bob Ferguson filed "the first consumer protection lawsuit involving crowdfunding."⁹⁴ The lawsuit was against crowdfunding user Ed Nash, operating under his company Altius Management, after he "raised \$25,146 from 810 backers" (well over the \$15,000 funding goal) to fund a card game and never delivered the product.⁹⁵ Ferguson accused Nash and Altius of first misrepresenting that backers would receive that rewards promised to them if they helped fund the game (then failing to deliver the rewards) and the failing to "provide refunds to Backers who requested one after they did not receive their Reward in a timely fashion."⁹⁶ On July 22, 2015, the Washington King County Superior Court entered a default judgment in favor of the State of Washington.⁹⁷ The Court pointed out in its order that under Kickstarter's Terms and Conditions, "project creators are legally bound to fulfill backer rewards if funding is successful."⁹⁸ The Court ordered Nash and Altius to pay \$54,851.29 in fees, penalties, and restitution.⁹⁹ Ferguson followed the judgment with a statement announcing that "Washington state will not tolerate crowdfunding theft . . . If you accept money from consumers, and don't follow through on your obligations, my office will hold you accountable."¹⁰⁰ This statement shows a strong commitment on the part of Washington state to protect consumers from further crowdfunding fraud.

CONCLUSION: CROWDFUNDING'S FUTURE AND PRESIDENT TRUMP

Discussing crowdfunding's impact on the country and its problems is important now, considering the country just received a new president in

⁹² Ganatra, *supra* note 55, at 1456.

⁹³ *Id.*

⁹⁴ Taylor Soper, *Kickstarter fraud: Washington files first consumer protection lawsuit involving crowdfunding*, GEEKWIRE.COM (May 1, 2014), <http://www.geekwire.com/2014/attorney-general-asylum-playing-cards-crowdfunded-project/>.

⁹⁵ *Id.*

⁹⁶ Complaint for Plaintiff at 3, *Wash. v. Altius Mgmt., LLC*, No. 14-2-12425-SEA (King Cty. Super. Ct. filed Apr. 30, 2014) https://www.scribd.com/doc/221464947/State-of-Washington-vs-Asylum-5-1-2014#from_embed.

⁹⁷ Default Judgment, *Wash. v. Altius Mgmt., LLC.*, No. 14-2-12425-SEA at 2 (King Cty. Super. Ct. filed July 22, 2015), http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/201507221452.pdf.

⁹⁸ *Id.* at 3.

⁹⁹ *Id.* at 1.

¹⁰⁰ Press Release, Washington State Office of the Attorney General, *AG Makes Crowdfunded Company Pay For Shady Deal* (Jul. 27, 2015), <http://www.atg.wa.gov/news/news-releases/ag-makes-crowdfunded-company-pay-shady-deal>.

Donald Trump. With President Trump comes both a renewed hope for raising the effectiveness of Title III equity crowdfunding, but also some reason to worry about consumer protection for crowdfunding fraud. Even before he was elected, President Trump publicly supported crowdfunding.¹⁰¹ Trump made a public appearance at the launch party for the crowdfunding platform FundAnything where he distributed money to attendees.¹⁰² After supporting the platform for a year, Trump eventually decided he was too busy to directly support FundAnything.¹⁰³

Later, after Trump became the President-Elect, he hired former SEC Commissioner Paul Atkins as the “point person” for his financial regulatory appointments.¹⁰⁴ This hiring was good news for fans of equity crowdfunding reform, as Atkins was a large supporter of HR 4855, the Fix Crowdfunding Act.¹⁰⁵ Atkins stated he believed crowdfunding will “a valuable source of equity capital” in the future, but Title III flaws are getting in the way of that goal.¹⁰⁶ Atkins believes that, “the Fix Crowdfunding Act . . . can prevent some of these problems before they negatively impact crowdfunding issuers, crowdfunding platforms, and the ordinary investors seeking to deploy capital to small businesses.”¹⁰⁷

Lastly, President Trump’s pick to lead the SEC, Walter “Jay” Clayton, seems to a good sign for Silicon Valley investors and founders.¹⁰⁸ Though yet to be confirmed, Clayton is expected to “accelerate” the “pace of deal-making” by adjusting the equity crowdfunding regulations.¹⁰⁹ In general, Clayton is expected to “usher in a period of deregulation” in the United States.¹¹⁰

¹⁰¹ Keeton Hayes, *How Will the 2016 Election Impact Crowdfunding*, KICKFURTHER.COM (Nov. 1, 2016), <http://info.kickfurther.com/how-will-the-2016-election-impact-crowdfunding>.

¹⁰² *Id.* Trump reportedly passed out “boxes full of cash” to people at the launch. He also passed out \$5,000 checks to attendees who told him “hard luck stories” that “moved him the most.”

¹⁰³ *Id.*

¹⁰⁴ JD Alois, *Paul Atkins on Trump’s Transition Team for Financial Appointments is a Very Good Sign for Fintech*, CROWDFUND INSIDER (Nov. 13, 2016), <https://www.crowdfundinsider.com/2016/11/92431-paul-atkins-trumps-transition-team-financial-appointments-good-sign/>.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Loizos, *supra* note 42.

¹⁰⁹ *Id.*

¹¹⁰ Lauren Gensler, *Trump Taps Wall Street Lawyer Jay Clayton to Head SEC*, FORBES (Jan. 4, 2017), <http://www.forbes.com/sites/laurengensler/2017/01/04/trump-nominates-jay-clayton-sec-chair/#98139954d8c3>.

However, while President Trump's developing policy and administration is expected to help the businesses involved in crowdfunding, the same cannot be said of protecting consumers involved in it. Clayton's promise to focus on deregulation in the crowdfunding world acts as both a promise to equity crowdfunding investors and a threat to consumers. The more the government peels back the FTC and SEC's authority to stop crowdfunding fraud and other misdeeds, the more vulnerable common Americans become. Without protection, America might not be any better off with JOBS Act than they were without it. Indeed, the same conclusion can be reached for all aspects of crowdfunding. The law must ensure it is protecting the people, but it cannot work to hamstring other sources of legitimate prosperity.

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