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Statement of Lauren Saunders, Managing Attorney, National Consumer Law Center on Today's Supreme Court's *Cuomo v. Clearing House Association* Decision On Discriminatory Mortgage Lending

"Today the Supreme Court interpreted an 1864 law to hold that a federal banking agency, the Office of the Comptroller of the Currency, acted unreasonably in preventing the New York Attorney General from prosecuting national banks for violations of nonpreempted state fair lending laws, but that the OCC could prevent states from seeking information to determine whether violations occurred. The Attorney General had threatened to subpoena information from several banks after federal mortgage data pointed to glaring discrepancies by race in the prevalence of high cost mortgage loans.

"This decision and the OCC's position show just how little the banking agencies have learned from the foreclosure crisis, how abysmally far our regulatory system has gone in gutting consumer protections, and why Congress must act now to protect consumers.

"The Supreme Court today has given states only a limited ability to enforce state fair lending laws. States can sue if they are confident that a violation has occurred, but cannot act responsibly by investigating first. Banks' lending practices are a black box, and states cannot peer inside to see what is really happening. The decision also leaves in place a number of other decisions and regulations, based on the same Civil War-era law, that continue to allow banks to ignore state predatory lending and other consumer protection laws.

"The *Cuomo* decision clearly points to two essential steps Congress must take, both outlined in President Obama's regulatory reform plan announced last week, to modernize consumer protection.

"First, the OCC regulation is the latest, most egregious example of why consumer protection needs to be taken away from the banking agencies, which have shown far too much interest in protecting banks over consumers. Instead, we need a new Consumer Financial Protection Agency, as President Obama has proposed and as reflected in the bill introduced by Senator Durbin and Representative Delahunt. A new Consumer Financial Protection Agency will truly look out for consumers without the conflict of interest of banking agencies focused on bank profits.

"Second, Congress must restore the ability of the states to protect their citizens. Congress passed the 1864 National Bank Act to fund the Civil War and to prevent states from driving out national banks. It was never intended to stop states from exercising their traditional role against predatory lending. All 50 state attorneys general spoke up loudly in the *Cuomo* case, and

Congress must heed their unanimous cry. States are much closer to the ground and in a much better position to see violations of law and to react quickly when abuses occur.

"The foreclosure crisis could have been averted had states and a true federal consumer watch dog been able to act against the reckless lending that wrecked havoc on our economy and on minority neighborhoods. Congress must act now so that crises like this one are never allowed to occur again."