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## **MADIGAN CALLS ON FEDS TO ALLOW STATES TO PROTECT MORTGAGE BORROWERS FROM UNFAIR LENDING**

### ***Attorney General Asks Justice Department to Reverse Position in Key Supreme Court Case***

Chicago - Taking advantage of the recent appointment of a new U.S. Attorney General, Illinois Attorney General Lisa Madigan has called on the U.S. Department of Justice to reverse its position in a case before the U.S. Supreme Court that could limit the ability of state attorneys general to protect people from discriminatory and predatory lending practices in the home mortgage market.

The Justice Department - under the Bush administration - backed a ruling that stripped state attorneys general of their ability to enforce state consumer protection and anti-discrimination laws against national banks, leaving those seeking home mortgages vulnerable. In a letter sent to U.S. Attorney General Eric Holder, Jr. and U.S. Solicitor General-designate Elena Kagan, Madigan asks the United States to reverse its position and follow long-established case law recognizing the authority of state attorneys general to enforce these protections.

"Given the significance of our current mortgage crisis, it is critical that states be able to regulate and enforce state and federal fair lending and consumer protection laws," Madigan wrote. "Only a comprehensive, state and federal effort will be sufficiently robust to address the wide-scale instances of fraud and discrimination that led to this crisis, and to ensure that our nation's financial system and homeowners are protected from a similar crisis in the future."

Madigan's letter asks the Justice Department to change its stance in *Cuomo v. The Clearing House Association, L.L.C. and Office of the Comptroller of the Currency*, No. 08-453, a case that stems from the New York Attorney General's attempt to investigate possible discrimination in the residential mortgage lending practices of several national banks operating in New York. A central question in that case is whether a federal bank regulator has the authority to diminish the traditional role of state Attorneys General as the primary enforcers of consumer protection and fair lending laws.

In the events leading up to the *Cuomo* case, the New York Attorney General launched a probe of the national banks after an analysis of publicly reported loan data indicated that some of the banks were issuing high-interest home mortgage loans in significantly higher percentages to African American and Latino borrowers than to white borrowers. The Office of the Comptroller of the Currency (OCC), a federal agency that is the main regulator of national banks, and a group of national banks filed lawsuits against the New York Attorney General to prevent him from pursuing his investigation and, ultimately, from enforcing state civil rights laws against national banks. The Second Circuit Court of Appeals decided in favor of the OCC and the banks, citing a 2004 OCC regulation that purports to broadly prevent states from enforcing state laws against national banks and their operating subsidiaries. As a result of that ruling, the New York Attorney General asked the U.S. Supreme Court to take up the case, with Madigan and all other 48 Attorneys General filing an amicus brief urging the Supreme Court to reverse the decision.

As the New York case made its way through the court system, the U.S. Solicitor General, serving as the OCC's attorney in the matter, supported the argument that the federal agency's regulation effectively bars a state attorney general from investigating a national bank for possible discriminatory lending practices.

Madigan's letter warns that failure to reverse the United States' position in the case could give sole authority for overseeing national banks' lending practices to the OCC, an agency, according to Madigan, with a "recent history of routinely placing industry interests before and above the interests of the public."

Madigan also cautioned that restricting oversight of national banks to federal regulators would likely encourage a recent trend in which state-licensed mortgage lenders have shifted their operations to national charters—a move that some consumer advocates perceive as an attempt to evade critical state consumer protection and civil rights laws. As evidence of this trend, Madigan pointed to her own fair lending investigation of Countrywide Home Loans, Inc., and Wells Fargo Financial Illinois, Inc. In that ongoing probe, Madigan is seeking to determine whether the two lenders engaged in discriminatory lending by placing African Americans and Latinos into costlier or less favorable loans as compared with loans sold to white borrowers of similar creditworthiness. When Madigan began her investigation, in 2008, Countrywide Home Loans and Wells Fargo Financial Illinois were both state-licensed entities and not regulated by a federal agency. Since that time, however, Countrywide has transferred its mortgage loan originations to its national thrift, which is regulated by the federal Office of Thrift Supervision (OTS), and Wells Fargo Financial became part of Wells Fargo Bank, N.A., regulated by the OCC.

In addition to calling on the U.S. Attorney General and the Solicitor General-designate to reverse the United States' position in the Cuomo case, Madigan asks that they review and work to roll back recent federal regulations and policies that have sought to limit state oversight of national banks. "In light of the current financial crisis, it is of utmost importance that all regulators, state and federal, be able to enforce the laws that protect our citizens," Madigan wrote. "It is illogical to stymie state enforcement of laws intended to protect the citizens who have been so gravely injured by the unfair practices of many participants in the home mortgage industry."

-30-

[Return to February 2009 Press Releases](#)

