

An Open Letter to the Honorable Senate President Stanley Rosenberg and Members of the Massachusetts Senate Regarding Senate 1981

September 17, 2015

As leaders of communities of color, we ask you to consider how **Senate #1981: An Act "Clearing Title" to Foreclosed Properties** will codify illegal, racially discriminatory lending practices and cause additional harm to our communities of color. Not only would Senate 1981 ratify the lending practices that have ravaged many communities in our state, *it specifically codifies waivers for illegal practices which differentially harmed communities of color*. This bill is now in front of the Senate but it should not be made into law. We ask that you either substitute language that will result in true clearing of title with justice to communities of color or stop this bill.

Senate 1981 dramatically shortens the centuries-old time limit during which one can sue to get property back if illegally taken. It would go from 20 years to 3 years for foreclosures in the future and *a mere one year for the over 68,000+ households that have been foreclosed already*.

Targeting of Subprime Mortgages to Borrowers of Color Led to Earlier Foreclosures

As you know, a much higher percentage of subprime mortgages were targeted at communities of color. Depositions and reports from workers at subprime lenders state that such mortgages were specifically referred to as "mud people" or "ghetto" mortgages and other reprehensible terminology. These terms were an expression of intentionally targeted marketing practices to snag borrowers of color – brokers were rewarded for ramping up home values.

Numerous examples exist where brokers from particular language minority groups were heavily recruited, then guided through strategies to market deep into their own language minority communities. Initial lawsuits against Fremont and Option One were landmark cases for the country, exposing the illegal subprime practices of the mortgage industry. Settlements have exposed the incentivization of subprime mortgages with resultant special, worse harm to borrowers of color. *Yet, the majority of subprime mortgages continue disproportionately to impact communities of color.*

More recent studies have shown that borrowers of color are far less likely to get loan modifications even though the Supreme Judicial Court outlined this very remedy in its Fremont decision, stating sub-prime mortgages are illegal under Massachusetts law.

Because a higher percentage of those foreclosed early on in the foreclosure crisis were subprime mortgage borrowers and thus people of color, Senate 1981 has a racially biased impact. It limits these borrowers to one year only to sue to get their home back whereas those who are foreclosed in the future will get three years. Now and going forward, foreclosures are overwhelmingly prime mortgages provided predominantly to Whites. Senate 1981 will specifically penalize the very same communities that were targeted for racially discriminatory

practices and illegal types of mortgages. It provides more protections for those still in their homes; again disadvantaging those foreclosed earlier. It protects those still to be evicted in Housing Court but would require those foreclosed earlier to use the disadvantageous procedures of Superior and Land Court.

We believe it is not your intent to further harm those enticed into illegally discriminatory loans. We believe your goal is improved justice for communities of color; as such, S1981 is not an option.

Massachusetts Now has the Largest Divide in Homeownership between Whites and People of Color in the U.S. in Direct Violation of Constitutional Fair Housing; S1981 will Exacerbate It!

Massachusetts ranks 50th with the largest disparity in the homeownership between white folks and people of color. Our state is bottom of the heap! This bill would codify and allow those illegal, subprime lending and foreclosure practices that have exacerbated this situation over the last 15 years. It will make it almost impossible for communities of color to repair the illegalities perpetrated during those foreclosures. Passage of S1981 is a clear violation of national fair housing laws, state fair housing laws and state constitutional property rights, especially those of people of color; such violation is immoral. As the most recent Demos/Brandeis study pointed out, addressing homeownership disparities would accomplish the largest policy repair to the wealth gap between white households and households of color. Eliminating the racial disparities in homeownership rates would shrink the black/white wealth gap by 31% and the Latino/white wealth gap by 28%. Equalizing the return on investment in homeownership would shrink the black/white wealth gap by 16% and the white/Latino wealth gap by 41%. Reversing this homeownership and concomitant wealth gap between white and people of color rests in the hands of Massachusetts policy makers. When you vote against S1981, you show your commitment to ending these illegal disparities.

Vast Amount of Household Wealth Lost in Foreclosures Already Left Massachusetts

The 68,000+ households who have been foreclosed conservatively represents \$20-\$40 billion in wealth pillaged from their communities. The vast majority of these mortgages are held by national and international financial institutions. That wealth has gone out of state. ***A significant percentage of those who lost wealth to foreclosures came from communities of color in Massachusetts. That wealth can only come back through lawsuits brought by the wronged homeowner.*** Our homeowners, our neighborhoods, our communities, our state need as much of that wealth back as possible. The financial industry must not be absolved of accountability for their unjust procedures.

The vast majority of subprime mortgages were foreclosed between 2005-2009. It will take an estimated 2 to 3 generations to recoup the 66% median wealth loss from Latino households; the 54% median wealth loss from Black households; the 54% median wealth loss from Asian households between 2005-2009 unless we insure these mostly illegal takings can be reversed.

Timing of Historic Removal of Rights to Recoup Property Disparately Harms Communities of Color

There is an even deeper, discriminatory influence in this legislation. Historically, when communities of color have exerted their rights and begun to win at a cause, the establishment responds by proposing system change that denies the communities (and similarly situated Whites) from exercising established, hundreds-years-old rights. In this way, Senate 1981 remains unfair even if the shortening of the time period to sue were uniformly broadened to three, four or six years regardless of the timing of a foreclosure. That period would still disproportionately penalize borrowers of color who are finally accessing otherwise centuries' old constitutional property rights.

The turn of the 20th century marks a turning point in history. Households of color were finally creating wealth through homeownership. For the first time in US history, this stabilized and grew the wealth of our communities. Passing Senate 1981 would end this unique, historic period, by curtailing the rights of all homeowners and particularly homeowners of color. It is unjust; it creates disparate harm to communities of color. Denying homeowners of color the ability to reverse the illegal practices and gain restitution for such illegal acts creates a policy that will memorialize such disparate harm.

Senate 1981 Curtails Homeowners' Private Right of Action:

Senate 1981 strips homeowners of their private right to take action in response to illegal foreclosure of their property. These homeowners, from communities of color and more broadly, must retain their rights. They must have access to adequate legal redress. Denying them the ability to sue to regain title to their illegally foreclosed home is not justice. The continuing Supreme Judicial Court decisions starting less than 5 years ago and research into foreclosure deeds at Registries of Deeds have shown many thousands of the state's foreclosures to be illegally carried out and therefore void by operation of law – void the day the illegal foreclosure happened.

We, the undersigned, represent communities across Massachusetts who have been disproportionately harmed in the current foreclosure crisis. Our communities will be disproportionately harmed again if Senate 1981 becomes law. We ask you to stop this bill.

Sincerely,

/s/ Juan M. Cofield, President
NAACP, New England Area Conference
Representing the following Branches in Massachusetts:

Amherst Area Branch
Berkshire County Branch
Boston Branch
Brockton Branch
Cambridge Branch

/S/ Charles J. Ogletree, Jr.
Executive Director
Charles Hamilton Houston Institute for Race & Justice
Harvard University

/S/ Horace Small
Executive Director
Union of Minority Neighborhoods

Cape Cod Branch
Martha's Vineyard Branch
Merrimack Valley Branch
Mystic Valley Branch
New Bedford Branch
South Middlesex Branch
Springfield Branch
Worcester Branch

/S/ Mel King
Senior Statesman & former State Representative
Boston, Massachusetts

/s/ Marvin Martin
Executive Director
Greater Four Corners Action Coalition

/S/ Tito Jackson
City Councilor, District 7
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/S/Dana Rebeiro
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/S/ Lydia Lowe
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/s/ Robert Terrell
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/S/ Magalis Troncoso
Executive Director
Dominican Development Center

/S/ Gladys Vega
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/S/ Jass Stewart
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/S/ Sarai Rivera
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