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PREDATORY PAYDAY LENDING:
A PUBLIC JUSTICE PROBLEM

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Texas Catholic Conference of Bishops: A Model for Community Action on Issues of Public Justice

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Abstract: Usury has been a concern of the Church and civil society for millennia. This article outlines ten years of problems, strategies, wins, and losses in Texas as faith leaders and other concerned civic groups have fought for reasonable payday and auto-title lending reform at local, state, and federal levels. Payday and auto-title lenders have a similar business model: market high-cost emergency loans to desperate borrowers. For payday loans, borrowers provide lenders with access to a bank account or Electronic Funds Transfer (EFT), and automobile titles for auto-title loans. This predatory industry receives its revenue primarily from low-income working families. The loans are structured so that a borrower's inability to repay increases the lender's profit and deepens the borrower's reliance on continued extensions of the loan — thereby creating a cycle of debt rather than incentivizing success.

Faith and community leaders in Texas have collaborated using a variety of strategies to address this cycle of debt. These strategies have been developed through a systematic process of gathering data, reflecting on the trends, developing local internal community solutions, and advocating for legislative change. The coalition efforts have been successful in passing local ordinances and state legislation, as well as making progress toward federal regulatory reform. As with all systemic change, the reforms are sometimes slowed down or even rolled back when the payday and auto-title industry lobbyists begin to exert their influence. Yet, advocates remain vigilant as voices for the working families targeted by predatory lending practices. The engagement processes and strategies used in Texas can serve as a model for community action on other issues of public justice as well.

Introduction: Why TCCB Cares

"When a family doesn't have enough to eat because it has to pay off loans to usurers, this isn't Christian!" It's not human!" exclaimed Pope Francis at January 29, 2014 General Audience in Rome[1].

Faith communities and our ministries witness the high human cost of poverty every day as we assist families in need. The Texas Catholic Conference of Bishops (TCCB) is the public policy voice of the Catholic Church in Texas. In addition to facilitating collaboration among the Catholic dioceses and ministries in Texas, the TCCB also advocates on behalf of the bishops before our state legislature. This dual mission provides opportunity for our staff to work directly with those serving our neediest Texans and then allows us to bring that experience and insight to policy work at the state Capitol. Our work is informed by our rich faith teachings and our everyday experience serving Texans. With approximately 8.5 million Catholic residents in Texas, elected officials care about the viewpoints we express.

In 2008, as the TCCB staff was discerning the issues to be addressed in the upcoming legislature, we received phone calls from Catholic Charities staff alerting us to an alarming trend: a high percentage of clients were seeking help due to debts incurred from payday loans. TCCB case workers asked us to investigate the issue, resulting in staff conducting client surveys of Catholic Charities agencies throughout the state. The results showed that, while Catholic Charities agencies were providing $300 cash assistance per month to a family for food and utilities, that same family had payday loan debt averaging $455 monthly. In effect, the assistance was helping the client pay for necessities like electricity or water, so that they could continue to pay off the payday lender with their other funds.

When clients were asked about their financial stress, they were generally embarrassed to admit they sought payday loans in times of emergency, and failed to understand the fees involved, which resulted in exorbitant annual percentage rates on the loans.

Statewide, we found that nearly one in three of those served in financial assistance programs used payday and auto title loans. In almost half of the cases, we found the financial stress caused by these loans led to desperation, thus leading our clients to seek additional assistance. In some cities, we were spending more than $1 million per year assisting clients trapped in these loans. The cycle of debt created by these loans prevents the very self-sufficiency families seek and violates the Christian notion of loving thy neighbor.

Catholic teaching on lending rests on the scriptural directive from God: “If you lend money to my people, the poor among you, you must not be like a money lender; you must not demand interest from them,” (Ex.

22:24. See also: Ez. 18:17, 18:8; Ps. 14:5). As Catholics, we recognize that lending practices that intentionally take advantage of anyone's desperate circumstances are unjust. Church teaching demands respect for the dignity of persons and preferential concern for the poor and vulnerable. This is expressed in the Catechism of the Catholic Church (no. 2409)[2] which states,

> Even if it does not contradict the provisions of civil law, any form of unjustly taking and keeping the property of others is against the seventh commandment: thus, deliberate retention of goods lent or of objects lost; business fraud; paying unjust wages; forcing up prices by taking advantage of the ignorance or hardship of another.

The information we learned from our ministries coupled with our teachings compels us to speak out on behalf of these struggling families.

Texas Law and Policy

When people learn about the scope of this problem they often ask, "How is this legal? Aren't interest rates capped?" Since 1891, the Texas Constitution has maintained that the maximum legal interest rate is 12 percent annually; if any contracted rate exceeded this amount, all interest on the loan was void and a borrower was only obligated to pay back the loan principal. (Constitution of the State of Texas, Article XVI. Sec. 11.[3] (1891); Senate Committee on Business and Commerce, *Texas Usury Laws and Credit Counseling Services*[4]. 2.)

However, while the constitutional limit on interest rates applies to interest charged by lenders, it does not apply to *fees* that are charged by *loan-brokers*, which are third party businesses that arrange, service, and guarantee a loan—aka payday lenders. (State of Texas v. The Money Store, *Amicus Brief filed by Texas Appleseed*[5]. 5-7.) All payments and communication with a borrower are managed by the payday or auto-title lender, but the borrower is also obligated to pay the loan-broker's fees. Thus, brokers effectively operate within a legal loophole that contradicts the principles and spirit of the Texas Constitution. Notably, Texas is the only state in the Union which permits such a lending structure.

The average payday loan debtor in Texas will borrow $460 and have an average loan term of 17 days. However, because borrowers in Texas average six loans per year, they spend 115 days—one-third of the year—in debt to payday lenders (CFPB, *Supplemental findings*[6]. 67.) Re-borrowers are the majority of this industry's customers: 64 percent of first-time borrowers end up re-borrowing; 20 percent default outright; and only 15 percent repay their loan and fees in full (CFPB, *Data Point: Payday Lending*[7]. March 2014. 26.). Our state's case is not unique: national studies indicate that 90 percent of all loan fees are paid by consumers who borrowed seven or more times and 75 percent are paid by consumers who have borrowed 11 or more times. (CFPB, *Payday Loans and Deposit Advance Products*[8]. April 2013. 22; 81 Fed. Reg. at 47874[9].)

In sum, this predatory industry receives its revenue primarily from low-income, working Texans who cannot fully repay their loans due to the excessive fees charged, despite making repeated good faith efforts to do so, including frequently paying more in fees than the original loan principal.

State Inaction

We believe Texas lending law should be consistent. The lending playing field must be leveled to ensure the market operates fairly with rules applicable to all lenders. In 2009 and 2011 the Texas Catholic Conference of Bishops joined with the Texas Baptists Christian Life Commission and the Texas Fair Lending Alliance[10], led by Texas Appleseed[11], to seek reform at the state legislature. Our goal was to close the loophole allowing unlimited fees. Knowing many of our clients depended on the initial payday loan, we did not seek to shut down the industry, but to stop the unlimited fees and repetitive borrowing so clients had a chance to repay the loan rather than refinance it. The bills we supported would have limited interest rates to the amounts allowed in other sections of the Texas Finance Code, which still allowed for rates as high as 150 percent annually. Yet the industry claimed this regulation would shut them down. They hired high-dollar lobbyists to fight the effort and donated millions of dollars to candidates during the campaign season.

From 2013 to 2017, the state passed some modest legislation to improve disclosure laws and further clarify the applicability of the federal military lending act in Texas, but meaningful reform remains elusive.

Taking Our Show on the Road:

"But blessed are your eyes, because they see, and your ears, because they hear." (Matthew 13:16)

Seeing no clear path to statewide reform and refusing to give up on solutions, we took our fight to the cities by kicking off a statewide payday lending roadshow in 2013, in part to assist local efforts at passing city ordinances for reform. As a part of the roadshow, we decided to go deeper with our survey of the impacts on clients by hosting local listening sessions to dialogue with borrowers and financial assistance case workers. We posted flyers at Catholic Charities and local United Way funded agencies asking borrowers and case workers to come talk with us about their loans so we could hear their stories directly. Few recruitment calls or formal outreach was done. Yet in city after city there were hundreds of borrowers who showed up to share their stories. The pattern of predatory behavior of the lenders was appalling.

For example, several clients in east Austin told how they took out the loans to pay for necessary dental care after horrible tooth pain. As I left the church where we held the session, I drove around the neighborhood. There was a proliferation of payday and auto title lending storefronts flooding the nearby shopping centers in this low-income neighborhood. Within three miles of this church there were four payday loan offices located adjacent to low cost dental clinics.

A church minister in Waco shared this story:

> "One particular one [client] I'll never get over. He had a car title loan and kept telling them he could not pay it. One weekend he was telling them that he was going to move into the homeless shelter so he could use his rent money to pay the loan. He told them he was putting his stuff in a storage unit. When the truck was loaded up with their TV and dressers and a lot of their items is exactly when the title lender showed up to repossess. We went through a lot of lawyers in town to try to get their stuff back. Of course, when we did get the car back, none of their stuff was there. It's written in their little articles that whatever is in the car is theirs. That one really has never gotten out of my heart."

A financial assistance worker in Fort Worth told us how the payday loan store manager sells the loans:

> "When I talked to the supervisor of a payday loan company, he explained it this way, 'The clients are paying rent. Instead of interest, they are paying rent every month on the capital they got. Every month they are paying the fees, which is rent to keep it from going to collections and to stay in good standing, but they still owe the same loan amount.' This was a personal conversation with the manager, but he said that he doesn't tell the client that, he tells them, 'Don't worry about the interest because in two weeks you are going to pay off that loan.'"

As we journeyed around Texas listening to these stories and seeing the predatory marketing and tactics of the lenders it became even more clear that lenders were taking advantage of the lack of knowledge or hardship of borrowers – exactly the practice that our Catechism condemns. A Vatican report[12] issued in 2018 elaborates on this point,

> "What is morally unacceptable is not simply to profit, but rather to avail oneself of an inequality for one's own advantage, in order to create enormous profits that are damaging to others; or to exploit one's dominant position in order to profit by unjustly disadvantaging others, or to make oneself rich through harming and disrupting the collective common good." (No. 17)

Local Action: Ordinances and Alternatives

These stories and the thousands of others we heard helped to galvanize local action. In each city where we hosted a roadshow, the local Catholic bishop joined with other faith leaders and non-profit community organizations – the institutions of civil society – support zoning and regulatory ordinances and to develop community lending alternatives. Local ordinances to provide some basic protection for borrowers were passed by more than 45 cities, including Austin, Brownsville, Dallas, Houston, Midland, and San Antonio. These ordinances have highlighted the issue locally and emboldened local advocates and legislators by galvanizing public support to bolster the state to act.

We recognize ordinances and legislation are not the only solution. We must also improve the lending environment by offering free market alternatives. Several parishes and Catholic social outreach programs in Texas worked with credit unions and other interfaith partners to develop alternative lending programs with interest rates between 3% and 20% APR. Dioceses and non-profits joined with a Community Loan Center so our own employees are able to access short-term loans at realistic rates and with realistic repayment schedules.

Washington Noticed

Our payday lending roadshow took place from 2013 to 2016, during which time we had multiple media stories and even a documentary filmmaker[13] document some of our events and the coalition work taking place in Texas.

Federally, the Consumer Financial Protection Bureau (CFPB) has the authority to regulate unfair, deceptive, or abusive loan practices. By 2016, the CFPB was in the processing of developing federal rules to address the cycle of debt created by payday loans. Staff there learned of our roadshows and asked if

Director Richard Cordray could join us at one of them to hear directly from Texas faith leaders and borrowers as the agency developed the rules. Our coalition responded to the request and actively participated in the federal rules processes while still passing local ordinances and fighting back on statewide efforts at payday expansion. The CFPB issued rules[14] in 2016 that were an excellent first step at reasonable and meaningful regulation of a predatory industry that has operated in an exploitative manner for far too long. The direct recommendations of Texans were apparent in some of the rule provisions. Unfortunately, under new leadership the agency is attempting to rollback many of the important protections we accomplished.

The Cycle Continues

Overall, this reform work has been a roller coaster of successes, near misses, and setbacks. While the wins at the local level represent critically important progress, they aren't enough. Our primary successes at the state level have been in defeating industry attempts to preempt our local ordinances and defeating sneaky amendments to further erode the modest regulation in place. For example, in the 2017 state legislative session a floor amendment to an agriculture bill on feed and grain subsidies had a phrase that prohibited local ordinances from regulated businesses licensed by the state. The word "lenders" never appeared in the bill and was never said from the microphone. But in 30 seconds the amendment passed the Texas House floor and nullified all our 40-plus local ordinances. Our advocacy coalition sprang into action to let members know what they had done and we got very little sympathy toward correcting it until we pointed out that it also nullified zoning ordinances for sexually explicit business. Legislators were not willing to go back to their districts and admit to their constituents that mistake. After a rough 48 hours of arm twisting, the Senate removed the amendment and the ordinances were saved.

After ten years of this fight, this article has presented me with the opportunity to pause and ask, is holding back expansion and defeating repeal of progress fulfilling our call to seek justice? Unfortunately, it isn't. That is why we continue in this fight. Payday lending can often feel like a David and Goliath battle. But as people of faith, we must remember this: David wins.

1. https://www.ncronline.org/blogs/francis-chronicles/francis-puts-usury-mix-social-justice-concerns
1. http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a7.htm
2. https://statutes.capitol.texas.gov/Docs/CN/htm/CN.16.htm#16.11
3. https://senate.texas.gov/cmtes/78/c510/TULCCSCh2.pdf
4. https://www.texasappleseed.org/sites/default/files/Amicus%20Curiae%20Brief%20of%20Texas%20Appleseed%20Foundation%208.1.17%20%28Money%20Store%29.pdf
5. https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/Supplemental_Report_060116.pdf
6. https://files.consumerfinance.gov/f/201403_cfpb_report_payday-lending.pdf
7. https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf
8. https://www.gpo.gov/fdsys/pkg/FR-2016-07-22/pdf/2016-13490.pdf#page=12
10. https://www.texasfairlending.org/
11. https://www.texasappleseed.org/

12.http://press.vatican.va/content/salastampa/en/bollettino/pubblico/2018/05/17/180517a.html

13. https://deidox.org/theordinance/

14.https://files.consumerfinance.gov/f/documents/201710_cfpb_final-rule_payday-loans-rule.pdf

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