

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On "Mandatory Mediation Programs:
Can Bankruptcy Courts Help End the Foreclosure Crisis?"
Subcommittee On Administrative Oversight And The Courts
Rhode Island Housing, Providence, Rhode Island
October 28, 2010

I thank Senator Whitehouse for chairing today's hearing and I thank the witnesses for their testimony. This is a critical topic in these tough economic times.

Our Nation is facing an unprecedented foreclosure crisis. Recent estimates predict that by the end of 2010, over one million homes will have been lost to foreclosure. This is on top of the 900,000 homes that were lost in 2009. These losses greatly affect hardworking Americans and their families.

To add insult to injury, it is becoming apparent that there are widespread problems relating to the documentation and procedure in many foreclosures. Judges, sheriffs, and State Attorneys General from across the political spectrum are now asking important questions, and are mobilizing on behalf of homeowners. The Attorneys General of all 50 states have begun investigations to determine the extent of these failures and whether banks have acted with incompetence, sloppiness or fraud.

Since the beginning of the housing market collapse, I have sought to provide Federal prosecutors with the tools they need to combat fraud perpetrated on Americans, whether in the mortgage market or elsewhere. I was heartened when the President signed the Fraud Enforcement and Recovery Act, legislation I authored in 2009, and I understand that it is already helping in the fight to protect Americans as we move forward. And I worked with Senator Dodd to ensure that the Wall Street Reform legislation contained appropriate measures to protect whistleblowers and to prevent fraud in the financial markets. But I am especially troubled by recent developments related the foreclosure process for so many Americans. I have written to Attorney General Holder to ask him if he needs more help from Congress to investigate and prosecute fraud and misconduct in the foreclosure process. I know the Attorney General is focused on this crisis and trust that he will tell us if more help is needed.

Officials at the Federal, state, and local level are also working hard and innovating in response to the foreclosure crisis. The state court system in New York is now requiring lenders' attorneys to

affirm that foreclosure documentation is accurate and truthful, under penalty of judicial sanction. The Vermont legislature has also taken action to require mediation between the lender and the debtor before foreclosure. Chief Judge Colleen Brown in the Vermont Bankruptcy Court, like the state judiciary in New York, is now carefully scrutinizing the documents and representations put forth by lenders' attorneys involved in foreclosures and requiring more than just unsworn, blanket representations. I commend the Vermont state legislature, Chief Judge Brown in Rutland, the New York state judiciary, and others who are stepping up and demanding accountability.

And, as this hearing will illuminate, bankruptcy courts in several districts have now implemented mandatory mediation programs between homeowners and lenders as part of the bankruptcy process. Judge Brown's court in the Vermont district, two Federal districts in New York, the district of Rhode Island, and the Central District of Florida have all put in place loss mitigation programs to help homeowners and lenders reach mutually beneficial agreements. I am encouraged by what has been done so far.

From what we have heard, this mediation is working. Every American family that we can help to stay in their home and find a path to financial stability is progress toward an end to the crisis. And every mortgage that continues to perform will only help our national economy. The bankruptcy courts are essential and are playing an active role. The courts that have implemented loss mitigation programs are leading the way in innovating sensible practices to ensure fair dealing, and to encourage the parties to reach mutually beneficial resolutions.

Law enforcement officers are playing a role as well. In Illinois, Cook County Sheriff Tom Dart has refused to evict anyone being foreclosed on by the three national banks at the heart of the foreclosure scandal until he can be assured that the documentation is sound. I commend Sheriff Dart for demanding accountability of those who seek to evict financially struggling homeowners and accuracy on behalf of the citizens he serves as a law enforcement officer.

State legislatures are also responding to the foreclosure crisis by enacting laws designed to mitigate the effects of widespread foreclosures. In 2009, 33 states and Puerto Rico enacted laws to help citizens cope with the crisis. The states have acted to create safeguards and certainty for citizens facing foreclosure and have enacted laws to try to bring homeowners and lenders together to see if modification is possible. Common sense would suggest that it is more beneficial for a bank to work with a homeowner to reduce interest rates and help the homeowner maintain a manageable payment schedule rather than initiate a foreclosure.

Unfortunately the good ideas of Senators and Representatives that will help Americans swept up in this crisis have been opposed at every turn by the banking industry. In 2008, after a hearing and lengthy debate, the Judiciary Committee reported legislation proposed by Senator Durbin that many bankruptcy judges, economists, academics, and consumer advocates agreed would have a substantial impact on helping financially distressed Americans remain in their homes. The Helping Families Save Their Homes in Bankruptcy Act of 2008 was vehemently opposed by the American Bankers Association and others in the financial industry, and regrettably it failed to pass.

I commend the state legislatures, bankruptcy judges, state attorneys general, and law enforcement officials are doing what they can, within the law, to provide fairness not just to

Americans in need, but to support our broader economy by preventing the havoc that results from a foreclosure. These officials know how devastating this process is for families, communities, and local economies. I commend them and I am pleased that this hearing will shine some light on the thoughtful approach that has been taken in Rhode Island, Vermont, New York, and Florida. I believe Federal lawmakers can learn from these innovations. Where there is success, Congress would be right to do what it can to build upon this success and to support those who are on the front lines dealing with these terrible circumstances.

I look forward to reviewing the testimony of today's witnesses and to working with Senator Whitehouse as Chairman of the Judiciary Committee's Subcommittee on Administrative Oversight and the Courts to find ways the Congress can play a role in helping Americans emerge from this crisis.

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