

Massachusetts v. Fremont: PREDATORY LENDING AND THE CREATION OF AN EXTRAORDINARY *EX POST FACTO* SUITABILITY STANDARD

By Wayne van Rooyen[†]



I. INTRODUCTION

On October 4, 2007, Martha Coakley, Attorney General for the Commonwealth of Massachusetts, filed suit against subprime mortgage lender Fremont Investment & Loan and its parent company Fremont General Corporation (“Fremont”).¹ The suit alleged that subprime loans Fremont originated violated Massachusetts’ consumer protection statute and the spirit of Massachusetts’ Predatory Home Loan Practices Act because the lender ignored the homeowners’ inability to repay their mortgages.² The Massachusetts Superior Court agreed and ordered Fremont to discontinue foreclosure on any loans that were “presumptively unfair” and ordered the lender to renegotiate the loan terms with struggling borrowers thereby creating an extraordinary *ex post facto* suitability standard.

II. BACKGROUND

A suitability standard can be defined as an appropriateness test wherein a lender assesses the borrower’s ability to repay the loan the borrower is offered. Suitability standards were not used in the mortgage industry until after the enactment of the Home Ownership and Equity Protection Act of 1994 (“HOEPA”), which amended the Truth in Lending Act to protect borrowers of high-cost subprime loans.³ HOEPA, however, was largely ineffective at preventing predatory lending because very few subprime loans triggered its provisions.⁴ In an effort to close these gaps, individual states began enacting their own anti-predatory

lending laws that included suitability standards, but most of these state laws would later be preempted by federal banking laws.⁵ In the wake of the subprime crisis, there has been resurgence in anti-predatory lending laws and related suitability standards.

A. Current Legislative Suitability Standards Have Grown Out of Response to the Subprime Crisis

Both the federal government and state governments have responded to the subprime crisis with legislation incorporating suitability tests. The federal government’s response includes a number of legislative proposals that create additional guidelines for mortgage loan underwriting, most of which require lenders to assess the borrower’s ability to make his/her mortgage repayments.⁶ States have also responded by creating new lending laws or amending their predatory lending laws to include some type of suitability standard.⁷ For example, Minnesota’s new mortgage originator statute requires a suitability test and prohibits providing loans that have no tangible net benefit to the borrower.⁸ While Massachusetts’ consumer protection law did not previously include a suitability standard, new amendments created a defined suitability standard for all loans and not just the high-cost loans that the Predatory Lending Home Practices Act regulates.⁹

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B. Judicially Created Suitability Standards are Becoming More Common as a Result of the Subprime Crisis

Another consequence of the subprime mortgage crisis has been an increase in subprime suits in which the plaintiffs argue for bench-made appropriateness tests.¹⁰ In June 2008, Illinois challenged the lending practices of Countrywide Mortgage Corporation (“Countrywide”) as violating its unfair and deceptive practices laws.¹¹ The Illinois Attorney General argued that

Countrywide's expansion in its effort to securitize mortgages forced the lender to lower its underwriting standards which resulted in borrowers obtaining loans for which they were not qualified. The State of California and the City of San Diego have also independently filed suit against Countrywide making suitability claims that the lender was deceptive in originating loans that it knew its borrowers could not afford.¹²

III. ANALYSIS

The Massachusetts Superior Court held that Fremont's loans were "presumptively unfair" if they met all four of the following conditions: 1) the loan included a two or three-year adjustable rate; 2) the introductory rate was more than three percentage points lower than the fully indexed rate to be paid after the introductory rate expired; 3) the borrower's debt-to-income ratio exceeded fifty-percent at the time of the loan if the debt was measured by the fully indexed rate; and 4) if the loan-to-value ratio was 100 percent, or if the loan carried a substantial prepayment penalty or a prepayment penalty that extended beyond the usual prepayment period.¹³ Because it used specific provisions as a threshold, the Massachusetts court has fashioned a standard more closely analogous to the requirements of a state, high-cost mortgage law.



High-cost mortgage laws were introduced to prevent predatory lending by triggering a suitability test if the thresholds were met or exceeded. In *Fremont*, once the requirements were met, the court then correctly shifted the burden to Fremont to show that the loans the company originated were not unsuitable for the individual borrowers.¹⁴ The *Fremont* test, however, is dissimilar to general mortgage suitability standards, which are more akin to Minnesota's recently enacted requirement that a lender make a specific inquiry into a borrower's ability to repay their loans.¹⁵ Usually suitability tests are a one-step test in which the lender evaluates a borrower's ability to repay a loan, whereas the Fremont test is a multipart test that first looks to the terms of the loan and then the borrower's ability to repay.

The first, second, and fourth prongs of the *Fremont* test share some similarities with various threshold tests established in high-cost loan statutes.¹⁶ A loan is classified as presumptively unfair if, under the first prong, the loan is an ARM with an introductory period of three years or less.¹⁷ Under the Massachusetts Predatory Lending Home Practices Act, an ARM that has an interest rate eight percent above the yield on United States Treas-

ury securities with comparable maturity period as the mortgage is designated a high-cost loan.¹⁸ Only after this threshold is met is the lender required to make a suitability determination. North Carolina uses a similar calculation to regulate its rate-spread mortgages but only allows a three percent difference between the loan rate and the U.S. Treasury yield. Rate-spread mortgages also trigger North Carolina's suitability test, which requires a reasonable presumption of the borrower's ability to pay.¹⁹

The second prong labels a loan as presumptively unfair when the introductory interest rate is at least three percent lower than the fully indexed rate.²⁰ The Predatory Home Loan Practices Act does not include a similar provision. Like North Carolina's predatory lending statute, Massachusetts' law provides that the lender must use the rate after the introductory rate has expired to measure if the loan qualifies as a high-cost loan.²¹

The fourth prong of the *Fremont* test classifies a loan as presumptively unfair, when the loan-to-value ratio is 100 percent, or the loan carries a substantial prepayment penalty or a prepayment penalty that extends beyond the introductory period.²² The Predatory Home Loan Practices Act does not reference loan-to-value calculations, but like North Carolina's rate-spread loan law, bars all prepayment penalties for high-cost loans.²³ Illinois uses a novel approach that

requires, for any type of mortgage, a borrower must first decline a loan without a prepayment penalty before accepting a loan with a prepayment penalty.²⁴ Illinois further sets a sliding scale for prepayment penalties that is capped at three percent of the total loan amount.

Prong three of the test articulated in *Fremont* is a true suitability test that is nearly identical to Massachusetts' own high-cost lending laws, as well as other states' predatory lending laws.²⁵ This is the only prong that could stand alone as a suitability test, but here it is used as another threshold test.²⁶ Together with the other tests, the third prong creates a line that if crossed, requires the loan to be ruled as unsuitable.²⁷ This provision is phrased similarly to Massachusetts' Predatory Home Loan Practices Act suitability test, which also uses fifty-percent as the limit for an acceptable debt-to-income ratio. Both North Carolina and Illinois set a fifty-percent threshold for affordability of high-cost loans as well.²⁸ The *Fremont* decision/holding is unusual because all three states' high-cost loan statutes require this affordability test to be applied only after determining that a loan is high-cost while *Fremont* applies the tests simultaneously.²⁹

While Fremont's mortgages were legal at the time of their respective originations, it is evident that the lenders engaged in a clearly orchestrated plan to originate loans it knew borrowers could not repay.

A. The Court Decided *Massachusetts v. Fremont* Correctly

It was necessary for the court in *Massachusetts v. Fremont* to apply a retroactive suitability standard because it was the best possible method to find that Fremont's loans were unfair and subsequently to force the mortgager to negotiate with borrowers. While Fremont's mortgages were legal at the time of their respective originations, it is evident that the lenders engaged in a clearly orchestrated plan to originate loans it knew borrowers could not repay. Under Massachusetts' consumer protection laws, this behavior qualified as an unfair and deceptive trade practice.³⁰ The court's use of a fairness test allowed it to discern which borrowers were in a position to lose their homes due to an unfair loan and then force the lender to work with borrowers to preserve their homes.³¹

The judge in *Fremont* correctly stated that none of Fremont's loans originated in Massachusetts were predatory at the time of execution under federal or Massachusetts law.³² These mortgages did not trigger thresholds in the Predatory Home Practices Act or violate HOEPA or any other Massachusetts or federal lending law. The Attorney General, however, correctly alleged that Fremont's mortgages were *de facto* high-cost loans and therefore should be regulated by the Predatory Home Loan Practices Act.³³ In the end, the court agreed with the Attorney General and used legislative intent to support its view that Fremont had violated the spirit of the law. The court accurately interpreted the pre-securitization mortgage industry when it held that the legislature could not have imagined that the type of loan Fremont made would not be a high-cost loan based on the high level of risk associated with these loans.³⁴ Massachusetts courts have not applied the standard developed in *Fremont* to any other lenders since the decision, but with foreclosure rates showing no sign of slowing, it is only a matter of time before another lender is targeted under this new standard.

Banking industry supporters have opposed this decision and have based their critiques on the fact that Fremont followed all of Massachusetts' lending laws.³⁵ These groups have argued that a lender should not be forced to restructure its financial products *ex post facto*. Fremont, however, demonstrated a pattern and practice of making loans to borrowers who could not afford them in order to support the company's expansion in the securitization market.³⁶ While the Predatory Home Loan Practices Act might not have directly applied, the court was correct to assert

that under Massachusetts' consumer protection laws, the lender's practice of creating a product doomed to fail was unfair.³⁷ Critics of the Fremont decision also claim that Fremont did not mislead or hide the rate increases from its borrowers, and maintain that borrowers were fully aware of the terms they agreed to, including potential rate increases. While the court did not suggest that Fremont failed to make any required closing disclosures, Attorney General Coakley described borrowers who claimed that they did not understand the terms of their mortgage or were misled by Fremont's brokers.³⁸

Mortgage industry supporters also claim that the court's order might violate the Contracts Clause, Article I, § 10 of the U.S. Constitution. This clause prevents states from passing laws that interfere with a party's ability to enforce a contract because the order may impair the lenders due process rights.³⁹ However, the Contracts clause is not absolute.⁴⁰ In *Home Building & Loan Ass'n. v. Blaisdell*, the Supreme Court ruled that during a national emergency, the Great Depression, a mortgage loan could be altered by court order.⁴¹ With current national foreclosure levels exceeding Great Depression era levels, it can be expected that courts will move to similar solutions, like court ordered mortgage reformation, which were used during other financial crises.

B. The Application of Suitability Standards Will Be Beneficial to All Home Mortgages

All residential mortgages, and not just high-cost loans, should be subject to affordability requirements. This will lead to fewer foreclosures, and thus, a more sound national credit market. Reputable lenders already engage in suitability tests as part of their underwriting process; therefore, it would not be problematic for them to comply with new federal and state suitability standards.⁴² While each jurisdiction might impose variations on the method of verification, these discrepancies are slight and most standard loan applications already require these documents to be included.⁴³ These new standards, as well as more stringent underwriting requirements, might also create a fiduciary obligation between the lender and the borrower similar to the fiduciary relationship between investment brokers and their customers.⁴⁴ If these standards become a condition of qualifying for a loan, the raised lending standards may help avoid future mortgage lending crises by forcing lenders to take responsibility for their loans.⁴⁵

One proposal is the creation of a simple suitability cutoff point, like a fifty-percent debt-to-income ratio calculation, that could be easily administered by lenders. While this mimics the standard found in some high-cost loan laws, it might not be practical for other loan products, because it could limit lenders' flexibility. Notwithstanding new standards should still include a presumption of affordability at a specific debt-to-income level to protect lenders from borrowers with poor money management skills and to protect borrowers from predatory lenders who ignore borrowers' ability to pay their debts.



Instituting a standard of loan affordability will make it less likely that the cycle of high levels of foreclosure and a resulting financial crisis will repeat because repayment ability would have been determined during the mortgage underwriting process.⁴⁶ Also, mortgage-backed securities buyers will have a lower risk of exposure, and increased investor security might lower the chance of future credit shortages.⁴⁷ Banking advocacy groups have responded to this theory by claiming that instituting suitability standards will have severe unintended consequences, like limiting access to credit.⁴⁸ Current data, however, has not shown a correlation between areas with strong anti-predatory lending statutes and related suitability tests with a lower level of credit access.⁴⁹ According to a pro-consumer advocacy group report, compared to states without anti-predatory lending laws, Massachusetts saw a twenty-nine point reduction in loans with abusive terms and less than one percent change in loan volumes when it instituted its anti-predatory lending laws.⁵⁰ In contrast, over the same time period, Minnesota, which had a weaker predatory lending statute at the time, saw only a one and a half point reduction in loans with abusive terms.⁵¹

IV. CONCLUSION

The creation of a court-imposed retroactive suitability standard was necessary to effectively deal with the high rate of default of Fremont's subprime loans. Suitability standards can be an effective protection mechanism for borrowers and the market, therefore, lending laws should require a suitability standard to be applied to all residential loan products as an effective method to prevent future credit crises.⁵² The federal government should allow individual states to create their own anti-predatory lending laws, which can supersede federal provisions. States will be able to better protect their citizens by reacting quickly and effectively to threats in their localized real estate markets.⁵³ The federal government, however, should not shy away from intervening and should create a floor for lending requirements.⁵⁴ If states choose not to institute their own suitability standards, these federal laws would allow some recourse for home owners injured by unsuitable loans. **BLB**

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¹ See *Mass. v. Fremont Inv. & Loan Co.*, No. 07-4373-BLS1, 2008 WL 517279, at *2-3 (Mass. Feb. 26, 2008) (filing suit because Fremont chose to exercise its termination option of a prior agreement with the Attorney General's Office wherein Fremont agreed to allow review of any loan before filing for foreclosure).

² See Massachusetts Unfair and Deceptive Act and Practices Statute, MASS. GEN. LAWS ch. 93A § 2 (2006) (explaining that a violation of the Predatory Home Practices Act constitutes a violation of the Unfair and Deceptive Act and Practices Statute); Massachusetts Predatory Home Loan Practices Act, MASS. GEN. LAWS ch. 183C, § 4 (2008) (forbidding high-cost loans unless a lender reasonably believes the borrower has the ability to repay).

³ See 15 U.S.C. §§ 1601-1649 (1994); 12 C.F.R. § 226, Reg. Z (2004) (codifying a suitability standard when certain high-cost loans terms create an unreasonable risk of foreclosure by extending credit without considering the borrowers' ability to repay).

⁴ See U.S. Dep't of Housing & Urban Dev. & U.S. Dept of Treasury: A Joint Report 2 (2002), (describing how HOEPA's provisions are only triggered if a mortgage loan has an interest rate above a certain threshold or if the points and fees charged are unusually high).

⁵ See 12 C.F.R. § 34.4(a)(2004) (resolving that state laws do not apply when they interfere with a national bank's ability to make mortgage loans).

⁶ See, e.g., Mortgage Reform and Anti-Predatory Lending Act of 2007, H.R. 3915, 110th Cong § 129B(a)(1) (2007) (creating guidelines for mortgage lenders that include assessing a borrower's ability to repay).

⁷ See Beth Ambrose, *State Legislators Respond to Subprime Lending Problems*, NATIONAL BUILDING NEWS, Sep. 17, 2007, available at http://www.nahb.org/news_details.aspx?newsID=5302 (noting that by late 2007 state governments had passed over 100 initiatives in response to the lending crisis).

⁸ See MINN. STAT. § 58.13(1)(a)(25)(2002).

⁹ See Massachusetts Predatory Home Loan Practices Act, MASS. GEN. LAWS ch. 183C, § 2 (2008) (defining a high-cost loan as a transaction that is secured by the borrower's principal dwelling that meets one of the following conditions: 1) the APR exceeds the yield rate on U.S. Treasury Bonds by eight-percentage points (APR is calculated at the highest scheduled rate for loans with lower introductory APRs); or 2) excluding either a conventional prepayment penalty or up to two discount points, the total points and fees exceed the greater of five-percent of the total loan amount or four hundred dollars).

¹⁰ See Michael Orey, *Waiting for the Subprime Lawsuits*, BUSINESSWEEK, Mar. 13, 2008, at 34 (reporting that nearly half of the 300 subprime lawsuits filed in 2007 were by individuals who claimed they received inadequate information from their lender).

¹¹ See *People v. Countrywide Financial Corp. et al.*, No. 08CH22994, (Ill. Cir., Cook Co. June 25, 2008).

¹² See *California v. Countrywide Financial Corp., et al.*, No. LC081846 (Calif. Super., Los Angeles Co. filed July 17, 2008); See *California v. Countrywide Financial Corp., et al.*, No. 37-2008-00088176-CU-BT-CTL (Calif. Super., San Diego Co. filed July 23, 2008).

¹³ See *Fremont*, 2008 WL 517279, at *6 (describing that every Fremont loans in foreclosure was an adjustable rate mortgage ("ARM") with a payment shock of at least three percent, and ninety-percent of the loans were at a 100 percent loan to value ratio).

¹⁴ See *id.* at *11 (holding that Fremont could show that its loans were not unfair by proving that the mortgagee could still refinance even if their property value had diminished or if the borrower had other assets they could use to pay the loan).

¹⁵ See 2007 Minn. Sess. Law Serv. Ch.241 (S.F. 3154) (West) (amending MINN. STAT. § 58.13(1)(b)(24)(2007)).

¹⁶ See *Fremont*, 2008 WL 517279, at *11 (eliminating stated-income loans as another possible threshold because a lender cannot be held accountable for affordability when the loan product did not require proof of income).

¹⁷ See *id.* at *11 (claiming that all of the Fremont's loans would create payment shock after the introductory period because their interest rates would adjust upward three percent with the potential to go up another 1.5 percent every six months, making the mortgages unaffordable).

¹⁸ See MASS. GEN. LAWS ch. 183C § 2 (2008) (clarifying that for second position liens the interest rate threshold is any loan with an interest rate over nine-percent higher than the Treasury yield).

¹⁹ See N.C. Gen. Stat. § 24-1.1F(7)(c) (requiring a good faith effort by a lender to determine the borrower's ability to repay the loan).

²⁰ See *Fremont*, 2008 WL 517279, at *10 (generalizing that most of Fremont's loans were 2/28 or 3/27 ARMs where the rate was fixed for the first two or three years and then becomes an ARM for the remaining twenty-eight or twenty-seven years respectively).

²¹ See *id.* (announcing the court's opinion that Fremont should have expected borrowers to default once the teaser rates expired because the slowing market would not allow borrowers to refinance because of limited equity growth).

²² See *id.* (defining a "substantial prepayment penalty" as a prepayment beyond a "conventional prepayment penalty" described in ch. 183C § 2).

²³ See N.C. ST § 24-1.1A(b)(1)(i).

²⁴ See 205 ILL. COMP. STAT. 635/5-8 (2008).

²⁵ See MASS. GEN. LAWS ch. 183C § 4 (2008) (listing principal, interest, taxes, insurance, as well as any other debts as items that must be accounted for in the debt-to-income ratio).

²⁶ See *Fremont*, 2008 WL 517279, at *10 (surmising that if Fremont's underwriters had calculated the borrowers debt-to-income based on the fully indexed rate instead of the teaser rate they would have noticed those borrowers above fifty-percent would have trouble affording the payments).

²⁷ See *id.* at *9 (clarifying that there was previously no Massachusetts law which prevented a loan from being written when a buyers debt-to-income ratio met a specific threshold).

²⁸ See N.C. ST §24-1.1E(c)(2); 815 ILL. COMP. STAT. 137/15.

²⁹ See *Fremont*, 2008 WL 517279, at *11 (applying all four prongs concurrently to determine if the mortgages were unfair).

³⁰ See *id.*

³¹ See *id.* at *16 (encouraging Fremont and borrowers to work together to negotiate affordable mortgage terms).

³² See *id.* at *9 (providing an illustration to show that under Massachusetts law Fremont could have legally originated a stated income, 100 percent loan-to-value, 2/28 ARM with a prepayment penalty to a borrower with a debt-to-income ratio exceeding sixty-percent).

³³ See Complaint at 9, *Mass. v. Fremont Inv. & Loan*, No. SUCV 2007-4373 (Mass. Super. Ct. Oct. 16, 2007), 2007 WL 5180872 (alleging that when the interest rate of Fremont's loans is calculated over the introductory rate, these loans exceed the high-cost loan threshold of the Predatory Home Loan Practices Act).

³⁴ See *id.* at *11 (describing how Fremont was able to make a profit and avoid the risks by quickly selling its loans as mortgage backed securities).

³⁵ See R. B. Allensworth, et al., *Looking Back to the Future: "Presumptively Unfair" Mortgage Loans in the Case of Commonwealth of Massachusetts v. Fremont Investment & Loan, et al.*, MORTGAGE BANKING & CONSUMER CREDIT ALERT (Mar. 6, 2008), available at <http://www.klgates.com/newsstand/Detail.aspx?publication=4369> (labeling the Fremont court as activist for both its legislative intent and burden-shifting argument).

³⁶ See Complaint at 10, *Mass. v. Fremont Inv. & Loan*, No. SUCV 2007-4373 (Mass. Super. Ct. Oct. 4, 2007), 2007 WL 5180872 (hypothesizing that if Fremont had characterized its loans as high-cost, it would not have been able to sell them on the secondary market).

³⁷ See *Fremont*, 2008 WL 517279, at *9 (holding that unfairness is not measured by the deception but by the equities between the parties (citing *Swanson v. Bankers Life Co.*, 389 Mass. 345, 349 (1983))).

³⁸ See Complaint at 11, *Mass. v. Fremont Inv. & Loan*, No. SUCV 2007-4373 (Mass. Super. Ct. Oct. 16, 2007), 2007 WL 5180872 (listing a Fremont borrower who was issued a mortgage with \$7000 in payments despite the fact the borrower received all her income from social security).

³⁹ See Allensworth et al., *supra* note 35, (arguing that the *Fremont* decision violated the constitutional contract right as set out in *Richmond Mortgage & Loan Co. v. Wachovia Bank & Trust Co.*, 300 U.S. 124, 128 (1937)).

⁴⁰ See *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 435-36 (1934) (listing cases where courts modified contracts despite the assumption that courts will not interfere with contracts).

⁴¹ See *id.* at 439-40 (holding that a state's police power grants it the right to modify or abrogate a contract already in effect).

⁴² See Matt Kane, *A Federal Suitability Requirement for Home Loan*, Nov 2006, NORTHEAST MIDWEST INST., 5 (proposing that suitability standards will force lenders to follow underwriting standards and avoid asset based lending) available at http://www.nemw.org/documents/Suitability_NEMWIssueBrief1106.pdf.

⁴³ See *id.* at 4 (suggesting that suitability standards might be more flexible than other forms of anti-predatory lending legislation).

⁴⁴ See *id.* at 2-4 (dissecting the suitability standard used in securities markets, and comparing securities markets with the mortgage lending industry).

⁴⁵ See *id.* at 4 (discussing the creation of industry regulation groups for the mortgage lending industry similar to those in the securities market as another layer of protection for borrowers).

⁴⁶ *Contra* Jack Guttentag, *Suitability Standards Could Carry Unintended Consequences*, WASH. POST, Mar. 31, 2007, at F20 (arguing that suitability standards are unnecessary because the market already balances high risk and low risk products).

⁴⁷ See Kane, *supra* note 42 at 4 (discussing that suitability standards would benefit investors in securitized loans because the originator bears little of the cost of foreclosed loans).

⁴⁸ See *Suitability Standards for Mortgage Lenders*, (Arizona Mortgage Lenders Association, Phoenix, AZ), AMLA Issue Paper, Apr. 19, 2007 at 1, at 1 (theorizing that making lenders responsible for measuring a borrower's ability to repay their loans will limit access to credit because these laws would negate advances banks have made in their underwriting standards).

⁴⁹ See Wei Li & Keith S. Ernest, *The Best Value in the Subprime Market: State Predatory Lending Reforms*, (Center for Responsible Lending, Durham, N.C.), Feb. 23, 2006 at 13 (finding no limitation in subprime lending availability in any state with anti-predatory lending laws).

⁵⁰ See *id.* at 14 (showing that Massachusetts only saw less than one percent change in loan volumes after instituting anti-predatory regulations).

⁵¹ See *id.* at 12 (comparing the proportion of states with strong anti-predatory loans against states with only minimal protections to find those with stronger regulations had a lower incidence of predatory lending).

⁵² See Kenneth Harney, *Suitability is New Hot Word in Mortgage Market*, SAN FRANCISCO CHRON., Jan. 28, 2007, at K-12 (supporting the premise that if a borrower wants to enter into an unaffordable loan a mortgage broker should not agree).

⁵³ See Li & Ernst, *supra* note 49, at 3 (finding that states without anti-predatory lending laws saw a greater decrease in predatory lending than states that only relied on federal anti-predatory lending laws).

⁵⁴ See Sue Kirchhoff, *Debate Brews Over Pre-Emptying State Laws on Subprime Lending*, USA TODAY, Dec. 6, 2004 at 9A (arguing that lenders have lobbied for a federal statute that would act as a preemption ceiling for mortgages).