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PREDATORY PAYDAY LENDING: A PUBLIC JUSTICE PROBLEM

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That All Might Thrive: The Colorado Ballot Initiative Story

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Abstract: In 2018, a movement with faith leaders at its core known as the Financial Equity Coalition led a state-wide ballot initiative, Proposition 111 ("Prop 111"), that asked Coloradans to end predatory payday lending practices by lowering annual percentage rates from 160 percent to 36 percent. By doing so, they took on an industry earning $50 million in state yearly and followed an ancient Judeo-Christian tradition of standing against usury and all practices that enrich a few by exploiting the poor. This article provides the background context for Prop 111, including why national touted "compromise" regulations from 2010 continued to allow widespread financial injustice that particularly targeted communities of color. It explores theological and social cases for establishing healthy boundaries on payday loans and other financial products. Centrally, this article tells the ballot initiative story, and why fairness in lending holds such widespread popular support. The conclusion highlights opposing trajectories taken by Colorado predatory lenders and the movement for financial equity since the election—particularly the emergence of a multi-faith, politically diverse coalition that now holds weekly gatherings at our state capitol calling for an end to structural racism and the building of a moral economy.

Ancient societies consistently rang with two calls for justice: "Cancel the debts and redistribute the land" (Finley). Israel blazoned these demands in her law. Sabbath and Jubilee practices established the foundation of a just and peaceable community which looked for "neither poverty nor riches, but only my daily bread" (Proverbs 30:8). When Israel's society veered into widening inequality and exploitation of land and the poor, a prophetic voice was never far off to call God's people back to the way of the Lord's restorative justice — a prophetic vocation that found its culmination when Jesus' unrolled the scriptures in his home temple and declared the jubilee of the Lord, good news to the captive and freedom to the oppressed.

Today in Colorado, the fault lines through which injustice spreads bear a disturbing similarity to those biblical places of struggle. Though touted as the number one economy[1] in the nation, soaring housing costs and a scarcity of livable wages drive impoverished, working, and middle-class households into unrepayable debt. The conditions for economic justice in our state were further undermined in 2000 by the passage of SB00-144[2], the Deferred Deposit Loan Act. Swept up in a modern wave of financial deregulation, SB00-144 breathed new fire into a 4,500 year-old practice[3] of building wealth by exploiting the poor through usury. At the stroke of a gavel, a new market was created: payday loans with nearly unlimited fees, direct access to pull money from a borrower's bank account, and triple-digit interest rates that would turn these new products into a multi-billion dollar industry in our state over the next decade.

If the kingdom of God is anything, it is a place free from exploitation and oppression. As followers of Jesus and ambassadors of God's reign in Caesar's empire, we are those whose practice of faithfulness seeks liberation in the present conditions of this world. From the beginning of payday lending here in Colorado, Christians and other faith-leaders were core members of a movement to banish usury from our communities. That movement culminated at the ballot in November 2018, when a broad coalition brought a state-wide ballot initiative to voters, demanding an end to predatory lending by putting a firm cap on the fees and interest rates of payday loans.

An Unacceptable Condition

After 2000, payday loan terms were terrifying but highly obfuscated to even well-educated people seeking a loan. Paul Chessin, who at the time was counsel to the Colorado Attorney General and later a steering committee member of the 2018 ballot initiative, explained what was actually going on inside these products back in 2005:

> "The [Colorado] Deferred Deposit Loan Act (DDLA) limits the principal amount of the loan to no more than $500. The term of the loan may not exceed forty days. The DDLA allows the lender to charge a maximum finance charge of up to 20% of the first $300 of principal, and up to 7.5% of any principal amount in excess of $300. Thus, the maximum allowable DDLA finance charge for a maximum loan amount of $500 is $75. The "cost" of a typical $300, two-week loan with a DDLA finance charge of $60, expressed as an "annual percentage rate" (APR), is slightly over 520%" (Denver Law Review[4]).

Take a common scenario. A person borrows $300 with a two-week repayment term at which time a $60 finance charge is due in addition to the principle. After fourteen days, the borrower can pay the $60 and renew the loan for another two weeks with a second $60 fee. So, after twenty-eight days, the borrower pays $420 to have the opportunity to use $300 on their personal needs. However, that often was not the end. While the same loan could not be renewed more than once, there were no prohibitions on lenders immediately issuing a new loan to the borrower, simply rebooting the fourteen – or twenty-eight-day – cycle, something referred to in the industry as "rollover" or "same day buy-back". This tactic is known to concerned observers as the "debt trap." Alternatively, if the borrower did not pay, the lender had authorization to debit the customer's bank account and would simply directly withdraw what they were owed. If borrowers had insufficient funds, they would be sent to collections and face the threat of bankruptcy. Unfortunately for the borrower, the cycle only deepens.

The impact on Coloradans, particularly the working poor, was swift and severe. Efforts to pass a reform bill through the state legislature were in full swing by 2005. Advocates for fair lending soon discovered that while public opinion viewed these loans as unfair and predatory, that did not translate into political will within a statehouse where payday industry lobbying and funding was bipartisan. That heavy influence resulted in a so-called compromise legislation in 2010 that was both a great victory in the face of 520 percent APRs while sorely insufficient to meet the true demands of justice. Effective APRs were now capped at 160 percent interest, while repayment terms could last up to six months and, as is the quintessential feature of payday loans, lenders retained direct access to borrowers' bank accounts.

Colorado was touted nationally, particularly by those with ties to the industry, as a reasonable middle-ground state between the functionally unlimited interest rates charged in some parts of the country, and those (multiplying) states that capped APRs at 36 percent APR. In Colorado, those watching the issue rejected the notion that our situation was remotely tenable. Payday lenders continued to target vulnerable communities with triple-digit APRs, trapping borrowers in cycles of debt that generated crippling downstream effects including trashed credit scores, evictions, and bankruptcy. Payday storefronts were *six times* more likely to appear in neighborhoods where the majority of the population were people of color neighbor versus majority white neighborhoods of the same average income. Payday lenders fleeced borrowers under the guise of easy cash and were unabashedly racist.

While unemployment in Colorado was historically low, far too many of these jobs failed to provide a wage that allowed workers to be self-sufficient[5] in a context where the exorbitant cost of living is largely driven by housing and health-care costs. Many Coloradans, disproportionately black and brown citizens, were in fact facing a debilitating challenge: little money (both income or wealth) and big expenses. Payday loans were like offering saltwater to a person starving of thirst, claiming it would bring peace to their suffering. While it could satiate for a moment, such a salesman was peddling a lie that could only make the problem worse.

Rejecting the warped framing of loan sharks—or anyone who worships at the feet of Mammon—is fundamental to the worldview of those who follow the Savior who overturned money-changer's tables (Matthew 21:12) and taught us to pray, "forgive us our debts as we forgive our debtors" (Matthew 6:12). St. Basil of Caesarea exemplifies this commitment in the early Church, writing boldly in his sermon:

> "Tell me, do you really seek riches and financial gain from the destitute? If this person had the resources to make you even wealthier, why did he come begging to your door? He came seeking an ally but found an enemy. He came seeking medicine and stumbled onto poison. Though you have an obligation to remedy the poverty of someone like this, instead you increase the need, seeking a harvest from the desert."

Christian citizens who follow a God at work in creation cultivating shalom: the great gardener of just and reconciled communities where all have what they need to thrive. The Christian vocation participates in and extends God's work of shalom within the practical particularities of our time and place. As Catholic Worker founder Peter Maurin said[6], we are called to "build a world in which it is easier to be good." Those stripped of all necessities often find their range of ethical options constrained by poverty's deprivations, and so may take the gamble of exorbitant and costly debt to avoid imminent suffering: homelessness, lack of food for children, a transportation breakdown that might lead to joblessness, or medical emergencies. A community of shalom workers provides life-giving alternative while also striking at the roots of injustice. At the same time, like any of us, those tempted by greed toward exploitation are better enabled to thrive within healthy boundaries set by a compassionate community. This, too, is God's grace.

A Movement for Racial & Economic Justice

The Financial Equity Coalition first gathered a diverse cast of members — people of faith and faith-based nonprofits, community organizers, policy wonks, unions, community banks and financial services representatives, financial education providers, veterans groups, youth organizations, and many others — to preserve the ground gained for fair lending in 2010, and to look for ways to continue building an economy that worked for all. By 2017, as we continued to watch $50 million per year be siphoned out of lower and working-class households into the hands of payday financiers, it was clear the time had come to follow other states and military lending guidelines by drawing APRs on payday loans down from 160 to 36 percent. After watching the inability of our state-legislature to follow public opinion on the issue, the coalition knew a ballot initiative was the only choice.

A national supporter of economic justice work stepped in by late-2017, enabling the group to see encouraging polling numbers. By February, we made the decision to gather the 98,000 valid signatures necessary to reach the November ballot. Through the spring and summer at festivals and street corners, Coloradans eagerly seized our petition clipboards to add their names until we had over 180,000 signatures ready to lay at the feet of the Colorado Secretary of State. With a caravan of dollies, we rolled in dozens of boxes crammed with names. Colorado's Proposition 111 to limit interest rates on Payday Loans was headed to the ballot. Over two-hundred ministers, rabbis, and imams from every corner of our square state and every end of the political spectrum joined the campaign, declaring that enough was enough —people of faith would tolerate usury and the exploitation of the poor no more. We marched through downtown with stoles flowing, singing freedom songs through our megaphones with the media jogging along to keep up with us. We preached the good news of liberty from the principalities and powers of economic oppression. We spoke in churches, seminaries, and synagogues. We held press conferences in front of payday stores (often dressed as business-casual loan sharks) and in VFW outposts, lifted up stories of those whose lives were impacted by impossible-to-escape payday debt, drove a sophisticated social media campaign, and knocked on thousands of doors.

On the evening of the election, we stood together in a Denver brewery and held each other as the numbers came in. With 76 percent of the popular vote, we not only received the largest win margin of anything on the ballot, our initiative won in every district in the state, from deep blue to deep red and every shade of purple in between.

Our movement continues. Predatory lenders still to show up, and the Financial Equity Coalition continues to stand firm against a rollback of people's financial rights and wellbeing. Attempts to run a bill to hike interest rates on loans all the way up to $10,000 was defeated before it was even introduced. Today, we are looking beyond the game of predatory loan whack-a-mole, toward establishing the nation's first State Office of Financial Empowerment that would, among other possible functions, expand financial education, low-cost banking access, and equitable credit products to disinvested communities across Colorado.

During the 2019 state legislative session, the coalition launched an initiative called Faithful Tuesdays: A Call for a Moral Economy, Equity, and the Eradication of Racism Now. Each week, people of faith — Catholics, Evangelicals, progressive Christians, Jews, Muslims, Sikhs, and more — gathered together in the second floor foyers of our statehouse to sing songs, declare the moral imperative of building an economy and community that works for everyone, and lobby our legislators on issues from renters rights to the minimum wage to criminal justice reform. Shalom is not yet enjoyed by all. Far too many continue to struggle for survival on far too little. But this is the work of the Kingdom, and we will continue to put our hands to the plow.

1.https://www.usatoday.com/story/money/2019/07/06/jobs-gdp-unemployment-states-with-best-worst-economies/39651531/
2. https://leg.colorado.gov/sites/default/files/images/olls/2000a_sl_128.pdf
3. https://www.mhpbooks.com/books/debt/
4. https://www.law.du.edu/images/uploads/denver-university-law-review/v83_i2_chessin.pdf
5. https://cclponline.org/pub_library/self-sufficiency-standard-for-colorado-2018/
6. https://www.harpercollins.com/9780060617516/the-long-loneliness/

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