



SENATOR AL FRANKEN FORUM ON FINANCIAL REFORM
June 2, 2010

Testimony by Prentiss Cox
Professor of Clinical Law
University of Minnesota Law School

Senator Franken, thank you for the opportunity to participate in this forum. The market for financial services was a disaster for American homeowners and consumers before it caused a financial crisis that made everyone pay attention. There is one important point about this state of affairs: it did not happen by accident.

Following the Great Depression, we erected a strong regulatory system for financial institutions. Consumers had reasonable access to home mortgage funding and credit; the U.S. government insured deposits and supervised prudent lending. It was boring; and it generally worked. Starting in the 1980s, we made a decision as a nation to dismantle this structure.

By the 2000s, lending in residential mortgage markets and some other areas of consumer finance came to be dominated by a non-bank sector that we allowed to explode without meaningful oversight. Meanwhile, federal banking regulators had become thoroughly identified with the short-term interests of financial institutions, not the needs of average Americans who used financial services.

The Restoring American Financial Stability Act begins the process of directly addressing these fundamental problems. Consumers can look forward to a single agency with a consumer protection mission that will have the authority to enact sensible rules for financial products. The Act contains new requirements for home mortgage loans that promote prudent and fairer loan terms, including many provisions modeled on the 2007 Minnesota anti-predatory lending law.



In addition to creating for the first time a true consumer protection regulator for financial services, it establishes systems for critically needed controls over derivative trading, failing financial institutions and credit rating agencies—all parts of that non-bank financial system that operated in the shadows of our previous regulatory system. Senator Franken deserves special recognition for his work on a provision that helps root out the conflicts of interest in our credit rating system.

The reach of the Act is extraordinary. Retailers, including small businesses, will begin to see a semblance of balance in the amount of fees charged for debit transactions and new flexibility in how consumers can pay for transactions. As with the hopes for the new Consumer Financial Protection Agency, this change is about using the power of smart regulation to create fairness in a marketplace that has been lopsided in rewarding a bloated financial sector.

The financial reform debate this past year makes me recall Paul Wellstone's fight on many of these same issues. Senator Wellstone understood how seemingly arcane issues like financial reform could be the difference between working families having economic security or not. Senator Wellstone led a very lonely battle to stop the shredding of bankruptcy rights for consumers at a time when the near consensus among academics and elected officials was that regulatory protections were usually the wrong policy and financial institutions needed to be unleashed so that they could produce market innovation and efficiency,. That battle was ultimately lost and studies show that consumers fared worse in bankruptcy while credit card issuers saw profits soar in a way directly linked to these bankruptcy law changes.

Today, the consequence of this once-dominant viewpoint is manifest and the consensus view, hopefully, is shifting to a more balanced and smart approach to regulation. Nonetheless,



there are more than 1,800 registered industry lobbyists working to stop this pending legislation in the upcoming conference committee, versus about 60 lobbyists for consumer advocacy groups.

These Alamo-like odds are a little better because we have a small group of Senators like Al Franken who are taking leadership in the tradition of Senator Wellstone.