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Perpetuating Property: Exploitative Businesses, the Urban Poor, and the Failure of Reform.

David Ray Papke

ARTICLES

PERPETUATING POVERTY: EXPLOITATIVE BUSINESSES, THE URBAN POOR, AND THE FAILURE OF REFORM

DAVID RAY PAPKE*

I. Introduction 223
II. Rent-to-Own 225
  A. Development of Commodification and the Rent-to-Own Business 225
  B. Rent-to-Own Business Model 228
III. Payday Lending 232
  A. The Rise of Payday Lending 232
  B. Business Model 234
  C. Attempts to Rationalize Payday Lending 236
IV. Title Pawns 238
  A. Significance of Vehicles for the Urban Poor 238
  B. Business Model 240
  C. Defenses of the Title Pawn Industry 243
V. Reform 245
  A. Litigation 245
  B. Legislative Action 248
  C. Can the Judiciary or Legislature Protect Poor Consumers? 250

I. INTRODUCTION

In the poor parts of American cities there is always at least one busy intersection with a dozen establishments offering rent-to-own goods, pay-

* Professor of Law, Marquette University Law School; A.B., Harvard College; J.D., Yale Law School; Ph.D. in American Studies, University of Michigan. The author thanks Casey Shorts, Marquette University Law School, Candidate for Juris Doctor, 2014, for his excellent research assistance.

day loans, or title loans. These establishments can also be found in suburbs and rural areas, and even on Indian reservations, but the concentration of these establishments in American inner-cities is unrivaled.[1]

Rent-to-own outlets, payday lenders, and title pawns target the urban poor. Their garish signs, flashing lights, and extended business hours are designed to entice the impoverished people of our inner-cities. More fundamentally, rent-to-own outlets, payday lenders, and title pawns rely on refined and time-tested business models developed to ensnare the urban poor in terribly disadvantageous transactions.

How and why do the urban poor fall victim to the unscrupulous practices of these businesses? While the urban poor have less money than members of the middle and upper classes, they do have enough money to avail themselves of rent-to-own outlets, payday lenders, and title pawns.[2] "Poverty" in the United States is relative, and does not preclude one from acquiring goods and loans.[3] Furthermore, the urban poor are often especially anxious to acquire these goods and loans and are quite willing to spend a large portion of their disposable income to obtain such items.[4] The goods and loans are welcome, not only in and of themselves, but also as symbols of desirable, albeit elusive, lifestyles.[5]

In the end, the urban poor who shop and borrow at rent-to-own outlets, payday lenders, and title pawns do in fact pay exorbitant amounts that are much higher than what they would pay for goods at ordinary retail shops or loans at the local bank.[6] As scholars have argued for al-

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1. *See* JAMES M. LACKO ET AL., FED. TRADE COMM'N, SURVEY OF RENT-TO-OWN CUSTOMERS 30 (2000), *available at* http://www.ftc.gov/reports/renttoown/renttoownr.pdf (finding "[h]ouseholds in the central cities of metropolitan areas and in non-metropolitan areas had a significantly higher incidence of rent-to-own use" than households in suburban areas).

2. *See* Shane M. Mendenhall, Note, *Payday Loans: The Effects of Predatory Lending on Society and the Need for More State and Federal Regulation*, 32 OKLA. CITY U. L. REV. 299, 308 (2007) (explaining consumers entering these transactions "are not even living paycheck to paycheck . . . these people are borrowing against their next paycheck to meet living expenses[,]" "are stretched to the limit financially," and are living below the middle-class); *see also* Jim Hawkins, *Renting the Good Life*, 49 WM. & MARY L. REV. 2041, 2058–64 (2008) (finding although rent-to-own customers have lower incomes, "nearly [eighty-four] percent had a car or truck, virtually the same percentage as the general public" and "have more access to credit than one might assume").

3. *See id.* at 307.

4. *See id.* at 307–08.

5. *See* Hawkins, *supra* note 2, at 2062 (contending that "rent-to-own goods are not primarily essential goods but instead are goods that enhance the quality of customers' lives").

6. *Id.* at 2044 ("The overall cost for the merchandise ends up doubling or tripling the cost of purchasing it outright at another store."). *See, e.g.*, DAVID CAPLOVITZ, THE POOR

most fifty years, it is routinely the case that the poor pay more than middle and upper-class Americans for comparable goods and services.[7] This includes food, housing, transportation, insurance, mortgages, and health care,[8] and it certainly includes goods and loans from rent-to-own outlets, payday lenders, and title pawns.

This article has four major sections. The first three sections examine the business models of the rent-to-own outlets, payday lenders, and title pawns, focusing particularly on the highly crafted, standardized contractual agreement that is central to each business's survival. The fourth section of this article reviews the leading efforts by courts and legislatures to limit the exploitative practices of these businesses and argues such reform efforts have been ineffective.

The business models and concomitant contractual agreements of rent-to-own outlets, payday lenders, and title pawns are so sophisticated and adjustable as to make them virtually impervious to regulation. As a result, rent-to-own outlets, payday lenders, and title pawns continue not only to exploit the urban poor, but also to socioeconomically subjugate the urban poor by trapping them into a ceaseless debt cycle. A blanket proscription of these tawdry businesses might be the only way to drive them from our midst and to eliminate their active role in the perpetuation of urban poverty.

II. Rent-to-Own

A. *Development of Commodification and the Rent-to-Own Business*

The rent-to-own business emerged in the United States during the 1960s and then grew rapidly during the 1970s and 1980s as independent "mom and pop" stores and regional outlets gave way to large national chains.[9] Two national chains, Rent-A-Center and Rent-Way, came to own half the rent-to-own stores in the country, and during the 1990s both

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Pay More: Consumer Practices of Low-Income Families 16–19 (1967) (discussing that the low-income market differs as it has to charge a "high markup on low-quality goods" in order to protect merchants from their risky credit transactions).

7. *See* DeNeen L. Brown, *The High Cost of Poverty: Why the Poor Pay More*, Wash. Post, May 18, 2009, http://www.washingtonpost.com/wp-dyn/content/article/2009/05/17/AR2009051702053. html (identifying food, housing, mortgages, transportation, health care, payday loans, insurance, goods and loans from rent-to-own outlets, and title pawns); *see also* Caplovitz, *supra* note 6 (describing the quality of being "price and quality conscious" that often allows those in higher income levels to avoid unfair deals, but is missing in many of the poor); Erik Eckholm, *Study Documents 'Ghetto Tax' Being Paid by the Urban Poor*, N.Y. Times, July 19, 2006, http://www.nytimes.com/2006/07/19/us/19poor.html.

8. *See* Brown, *supra* note 7.

9. Lacko et al., *supra* note 1, at 2–3.

of those chains doubled in size.[10] By 2006, Rent-A-Center was the largest rent-to-own company in the United States.[11] Along with its rent-to-own competitors, Rent-A-Center employs a business model well suited to exploiting members of the urban poor seeking relatively expensive consumer goods.[12] Some of the most commonly acquired goods include televisions, sofas, washers, stereos, beds, dryers, refrigerators, chairs, and dining room tables.[13] Despite sharp criticism of the industry from consumer advocates, the rent-to-own business remains highly successful today.[14]

The rent-to-own business is a resourceful participant and facilitator in the process known in academic literature as "commodification."[15] In the particular context of consumer capitalism, commodification refers to the way items of all kinds are constantly turned into "commodities."[16] Although we instantly think first of consumer goods, "commodities" need not necessarily be objects. Commodification can and does take place with services, as well as with the news, educational offerings, political positions, and even the adoption of children.[17] Commodification is a central process in consumer capitalism; as sad as it might be, many go through life thinking of themselves first and foremost as consumers of commodi-

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10. *Id.* at 3.

11. Perez v. Rent-A-Ctr., Inc., 892 A.2d 1255, 1258 (N.J. 2006); *see also Consumer Reports Investigation: Would You Pay the Equivalent of 311 Percent Interest to Own a Big-Screen TV?*, CONSUMERREPORTS.ORG, http://www.consumerreports.org/cro/money/shopping/ rentacenter/overview/index.htm (last updated June 2011) (explaining the predatory practices of rent-to-own businesses).

12. *See* LACKO ET AL., *supra* note 1, at 32 (finding rent-to-own businesses prey on individuals who are "African American, younger, less educated, have lower incomes, have children in the household, rent their residence, live in the South, and live in non-suburban areas[ ]"); *see generally* Hawkins, *supra* note 2 (analyzing the exploitive effects of the rent-to-own business model).

13. *Id.* at 52 tbl. 4.3.

14. *See* Opinion, *Rent-A-Center Is a Ripoff that Preys on the Poor*, N.Y. DAILY NEWS, Nov. 25, 2009, http://www.nydailynews.com/opinion/rent-a-center-ripoff-preys-poor-article-1.420198 (describing the protests and state actions against rent-to-own outlets and such outlets' subsequent lobbying which have protected and promoted their existence).

15. *See* Michael Ralph, *Commodity*, 27 SOC. TEXT 78, 78 (2009) (defining "commodification" as the theory by which "any entity can be objectified and reified—and set into an exchange equation" for the purpose of buying, selling, borrowing, or trading).

16. *Id.*

17. *See* David Ray Papke, *Pondering Past Purposes: A Critical History of American Adoption Law*, 102 W. VA. L. REV. 459, 469 (1999) (providing examples of services that can be commoditized, purchased, and sold).

ties.[18] This idea is captured in the familiar saying, "I shop, therefore I am."[19]

Commodification in the United States matured in the 1920s.[20] Advertising has contributed to the marketing of commodities by highlighting individual commodities' best features and by calling attention to the many commodities available in the market place.[21] More subtly, advertising, with its happy faces and cheerful outcomes, has promoted "consumption as a way of life."[22]

Modern-day retailers, advertisers, and others assure us consumer goods will bring us happiness or one sort of another.[23] For example, commercials and print advertisements attempt to make us believe that the right type of car can make us prettier or more virile and cell phones can make us more socially active. Products such as Viagra or Cialis, according to the narratives in their advertisements, provide sexual satisfaction for not only users of the products but also the users' partners. More generally, the whole process of commodification—the making and selling of commodities—is held out as the pathway to contentment and achieving a sense of well being in an unsettling world.[24] A belief in the rewards of commodities has become almost an article of faith in the context of consumer capitalism.

There is some reason to think that the urban poor might be especially desirous of the newest commodities. For starters, their lives are often less fulfilling, and as a result, they might be more likely to long for goods that, we have been told, bring contentment and happiness to those who possess them.[25] The urban poor are not without commodities to begin with,

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18. CHRISTOPHER LASCH, THE CULTURE OF NARCISSISM: AMERICAN LIFE IN AN AGE OF DIMINISHING EXPECTATIONS 72 (1979) ("Advertising promote[s] consumption as a way of life.").

19. D. Jasun Carr et al., *Examining Overconsumption, Competitive Consumption, and Conscious Consumption from 1994 to 2004: Disentangling Cohort and Period Effects*, 644 ANNALS 220, 221–22 (2012) (citing JULIET B. SCHOR, THE OVERSPENT AMERICAN: WHY WE WANT WHAT WE DON'T NEED (1999)).

20. *See* DANIEL HOROWITZ, THE MORALITY OF SPENDING: ATTITUDES TOWARD THE CONSUMER SOCIETY, 1875–1940, at 135 (1985).

21. *See* LASCH, *supra* note 18 (discussing the use of mass media to convince people they "need" to buy goods).

22. *Id.*

23. SUT JHALLY, MEDIA EDUC. FOUND., ADVERTISING & THE END OF THE WORLD 8–10 (1997) (stating the power of advertising exists in using images of social values, the real source of happiness, and linking it to material objects).

24. *See* Carr et al., *supra* note 19; *see also* LASCH, *supra* note 18, at 73 (stating consumption has become an alternative means to protesting or rebelling that consumers use change their surroundings).

25. *See* Elizabeth Sweet, *Symbolic Capital, Consumption, and Health Inequality*, 101 AM. J. PUB. HEALTH 260, 261 (2011) (arguing lower economic classes strive for the stan-

but, looking around their streets and cities, they might experience feelings of relative deprivation.[26] The acquisition of more commodities through rent-to-own outlets affords a perceived way to close the gap and claim some degree of status.

Additionally, the urban poor as a group rely less on social relations and institutions as the foundation of their identities than do the middle and upper classes. They turn increasingly to what Professor Robert G. Dunn calls "the mediated forms of signification derived from consumer goods, telecommunications, and informational technology" to craft their personal identity.[27] Indeed, lacking an abundance of social capital and deprived of rich, supportive organizations and institutions, the urban poor become especially likely to turn to commodities for existential sustenance.

B. *Rent-to-Own Business Model*

Having realized that the rent-to-own industry might be especially able to profit from this commodity lust, the Federal Trade Commission (FTC) conducted a study of over 12,000 households in hopes of gauging the nature and extent of rent-to-own use.[28] The study found that "rent-to-own customers were more likely to be African American, younger, lower income, have children in the household, rent their residence, live in the South, and live in non-suburban areas."[29] The majority of rent-to-own customers are "high credit-risk consumers."[30] Therefore, "Rent-to-own agreements are typically entered into by customers who can neither afford to purchase the goods outright nor obtain credit."[31]

At the center of a rent-to-own transaction is a well-crafted, standardized agreement that controls all features of the transaction.[32] This agreement obligates the customer to make weekly or, in some cases, monthly

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dard of decency at the next highest level by symbolically displaying social status through consumer goods).

26. *Id.* at 260 (defining relative deprivation as "a process of social comparison whereby individuals feel deprived in relative evaluation with another reference group in society").

27. Robert G. Dunn, *Identity, Commodification, and Consumer Culture*, *in* IDENTITY AND SOCIAL CHANGE 113 (Joseph E. Davis ed., 2000).

28. LACKO ET AL., *supra* note 1, at 1.

29. *Id.* at 32.

30. James P. Nehf, *Effective Regulation of Rent-to-Own Contracts*, 52 OHIO ST. L.J. 751, 752 (1991).

31. Kathleen E. Keest et al., *Interest Rate Regulation Developments: High-Cost Mortgages, Rent-to-Own Transactions, and Unconscionability*, 50 BUS. LAW. 1081, 1086 (1995).

32. *See generally Rent-to-Own Frequently Asked Questions (FAQ)*, IRENTTOOWN.COM, http://www.irenttoown.com/frequently-asked-questions#q1 (last visited Oct. 16, 2013) (providing information on rent-to-own agreements and transactions).

payments for the commodities the customer has selected.[33] Usually, the store delivers the commodities to the customer's home for an additional fee,[34] and the customer then assumes responsibility for maintenance.[35]

However, under the terms of the agreement, the store remains the owner of the commodities, and the weekly or monthly payments do not yield an ownership interest for the customer.[36] Only if the customer makes all the payments set out in the agreement or manages to pay a lump sum for some percentage of the remaining payments does the customer come to own the commodities.[37] "The prices paid for these goods, however, may be more than double their retail prices by the time the transaction has concluded."[38]

Typically, customers make their weekly or monthly payments for as long as they can; one industry representative estimated that eighty-five percent of the customers actually pay in person at the store.[39] Each visit to the store in effect includes a new decision about whether to continue because, after all, the option always exists to return the commodities and terminate the transaction.[40] If customers return weekly to make their payments, a relationship develops between store employees and the customers. This presents the stores with "a tremendous business opportunity to encourage customers to rent more products."[41]

It is worth noting that an important aspect of the rent-to-own business model requires getting customers to acquire an ever-growing number of commodities.[42] The previously-noted FTC study found that the average rent-to-own customer rented two to three items within the preceding five years.[43] Thirteen percent of the customers, meanwhile, had rented at least four items, and seven percent had rented more than five items.[44]

The stores also benefit from selling or, at least, attempting to sell, certain bundled services, such as insurance against theft and damage, that supplement the transaction agreement.[45] Additionally, the stores offer a

33. Keest et al., *supra* note 31.

34. Nehf, *supra* note 30, at 832 (stating all rent-to-own statutes allow rent-to-own businesses to charge for delivery expenses).

35. Hawkins, *supra* note 2, at 2047.

36. *Id.*; *see* Keest et al., *supra* note 31, at 1086–87 (explaining the transaction is like a lease that may be renewed at the end of each term).

37. *See id.* at 1086.

38. Nehf, *supra* note 30, at 804; *see also* Keest et al., *supra* note 31.

39. Hawkins, *supra* note 2, at 2054.

40. *Id.*

41. *Id.* at 2055.

42. *Id.*

43. LACKO ET AL., *supra* note 1, at 47 tbl. 4.1.

44. *Id.*

45. Hawkins, *supra* note 2, at 2055.

variety of preferred customer options.[46] The prospect of becoming a preferred customer may appeal to the urban poor, because they are eager to acquire commodities and the status with which such commodities are associated. Preferred customer programs, which usually require paying a fee, provide customers with extra benefits such as "theft and damage insurance[,] . . . sales and discounts, payment waivers, and the ability to reinstate a terminated agreement at any time."[47] Industry representatives report that over half of the customers take a preferred customer option.[48]

Under the basic agreement, the stores also charge a range of fees if the customer does not comply with the original terms, which include "late fees, reinstatement fees, and collection fees on delinquent accounts."[49] The fees can be and are used as a threat for the customer whose ardor for a given commodity is waning.[50] For example, a store's salesman might say, "Make your weekly or monthly payment and hold onto the commodity, but if you miss your payment you will be charged a late fee, or you may even find your name turned over to a collection agency and may lose the commodity anyway."[51]

Overall, the rent-to-own business is an extremely profitable way to take advantage of the urban poor, and the standardized, legally-binding agreement is at the very heart of it. The central challenge to the agreement involves whether it should be classified as a lease or a credit sale. A lease for personal property, such as a television, is a contract by which the owner of the property grants to the lessee the right to possess, use, and enjoy the property for a period of time in exchange for periodic payments, but without creating any debt and providing the consumer with the option of returning the good.[52] In contrast, a credit sale involves the customer as a buyer, rather than a renter.[53] With credit sales, the original

46. *Id.*

47. *Id.* at 2056.

48. *Id.* (citing the example of RentONE's CARE Plus program).

49. *Id.*

50. *Id.* (arguing these fees prey on consumer's weaknesses such as procrastination, while encouraging them to pay their rent so they do not have to forfeit their merchandise).

51. *See* Hawkins, *supra* note 2, at 2099 (explaining the significant role of procrastination in relation to the rent-to-own contract, which has roughly four times the potential of causing customers to incur fees than credit cards).

52. *See id.* at 2047, 2051 (defining a lease in the context of renting or credit sale options); *see also* Nehf, *supra* note 30, at 756 (identifying a key feature of a lease is that it does not create debt and "goods can be returned at any time with no further obligation, . . . a benefit not available . . . under traditional credit contracts").

53. *See* Nehf, *supra* note 30, at 761 ("Congress . . . [has] defined 'credit sale' to include: any contract in the form of a . . . lease if the . . . lessee *contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the*

owner usually requires the buyer to make a down payment and then collects payment for the balance in installments paid over time.[54] In return for accepting installment payments, the seller charges interest and penalty fees, which help ensure that the sale is profitable, whether or not the term is completed.[55]

With a lease as opposed to a credit sale, the operator of a rent-to-own outlet is in a much better position. He or she can simply reclaim the commodity if rental payments are not made in full, and the customer is not awarded any of the value of the good.[56] However, with a credit sale, customers have a partial, legally-recognized interest in the goods, even if they are unable to make all of their installment payments for the goods.[57] Additionally, credit sales provide customers rights to be given notice if the goods are being re-sold, to redeem the goods, and get the surplus of any goods sold.[58] Furthermore, if the conditional sale includes interest payments, as is usually the case, there are federal consumer protection laws and state usury laws requiring the disclosure of the terms and limiting interest rates.[59]

More will be said about litigation regarding this issue later in this article, but suffice it to say that even if courts recognize that rent-to-own transactions are actually credit sales with the associated regulations, the rent-to-own business is hardly doomed.[60] With more regulations, the business might become somewhat less profitable, but the business surely remains viable given the longing for commodities that has been cultivated

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property . . . and it is agreed that the . . . lessee will become, or for no other or a *nominal consideration* has the option to become, the owner of the property upon full compliance with his obligations under the contract.)."

54. Hawkins, *supra* note 2, at 2050.

55. *Id.* at 2056; *see* Nehf, *supra* note 30, at 761 (discussing that consumer representatives argue that rent-to-own agreements, although leases, are actually credit sales because "the lessee [ ] become[s] the owner of the good automatically at the end of the lease without paying any additional consideration").

56. Hawkins, *supra* note 2, at 2049.

57. *See id.* (suggesting customers will be more likely to keep possession of rented goods in bankruptcy if the transaction is a credit sale, which often allows a customer to "retain ownership . . . for less than . . . she owes").

58. *Id.*

59. *See* Truth in Lending Act of 1968, 15 U.S.C. §§ 1601–1677 (2006) (providing protection to consumers who participate in credit sale transactions); *see* Hawkins, *supra* note 2, at 2048 (subjecting rent-to-own transactions to the Truth in Lending Act if the transactions are categorized as credit sales); Nehf, *supra* note 30, at 761 (discussing the legislative climate and the consequences surrounding the debate of whether rent-to-own agreements are leases or credit sales).

60. *See generally* Hawkins, *supra* note 2, at 2108–09 (commenting that current price controls have not significantly harmed the rent-to-own industry because "the controls are high enough to allow operator to function").

among the urban poor. The local rent-to-loan outlet is a place in which the urban poor seek to satisfy their desire for relatively expensive consumer goods. Ultimately, however, the reality is that rent-to-own outlets "prey upon the financially illiterate in certain communities."[61]

III. Payday Lending

A. *The Rise of Payday Lending*

Should rent-to-own customers be dissatisfied with the selection available at the local Rent-A-Center or simply want to shop at the same stores as middle and upper-class Americans, they can turn to businesses for cash to use for the purchase of commodities. Commonly known as "payday lenders," these businesses are ubiquitous in inner-city neighborhoods. While the payday lending business did not even exist as recently as 1990,[62] there were as many as 25,000 outlets as of 2009.[63]

Payday lenders are specialized operators in what one scholar has described as contemporary society's "massive extension of consumer credit."[64] In the aftermath of the recent recession, consumer borrowing has surged, reaching its decade-high peak in March 2012.[65] Indeed, the recession and its aftermath make consumer borrowing even more likely. According to Millan Mulraine, a strategist at TD Securities in New York, "[w]hen the economy[ ] [is] not doing well, that[ ] [is] when you want the consumer to spend, and if it means borrowing to do that, then that certainly would be encouraged[.]"[66]

Prominent banks are complicit in this practice of borrowing from payday lenders. The different types of lenders in the United States are interconnected.[67] Banks such as JPMorgan Chase, Bank of America, and Wells Fargo are critical in the operation of payday lenders.[68] These banks

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61. *See* Opinion, *supra* note 14 (quoting Taharka Robinson, a consumer advocate in Brooklyn, New York).

62. Kim Christensen, *Payday Loans Mushroom Among Middle Class*, TRIBLIVE, Jan. 11, 2009, http://triblive.com/x/pittsburghtrib/business/s_606566.html#axzz2fkXVQZEH.

63. *Id.*

64. Dunn, *supra* note 27, at 123.

65. Meera Louis, *Consumer Credit in U.S. Increases by Most in 10 Years*, BLOOMBERG (May 7, 2012, 2:32 PM), http://www.bloomberg.com/news/2012-05-07/consumer-credit-in-u-s-rose-in-march-by-most-in-over-10-years.html.

66. Michelle Jamrisko, *Consumer Credit in U.S. Rises by $17.1 Billion, Fed Says*, BLOOMBERG (July 9, 2012, 3:09 PM), http://www.bloomberg.com/news/2012-07-09/consumer-credit-in-u-s-jumped-by-17-1-billion-in-may-fed-says.html.

67. Jessica Silver-Greenberg, *Major Banks Aid in Payday Loans Banned by States*, N.Y. TIMES, Feb. 23, 2013, http://www.nytimes.com/2013/02/24/business/major-banks-aid-in-payday-loans-banned-by-states.html?pagewanted=all&_r=0 (stating "major banks have . . . become behind-the-scenes allies of Internet-based payday lenders").

68. *Id.*

allow the payday lenders to withdraw payments automatically from their customers' checking accounts, even in those states that prohibit payday lending.[69]

In their defense, the traditional banks say they are merely "serving [their] customers who have authorized the [payday] lenders to withdraw money from their accounts" in order to pay off the loans.[70] In the overall scheme of things, the banks' actions might seem trivial; however, the payday customers are often operating close to their personal financial margins.[71] The withdrawals often cause overdrafts, for which substantial fees are charged.[72] According to a report from the Pew Charitable Trust, "[r]oughly [twenty-seven] percent of payday loan borrowers say that the loans caused them to overdraw their accounts . . . ."[73]

Payday lenders themselves, meanwhile, are thriving because they provide quick and easy loans for those strapped for cash.[74] In general, a payday borrower need not necessarily have a job or a "payday." A would-be borrower only needs a checking account and identification in the form of a driver's license, passport, pay stub, bank statement, or even a telephone bill.[75] Lenders do not conduct a credit check or ask for references, and, indeed, some boast of how quickly they can process a loan application.[76] For example, a payday lender may promise to get the customer "[i]n and out the door in five minutes with no hassles."[77]

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69. *Id.*

70. *Id.*

71. *See id.* (explaining processing automatic withdrawals may not appear to be a source of profit, but because many customers are already on shaky financial footing, withdrawals often cause customers to incur a succession of additional fees).

72. *Id.*

73. Silver-Greenberg, *supra* note 67.

74. *See* PEW CHARITABLE TRUSTS, PAYDAY LENDING IN AMERICA: WHO BORROWS, WHERE THEY BORROW, AND WHY 2, 4 (2012) (reporting that twelve million adults use payday loans in a given year and that a typical borrower requests a loan of $375 and spends approximately $520 on interest and fees). In their report, the Pew Charitable Trust also estimated that "payday loan borrowers spend approximately $7.4 billion annually at 20,000 storefronts and hundreds of websites . . . ." *Id.* at 2; *see also* Robert Faturechi, *Payday Lenders Giving Advances on Unemployment Checks*, L.A. TIMES, Mar. 1, 2010, http://articles.latimes.com/2010/mar/01/business/la-fi-payday1-2010mar01 (noting that the use of payday loans is increasing as people struggle to make financial ends meet).

75. *See* Creola Johnson, *Payday Loans: Shrewd Business or Predatory Lending?*, 87 MINN. L. REV. 1, 9 (2002) (applying for a payday loan usually requires several forms of identification but can be obtained quickly).

76. *Id.*

77. *Id.*

B. *Business Model*

As is true with rent-to-own transactions, a well-crafted, standardized contractual agreement is at the heart of payday loans. Under the terms of the loan agreement, a borrower provides a signed check for the amount of the loan he or she wants, plus a stipulated fee.[78] The fee is usually a percentage of the loan.[79] The lender then agrees to keep the check, knowing in advance that it is highly unlikely that funds will be available in the borrower's checking account to cover the amount of the check.[80] After all, why would borrowers even turn to a payday lender if they could simply take the funds from an existing account?[81]

The loan agreement includes a maturity date a few weeks or perhaps a month subsequent to the date on which the agreement was signed. On the date the loan matures, the borrower has three options: (1) pay off the amount of the loan with cash or a money order; (2) allow the payday lender to cash the check (usually through one of the previously-mentioned traditional banks); or (3) pay an additional fee to renew the loan.[82]

Payday lenders have a strong preference for the third option, which in effect amounts to a refinancing of the loan at the same high rate that was officially stipulated.[83] Such refinancing is known in the business as a "rollover" and is quite common.[84] According to the Center for Responsible Lending, the average payday loan is refinanced eight times.[85] Rollovers are in fact the key to generating profits in the payday lending business model.[86]

The total cost of refinancing often vastly exceeds the original loan amount, because rollovers extend the period set for repayment under the

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78. Mendenhall, *supra* note 2, at 305.

79. *Id.* at 305 ("'Fees charged for payday loans are usually a percentage of the face value of the check or a fee charged per amount borrowed—say, for every $50 or $100 loaned.'").

80. *Id.* (explaining the lender usually agrees to hold the check until the borrower's next paycheck, which is usually two weeks).

81. *See generally id.* at 329–30 (claiming consumers are easily susceptible to the dangerous and predatory practices of payday lenders because they are not aware of the alternative credit opportunities, such as, "negotiat[ing] a payment plan with creditors[,] . . . [using] credit cards or secured credit cards[,] . . . use of credit unions[,] . . . advances from employers, overdraft protection, and lines of credit from finance lenders").

82. *Id.* at 305.

83. *See id.* (explaining that refinancing the loan increases the cost of the loan, resulting in greater profits for payday lenders).

84. *Id.*

85. Christensen, *supra* note 62.

86. Mendenhall, *supra* note 2, at 309 (noting "[l]oan flipping (extensions, rollovers or back to back transactions)" account for "90 [percent] of the payday industry's revenue growth").

original agreement, and can be conducted again and again. In the previously mentioned calculations from the Center for Responsible Lending, the average payday loan indebtedness among borrowers jumps from $325 to $793 because of rollovers.[87] Additionally, Nathalie Martin, a consumer and bankruptcy law professor at the University of New Mexico who has studied payday lending, finds that "[w]hile the going rate is between 400 and 600[ ] [percent] per annum, some payday loans exceed 1,000[ ][percent] per annum."[88]

In the end, many borrowers are no more able to pay the mushrooming fees than they are able to pay back the loan.[89] At this point, payday lenders may implement various collection practices, including: harassment, threats of violence, collecting excessive damages, and threatening criminal prosecution.[90] Lawsuits have particularly grave consequences for defaulting borrowers because courts tend to award lenders excessive damages.[91]

There are several reasons payday loan borrowers might be more willing to tolerate distasteful, aggressive collections practices. First, the typical payday loan borrower tends to be financially disadvantaged.[92] Because of their poverty, the poor have limited social capital and virtually nothing in the way of back-up or emergency funds.[93] Furthermore, they have, in a sense, become accustomed to rude treatment from neigh-

87. Christensen, *supra* note 62.

88. Nathalie Martin, *Regulating Payday Loans: Why This Should Make the CFPB's Short List*, 2 HARV. BUS. L. REV. ONLINE 44, 46 (2011), *available at* http://www.hblr.org/wp-content/uploads/2011/07/Martin-Payday-Loans.pdf.

89. Mendenhall, *supra* note 2, at 310 (claiming payday lending is a predatory business model whose "lending practices put borrowers deeper and deeper in debt with little to no chance to fully repay the entire loan amount").

90. Johnson, *supra* note 75, at 78.

91. *See id.* at 78–80 (showing that courts tend to reward treble damages).

92. *See* Jane Cover et al., *Minorities on the Margins? The Spatial Organization of Fringe Banking Services*, 33 J. URB. AFF. 317, 319 (2011) (stating the urban poor are a "population that has not been well served by traditional banks"); *see also* Alice Gallmeyer & Wade T. Roberts, *Payday Lenders and Economically Distressed Communities: A Spatial Analysis of Financial Predation*, 46 SOC. SCI. J. 521, 522 (2009), *available at* http://wikis.uit.tufts.edu/confluence/download/attachments/28163599/Hoopes+Assn+1+Article.pdf (claiming "payday lending outlets serve as an indicator of community economic distress, just as they function as an exacerbating factor in that distress").

93. *See* CHRISTIAAN GROOTAERT, ET AL., WORLD BANK, MEASURING SOCIAL CAPITAL: AN INTEGRATED QUESTIONNAIRE 3 (2004) (explaining that social capital refers to the resources that individuals are able to obtain through their relationships with others). Those who occupy strategic positions in society and have ties to important groups have greater access to social capital. *Id.* at 3. The poor have limited access to social capital. *Id.* at 1 ("providing a set of empirical tools for measuring social capital[ ]" for the purpose of improving the "knowledge of the social dimensions of economic development . . . and implement[ing] more effective poverty reduction strategies").

borhood merchants and from government officials.[94] If a collections agent complains about a deadbeat debtor to a borrower's relatives or threatens to report the debtor to the police, what else is new?

C. *Attempts to Rationalize Payday Lending*

Payday lenders defend their targeting of the urban poor by saying it makes funds available for those who cannot turn to banks and traditional lenders.[95] Defenders of payday lenders know these borrowers are often impoverished and concentrated in minority neighborhoods, but according to the champions of payday lending, these people should be as free as other Americans to consume to their hearts' content.[96] It would be paternalistic to take payday lending away from borrowers who have knowingly decided to pay huge amounts for the loans they need for their purchases.[97]

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94. *See* DEEPA NARAYAN, WORLD BANK, BONDS AND BRIDGES: SOCIAL CAPITAL AND POVERTY 4 (1999), *available at* http://*info.worldbank.org/etools/docs/library/9747/narayan.pdf* (discussing that certain groups are not just excluded from access to resources but experience exclusion in all areas of society—social, economic, cultural and political).

95. Tom Lehman, *The Argument In Favor of Payday Lending*, MARKETPLACE (Nov. 9, 2012), http://www.marketplace.org/topics/your-money/commentary/argument-favor-payday-lending (claiming that "banning payday lending . . . does more harm than good by restricting credit options for households with no other recourse for loans"); Richard Eskow, *Usurious Payday Loans: Myths, Flawed Studies, and Solutions*, HUFF POST POLITICS (May 12, 2010), http://www.huffingtonpost.com/rj-eskow/usurious-payday-loans-myt_b_573542.html (asserting the argument by defenders of payday lending that "payday loans serve a group of people that can't get needed loans any other way[ ]" is a myth).

96. *See* Rebekah Coleman, *The Hidden Yet Positive Side of Payday Lending*, LOANS.ORG (June 28, 2013, 12:12 PM), http://loans.org/payday/articles/hidden-positive-side-cash-advance (stating defenders such as law professor Dr. Paige Skiba find payday loans have positive and negative aspects just like "credit cards, mortgage loans, and student loans"); Eskow, *supra* note 95 (explaining that payday lending disproportionately exploits minorities and that "lenders know exactly what they [are] doing when they trap people into a long term debt cycle . . ."); Lehman, *supra* note 95 ("[D]efending the right of individuals to make voluntary choices in the marketplace . . . [and] argu[ing] that financial resources are more productively employed when they are allocated by the voluntary forces of supply and demand."); Donald P. Morgan & Kevin J. Pan, *Do Payday Lenders Target Minorities?*, FED. RES. BANK OF NEW YORK (Feb. 8, 2012), http://libertystreeteconomics.newyorkfed.org/2012/02/do-payday-lenders-target-minorities.html (finding "blacks and Hispanics are not significantly more likely to use payday credit than are whites[ ]" and stating that the key determinant of whether they will use payday lending services is their likelihood of experiencing credit problems, not their race).

97. *See* Tim Miller, *Paternalism Out to Kill Key Loan Options*, SUN-SENTINEL, May 6, 2008, http://articles.sun-sentinel.com/2008-05-06/news/0805050210_1_payday-lending-researchers-borrower (defending payday loans and promoting the idea that adults are responsible for caring for themselves and are capable of making their own debt-management decisions). Paternalism is "the belief that adults do not possess the ability to take care of themselves" and is a driving force behind state legislatures' efforts to ban payday-lending

This pitch has been supported by some conservative economists. For example, Paige Marta Skiba has argued, "[C]redit in general allows consumers to smooth consumption over time, meaning that they borrow from future good times to help make it through current tough times."[98] Such "smoothing" is common, the argument goes, and society thinks little of it when students acquire loans to pay college bills, small business owners borrow to make business improvements, or consumers use credit to buy durable goods.[99] Yet, when payday lenders make their loans, their conduct seems immoral and usurious.[100] "While triple-digit interest rates may sound outrageous," Skiba says, "borrowing against future paychecks at such a high APR can be worth it if consumers' marginal utility is raised sufficiently to outweigh the expenditure they will make on interest."[101]

Unfortunately, business spokesmen and conservative economists do not satisfactorily acknowledge that payday lending is consciously geared to putting the urban poor into ever-larger debt as they struggle to pay their rollover fees and loans. Payday lending uses standardized loan agreements to drive borrowers into worse poverty by getting them onto what consumer law attorneys Lynn Drysdale and Kathleen E. Keest have described as "at best, a 'debt treadmill' or, at worst, a downward spiral."[102] Payday lenders know most borrowers will not pay back their loans in a timely fashion.[103] The borrowers ride the treadmill by borrowing again and again.[104]

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services. *Id.* (noting if "[u]sed responsibly, payday lending can help a borrower stave off financial calamity").

98. Paige Marta Skiba, *Regulation of Payday Loans: Misguided?*, 69 WASH. & LEE L. REV. 1023, 1026 (2012).

99. *Id.* at 1026–27.

100. *See id.* at 1027 (stating that lawmakers look down on payday loans but fail to consider the benefits of credit and that payday loans are the only form of credit available to many consumers). Skiba also claims that "there is little evidence that payday loans per se are unequivocally bad for borrowers or that consumers overall are better off without access to payday loans." *Id.*

101. *Id.*

102. Lynn Drysdale & Kathleen E. Keest, *The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and Its Challenges to Current Thinking About the Role of Usury Laws in Today's Society*, 51 S.C. L. REV. 589, 605 (2000).

103. *See* Mendenhall, *supra* note 2, at 311 (noting that, contrary to what lenders say, "payday loans are rarely one-time occurrences used for unexpected emergencies and expenses" and the borrower tends to struggle to pay off the loan within the loan period because of the excessively high interest rates).

104. *Id.* (describing that payday loans often put borrowers on a "debt treadmill" because the borrower cannot pay off the loan at the end of the loan period, and then, because of taking out another loan or loan fees, they are unable to make the next payment without taking out another loan or paying another fee—creating "a never-ending cycle putting consumers on a perpetual debt treadmill").

The net effect of this is to worsen the urban poor's already unenviable economic position. Attorney Shane M. Mendenhall concludes, "In effect, the payday loan industry is single-handedly broadening the gap between the wealthy and the poor. Because payday loan borrowers are not even able to live paycheck to paycheck, they are falling further below the poverty line."[105] To that end, the economic situation of some payday borrowers has become so bad that one scholar compares it to peonage.[106]

IV. Title Pawns

A. *Significance of Vehicles for the Urban Poor*

Many members of the urban poor have still another financing option for their commodity purchases: the title pawn. It might be located just down the block from the payday lender, and in fact, payday lenders also sometimes offer title loans.[107] Regardless of location, title pawns are prepared to provide high-interest loans if would-be borrowers can produce the title to a motor vehicle.[108] The security agreement of title pawns is geared to ensnare the urban poor, or at least that subcategory of the urban poor with motor vehicles.[109] To say the title pawn business is thriving is an understatement. In Florida, one of the states in which title pawns are most entrenched, lenders write $225 million in loans annually.[110]

A motor vehicle or, better put, the lack thereof, is a major factor in the previously mentioned pattern of the poor paying more for everything

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105. *Id.* at 330–31.

106. Zoë Elizabeth Lees, Note, *Payday Peonage: Thirteenth Amendment Implications in Payday Lending*, 15 SCHOLAR 63, 66 (2012). Peonage is "the use of laborers bound in servitude because of debt." *Dictionary – Peonage*, MERRIAM-WEBSTER, http://www.merriam-webster.com/dictionary/peonage (last visited Oct. 24, 2013). "[I]n 1865, the Thirteenth Amendment prohibited the institution of . . . slavery in the United States." Lees, *supra*, at 67.

107. *See* Paul Kiel, *How Payday Lenders Bounce Back When States Crackdown*, HUFF POST BUSINESS, (Aug. 6, 2013, 4:55 PM), http://www.huffingtonpost.com/2013/08/06/payday-lenders_n_3715116.html (finding that many payday loan lenders now offer auto-title loans to avoid regulations).

108. Nathalie Martin & Ozymandias Adams, *Grand Theft Auto Loans: Repossession and Demographic Realities in Title Lending*, 77 MO. L. REV. 41, 42 (2012) ("A title loan is a high-interest, deeply over-secured consumer loan, in which the consumer uses an unencumbered automobile as collateral for a non-purchase money loan.").

109. *Id.* at 43 (providing empirical data challenging the truth in title lenders' typical claims that they "rarely repossess borrowers' cars[,] [that] consumers understand the terms of these loans . . . and that their clientele is largely middle class"). Data from New Mexico shows "that the average borrower makes between $20,116 and $27,719" while the poverty line for a family of four is $21,200. *Id.* at 77 tbl.12.1, 85 (showing the industry's "claim that a majority of their customers are middle class[ ]" is false). Data from other states is similar, thus "discarding this middle class urban legend." *Id.* at 85.

110. Drysdale & Keest, *supra* note 102, at 600.

from food to high-priced consumer goods.[111] One study conducted in Buffalo, New York found that a major factor affecting a consumer's search for lower prices on consumer goods is "not her residential area or the poverty level per se[,] but whether or not she owns a car."[112] Buffalo's poor without motor vehicles are only twenty-five percent as likely to actively search for lower prices than either non-poor or poor households with a car.[113] Not surprisingly, most of those unable to search for lower prices end up paying more.[114]

In addition to providing the ability to comparison shop, a motor vehicle is crucial when it comes to finding and maintaining employment. The most common jobs for the urban poor are in fast-food restaurants and malls, and these jobs for the most part are not within walking distance of where the urban poor live. According to the Brookings Institution's Metropolitan Policy Program, "[i]n the nation's 100 largest metropolitan areas, nearly half of all the jobs lie more than [ten] miles from the downtown core[.]"[115] A second Brookings Institution study reveals, "[T]he typical job in major metro areas is accessible to only [twenty-seven] percent of all working age adults within an hour-and-a-half commute on public transportation."[116]

As if these figures are not sobering enough, the urban mass transit systems to which the working poor might turn are in severe decline. "A decades-long trend of prioritizing automobile use at the expense of public transportation has undercut an important means of improving the lives of low-income Americans . . . in urban areas."[117] As a result, the working poor turn to motor vehicles to get to work, and "[a] very large proportion

111. *See* Brown, *supra* note 7 (discussing why the poor pay more and the effects that not having a car have on the poor's access to lower priced consumer goods).

112. Debrabrata Talukdar, *Cost of Being Poor: Retail Price and Consumer Price Search Differences across Inner-City and Suburban Neighborhoods*, 35 J. CONSUMER RES. 457, 467 (2008) (finding that prices are two to five percent higher in poor areas and identifying one's access to a car as "a key determinant of consumers' price search patterns").

113. *Id.*

114. *Id.* The "proportion [ ] of residents without cars is considerably higher in inner-city areas, which are also characterized by an increasingly weakened competitive environment dominated by cost-inefficient corner stores[,]" and this lack of access to cost-efficient, large grocery stores is due to their limited mobility and the limited presence of such stores in their neighborhoods. *Id.*

115. Peter S. Goodman, *Unemployment Problem Includes Public Transportation That Separates Poor from Jobs*, HUFF POST BUSINESS (July 11, 2012, 7:16 AM), http://www.huffintonpost.com/2012/07/11/unemployment-problem-includes-public-transportation_n_1660344.html.

116. *Id.*

117. Patrick Moulding, Comment, *Fare or Unfair? The Importance of Mass Transit for America's Poor*, 12 GEO. J. ON POVERTY L. AND POL'Y 155, 155 (2005).

of the U.S. workers who live in poorer households (and who do have cars) do [in fact] drive to work."[118]

Given our reliance on cars to get to work, it is risky for the working poor to turn to title pawns to finance their commodity purchases. It "clouds the title" of the working poor's most valuable asset *and* jeopardizes the working poor's employment. Title pawns are hardly the only reason why so many men and women from impoverished urban areas lose what were lousy jobs in the first place, but title pawns are a contributing factor to unemployment.[119]

Thus, title loan lenders are partially responsible for some portion of the working poor becoming just poor. According to William White, senior vice president of the nation's largest pawn chain, "[s]omebody forfeits their VCR—life goes on. But you lose your car—that's a different ballgame. Now you're talking about somebody's livelihood[.]"[120]

B. *Business Model*

The distinction might be lost on the average borrower, but the agreement at the center of the title pawn business is a particular type of security agreement.[121] When entering into a security agreement, a party offers collateral to back up his or her promise to make payments that are becoming due or to pay off a loan.[122] If the party does not pay in a timely manner, the lender can claim all or at least part of the collateral.[123] The collateral is the source of the lender's security.

118. *Id.* at 165.

119. *See* AMANDA QUESTER & JEAN ANN FOX, CTR. FOR RESPONSIBLE LENDING & CONSUMER FED'N OF AM., CAR TITLE LENDING: DRIVING BORROWERS TO FINANCIAL RUIN 17 (2005) ("States that permit lending should vigilantly monitor title loan companies' operations and pursue violations[ ]" because there is "no way to determine how many loans are made, how many end in default, or how many borrowers lose their cars to repossession and, consequently, their jobs because they can no longer get to work.").

120. Joseph B. Cahill, *License to Owe: Title-Loan Firms Offer Car Owners a Solution That Often Backfires,* WALL STREET J., May 1999, http://info.wsj.com/classroom/archive/wsjce.99may.ymm.html.

121. QUESTER & FOX, *supra* note 119, at 4 ("The borrower generally keeps possession of the car during the term of the loan, but leaves the title with the lender as security for repayment of the loan.").

122. Todd J. Zywicki, *Consumer Use and Government Regulation of Title Pledge Lending,* 22 LOY. CONSUMER L. REV. 425, 433 (2010) ("The lender holds as collateral the title to the borrower's car and/or either a copy of the keys to the car or a device that permits the title lender to disable the car's ignition.").

123. *Id.* "The amount the lender will lend against the collateral varies: some studies have found that lenders typically will lend about 33% of the resale value of the automobile; others have found a typical loan value of 50–55% and even up to 100% of the value of the car." *Id.*

A classic example of a security agreement is the one between a customer and a pawnbroker; however, pawnbrokers take personal property only as collateral and do not take title to the personal property.[124] Customers in need of quick cash can bring their valuable possessions—jewelry, televisions, musical instruments, and the like—to the pawnbroker, who would provide cash while holding onto the possessions.[125] The customer can then reclaim the possessions by buying them out of hock at a higher price.[126] The pawnbroker, meanwhile, has the option of selling the possessions to a third party if reclamation is not forthcoming.[127] Historically, some thought pawnbrokers dealt primarily in stolen goods, and this presumption, along with the image of desperate debtors pleading for just a little more cash from the pawnbroker, tarnished the collective reputation of the business.[128] The business declined only to experience a revival in the present with national chains.[129]

As previously noted, under the terms of a title pawn's security agreement, the borrower does not turn over his or her motor vehicle, but rather uses the vehicle's title to secure the loan from the lender.[130] Legally speaking, title to a motor vehicle signifies that the holder has owner-

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124. Jarret C. Oeltjen, *Florida Pawnbroking: An Industry in Transition*, 22 FLA. ST. U. L. REV. 995, 996–97 (1996) (limiting "pawns" to tangible personal property).

125. *Pawnshop 101: How Pawnshops Work*, THE FUN TIMES GUIDE, http://savingmoney.thefuntimesguide.com/2010/05/pawnshops.php (last visited Oct. 25, 2013) (explaining that pawnshops provide short-term loans for those who do not have good credit). An individual takes an item to the pawnshop as collateral in exchange for money. *Id.* If the loan is paid back in time, they get their property back. *Id.*

126. *Id.* (explaining the original owner may buy back the item for whatever price the pawnbroker wants).

127. Oeltjen, *supra* note 124, at 996 ("[A] 'pawn' [is] . . . a bailment of personal property as security for payment of a debt for which the holders of the property have an implied power of sale on default."); *Pawnshop 101: How Pawnshops Work*, *supra* note 125 (explaining if the borrower does not pay back the loan in time the item becomes the property of the pawnbroker who can sell it to pay off the loan). The pawnshop usually has to keep the item for three to four months as collateral before they can sell it. *Id.*

128. Oeltjen, *supra* note 124, at 995–96.

129. *See Getting Rid of Pawn Shop Stereotypes*, SAN DIEGO LUXURY PAWN SHOP REPORT (Apr. 26, 2009), http://sandiegojewelrypawnshops.com/blog/2009/04/26/getting-rid-of-pawn-shop-stereotypes/ ("Pawn shops are often confused with buy-and-sell shops, which are [not] regulated and can often serve as a way for criminals to get fast cash for stolen goods[ ] . . . ."); *see also* Marissa Gwidt, *Pawnshops Struggle with Negative Labels, Battle Image of eBay*, DAILY ILLINI (Sept. 28, 2011, 12:00 AM), http://www.dailyillini.com/features/article_f0a5ba42-5ff4-541c-9154-38b2f7ccf82c.html (stating the negative labels of pawn shops include "shady places where crack-heads go . . . [and] unregulated, dirty stores shelved with stolen, inoperative products").

130. Zywicki, *supra* note 122, at 433.

ship of the vehicle.[131] In addition to taking the title, or at least a copy of it, some title pawns require a set of keys for the motor vehicle in order to facilitate taking possession of it should the borrower fail to make payments.[132]

It appears that the viability and size of the title loan depends more on the value of the motor vehicle offered as collateral than on the credit history of the borrower.[133] The loan can be for anything between one-third and two-thirds of the resale value of the motor vehicle, although there are instances in which title loans are made for the entire value of the car.[134]

The typical title loan is relatively small—$250 to $1,000—and repayment is usually due after one month.[135] However, as is the case with payday borrowers, customers at title pawns are frequently unable to pay back the loans by the end of the stipulated period.[136] The title pawn is then only too happy to allow the loan to roll over for another month, charging a new fee for this option.[137] In fact, unlike rent-to-own outlets, at which customers in effect renew their transaction frequently, some title pawns are able to renew the agreement automatically, and the borrower does not even have to return to the lender's office to sign additional papers.[138]

Rollovers can and do occur repeatedly, resulting in what amounts to an extraordinary interest rate as the borrower rides a "debt treadmill" into tighter and tighter financial straits. Surveys of borrowers from title pawns have found they routinely pay triple-digit interest rates, and many borrowers end up paying back appreciably more in interest than they borrowed at the outset.[139] Indeed, there are reported instances of borrowers paying over 900 percent in interest.[140] However, should borrowers real-

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131. *See* Martin & Adams, *supra* note 108 (explaining the role of the unencumbered vehicle title in securing a title loan from a lender).

132. Zywicki, *supra* note 122.

133. *Id.* (stating lenders focus on the value of the car and do not uniformly verify employment, income, or credit history).

134. *Id.*

135. *See id.* (discussing the findings of the Tennessee Department of Financial Institutions' 2008 report on the title pledge industry).

136. *See* QUESTER & FOX, *supra* note 119, at 6 (citing examples of people unable to pay back their loans).

137. *See id.* at 6–7 (quoting a study from Missouri that shows lenders make 3.5 times more from renewal loans per month than from new loans).

138. *See generally* JEAN ANN FOX & ELIZABETH GUY, CONSUMER FED'N OF AM., DRIVEN INTO DEBT: CFA CAR TITLE LOAN STORE AND ONLINE SURVEY (2005) (exploring renewal methods and availability of title loans online).

139. QUESTER & FOX, *supra* note 119, at 5 (giving examples of surveys that found triple-digit rates in Missouri, Illinois, and Florida).

140. *Id.* at n.24.

ize how outrageous the interest is, the borrowers might be hard-pressed to challenge things in court because many resourceful title pawns insert binding mandatory arbitration clauses in the security agreement in order to prevent borrowers from mounting a class action.[141]

If the borrower cannot make the interest payments, or perhaps simply wants to get off the "debt treadmill," the security agreement enables the title pawn to take possession of the motor vehicle.[142] For instance, in Tennessee, fourteen to seventeen percent of borrowers are unable to make their payments, and title pawns take possession of roughly half of the motor vehicles to which they are entitled.[143] Vehicles obtained in this manner can be routed to used car auctions or to used car lots, some of which are owned by the title lender.[144] As for the other half of the motor vehicles, many have serious mechanical problems or structural damage.[145] Some have been totaled or junked. Others quite simply were not worth that much at the outset of the borrowing process.[146] In all of these cases, the title pawn makes the business decision that the cost of taking possession and trying to re-sell the motor vehicle is greater than what might be received through a resale.[147]

C. *Defenses of the Title Pawn Industry*

As is true with rent-to-own operators and payday lenders, title pawns have their defenders. One of the arguments supporting title pawns is that the borrowers would pay even more if they had to turn to "other inferior forms of credit."[148] According to Todd J. Zywicki, a commercial and bankruptcy law professor at George Mason University School of Law and senior scholar in economics at the Mercatus Center at George Mason University, "If deprived access to title loans, many consumers would sub-

141. *Id.* at 4–5.

142. *Id.* at 4.

143. Zywicki, *supra* note 122, at 435 n.29.

144. *See* Drysdale & Keest, *supra* note 102, at 600 (explaining title lenders often obtain used car dealer licenses or simply have the cars auctioned off, and depending on the state's 'pawn' laws may not have to return any surpluses from the sale of the pawned item to the customer).

145. Zywicki, *supra* note 122, at 435.

146. *See id.* (stating that at the time vehicles are pledged, they are roughly eleven years old and have an average of 90,823 miles).

147. *Id.* (explaining repossession expenses can amount to about twenty percent of operating revenues).

148. Jim Hawkins, *Credit on Wheels: The Law and Business of Auto-Title Lending*, 69 WASH. & LEE L. REV. 535, 590 (2012).

stitute less-preferred sources of credit or risk losing access to credit altogether."[149]

Some scholars also argue that borrowers who turn to title pawns are not necessarily ensnared like unsuspecting animals in a trap. Rather, they are informed borrowers making intelligent, rational decisions to "use . . . title loans to meet short-term emergency liquidity crises . . . [or] . . . use title loans to finance small business operations."[150] However, it is hard to believe that a poor borrower who drives straight from the title pawn to Walmart, or maybe even Rent-A-Center, is using the loan to relieve a mortgage crisis or pursue a business opportunity.

A major blind spot among the defenders of title pawns is their failure to appreciate how much the industry focuses on the urban poor. Defenders of the industry might like to believe a large portion of title pawn customers belong to the middle class, or perhaps are small businessmen, but in reality, many are poor and lusting for commodities.[151] Nathalie Martin and Ernesto Longa, law professors at the University of New Mexico School of Law, have analyzed data from several sources and have found that in Illinois title loan customers earn an average annual salary of $19,808, and in New Mexico the average borrower makes between $20,116 and $27,719.[152] This reveals that most borrowers are not middle class, but rather are "near or below the poverty line."[153]

Title pawns know that their typical borrowers "can ill afford such high-cost, short-term balloon loans . . . ."[154] Poor borrowers are especially unlikely to be able to pay back the loans and are especially likely to incur extraordinarily high interest charges.[155] "Borrowers across the country find themselves sucked into a spiral of debt, paying more and more fees while the principle on the loan remains largely unchanged."[156] When al-

149. Zywicki, *supra* note 122, at 427 (claiming "there is no evidence that title lenders are earning supernormal economic profits . . ." and promoting title lending as an important source of credit that benefits the economy overall).

150. Hawkins, *supra* note 148.

151. Nathalie Martin & Ernesto Longa, *High-Interest Loans and Class: Do Payday and Title Loans Really Serve the Middle Class?*, 24 LOY. CONSUMER L. REV. 524, 550–52 (2012) (examining data from New Mexico and Illinois and finding that the average title loan customer earns approximately $20,000 annually and that alternative financial service providers are "most commonly located in low-income neighborhoods with moderate poverty").

152. *Id.* at 550.

153. *Id.*

154. QUESTER & FOX, *supra* note 119, at 6.

155. *Id.* "[M]any borrowers pay only the accrued interest charges while rolling over the principal amount into a new loan with additional exorbitant fees." *Id.* "In Oregon, [nineteen percent] of title loans that were paid off in May 2002 had been renewed six times prior to payoff." *Id.*

156. *Id.*

ready-impoverished borrowers sign the dotted line of a security agreement at a title pawn, they have not found a way out of a financial pinch, but rather have begun a process by which the pinch will become more and more painful.

V. Reform

Given the exploitative features of rent-to-own, payday lending, and title pawn business practices and their contractual agreements, they have attracted the ire of consumer advocates and community activists.[157] Litigation and lobbying in legislatures have followed, often resulting in reforms of the businesses.[158] However, although some limited victories have been won because of these reform efforts, the exploitation continues, and the victories have a Pyrrhic character which legitimizes these suspect businesses.[159]

A. *Litigation*

The most important litigation has involved defining how to conceptualize the rent-to-own, payday lending, and title pawn businesses in a legal sense. In the rent-to-own arena, litigation between Hilda Perez and a New Jersey rent-to-own outlet has attracted significant attention.[160] In 2001 and 2002, Perez launched five rent-to-own transactions at a local Rent-A-Center to acquire furniture, a washer and dryer, a DVD player, a computer, and a large television with cabinet.[161] She signed a standardized agreement for each acquisition.[162] The agreement required her to

157. *See e.g.*, Ashlee Rezin, *Consumer Advocates Say Payday Lending Worsens Debt, Call for Federal Ban*, Progress Illinois (June 7, 2013, 10:11 AM), http://www.progressillinois.com/quick-hits/content/2013/06/06/consumer-advocates-say-payday-lending-worsens-debt-call-federal-ban (examining efforts of consumer advocacy groups in Illinois to prohibit payday lenders and highlighting legislation proposed by Democratic Senator Dick Durbin to regulate the industry).

158. *See e.g.*, Paul Kiel, *Whack-a-Mole: How Payday Lenders Bounce Back When States Crack Down*, Pro Publica (Aug. 6, 2013, 9:00 AM), http://www.propublica.org/article/how-payday-lenders-bounce-back-when-states-crack-down (describing the progress and setbacks experienced by state legislatures in their efforts to restrict payday lending).

159. *See e.g.*, Jim Siegel, *Lenders Skirt State Laws on Payday Loans*, Columbus Dispatch, Aug. 7, 2013, http://www.dispatch.com/content/stories/local/2013/08/07/lenders-skirt-state-laws-on-payday-loans.html (describing how there were still hundreds of payday lending stores conducting business in Ohio in 2013, in spite of passing legislation five years prior).

160. *See* Perez v. Rent-A-Ctr., Inc., 892 A.2d 1255, 1255 (N.J. 2006) (detailing a class action lawsuit wherein the plaintiff filed suit on behalf of herself and thousands of others claiming Rent-A-Center contracts violated the Consumer Fraud Act and the Retail Installment Act by charging interest rates in excess of statutory allowances).

161. *Id.* at 1258.

162. *Id.* at 1259–60.

make weekly payments on the various goods[163] and subjected her to penalty fees if payments were not made.[164] The top of each agreement read: "THIS IS A RENTAL AGREEMENT ONLY."[165] Rent-A-Center repeated the statement and noted: "We own the property you are renting."[166]

The consumer goods Perez "rented" had a cash value of $9,301.72.[167] However, if Perez had somehow been able to make all her weekly payments on the goods, she would have paid a total of $18,613.32—a markup of over 100 percent—thanks to the payment scheme and added interest.[168] Perez stopped making payments well before she could claim to have purchased the goods,[169] although one must wonder if there was any chance she could actually "rent" the goods for long enough to ever "own" them.

Perez sued, arguing the agreements were not rental leases, but rather were retail installment contracts covered under the Retail Installment Sales Act (RISA), which she claimed imposed a thirty percent cap on interest rates for retail installment contract.[170] She lost before the trial court and the lower-level appellate court, but the New Jersey Supreme Court ruled in her favor, holding the agreement was not a rental agreement but an installment sale.[171]

Justice Virginia Long discussed at great length the manner in which the goods were sold and acquired.[172] Perez's expert witness, actuary James Hunt, calculated the annual interest rates on selected goods purchased by Perez as follows:

Washer and Dryer	79.9%
Furniture	82.7%
DVD Player	79.2% to 82.7%[173]

These figures convinced Justice Long and a majority of the New Jersey Supreme Court that the Rent-A-Center "rental" really amounted to a high-interest installment sale. Thus, they concluded that Perez's agree-

163. *Id.* at 1260.
164. *Id.*
165. *Id.* at 1259.
166. *Perez*, 892 A.2d at 1259.
167. *Id.* at 1260.
168. *Id.*
169. *Id.* (finding Perez stopped making payments in 2002 after paying $8,156.72).
170. *Id.* at 1263 ("RISA does not expressly contain an interest rate cap[ ] . . . [however,] it is the vehicle through which the legislature imposed the [thirty percent] cap in the criminal usury statute on retail installment sales.").
171. *Id.* at 1260–61, 1268, 1275.
172. *Perez*, 892 A.2d at 1265–70.
173. *Id.* at 1260.

ment with Rent-A-Center was covered by New Jersey's Retail Installment Sales Act (RISA) and was in violation of the state's criminal usury statute because the interest was higher than allowed.[174]

Decisions regarding payday lending and title pawns have not been as dramatic and pointed as the *Perez* decision regarding the rent-to-own business, but these decisions have in their own way clarified how these businesses might be conceptualized. In general, payday lending decisions have rejected the claim of payday lenders that they should be seen merely as providers of check-cashing services rather than as lenders, a claim which would free the payday lenders from limits imposed by state usury laws.[175] The U.S. District Court for the Eastern District of Kentucky, for example, found payday lending was in fact a loan-making enterprise and subject to the state's usury laws.[176] In later litigation, the Kentucky Supreme Court agreed with this interpretation.[177]

Title pawns, meanwhile, have argued that they are the equivalent of traditional pawnbrokers in hope of claiming the exception the latter have under most state usury laws.[178] As noted earlier in this article, however, while both pawnbrokers and title pawns rely on security agreements, title pawns do not actually hold the personal property as collateral as do pawnbrokers.[179] Title pawns hold only a motor vehicle's title. Hence, a number of courts have precluded title pawns from the pawnbroker exception.[180]

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174. *Id.* at 1273 ("Interpret[ing] RISA as incorporating the criminal usuary statute caps of [thirty percent]."). Retail Installment Sales Act of 1960, N.J. STAT. ANN. §§ 17:16C-1 to -16 (West 2001).

175. *See* Drysdale & Keest, *supra* note 102, at 641–42 (discussing decisions by Kansas, Virginia, West Virginia, Kentucky, and Indiana).

176. *See* Hamilton v. York, 987 F. Supp. 953, 956 (E.D. Ky. 1997) (finding the charges plaintiffs incurred were interest from short term loans and covered under Kentucky's Usury statute).

177. White v. Check Holder, Inc., 996 S.W.2d 496, 500 (Ky. 1999).

178. *See* Drysdale & Keest, *supra* note 102, at 639 (noting such efforts have not been successful).

179. *See* Martin & Adams, *supra* note 108 ("A title loan is a high-interest, deeply over-secured consumer loan, in which the consumer uses an unencumbered automobile as collateral for a non-purchase money loan.").

180. Pendleton v. Am. Title Brokers, 754 F. Supp. 860, 864–65 (S.D. Ala. 1991) (holding the defendant's title pawn business was "not a business of a bona fide pawn broker" and therefore the defendant was "not exempt from the Alabama Small Loan Act"); West Virginia *ex rel.* McGraw v. Pawn Am., 518 S.E.2d 859, 862 (W.Va. 1998) (holding a transaction that is "in reality a consumer loan with a usurious interest rate" is not a true pawn and not covered under the pawnbroker exceptions of the West Virginia Consumer Credit and Protection Act); Lynn v. Fin. Solutions Corp., 173 B.R. 894, 899 (Bankr. M.D. Tenn. 1994) (holding a title pawn "must . . . comply with all other applicable law governing the loan of money with realty as security for the loan").

B. *Legislative Action*

The various businesses discussed in this article have also been highly scrutinized by state legislatures concerned with the exploitation of the poor and the working poor, although some of these legislatures appear to be focused on "consumer affairs" rather than socio-economic inequalities.[181] A bevy of legislative feints and stabs have resulted, which have recently been summarized by Professors Susan Lorde Martin and Nancy White Huckins.[182] A majority of states have laws regulating rent-to-own transactions, most commonly requiring that rent-to-own outlets disclose the amount of each rental payment and their due date, the number of payments necessary to acquire a given commodity, and any fees that might be charged for delivery, late payments, and reinstatement of an agreement.[183] Most states also require outlets to provide either the cash price if the commodities are bought outright from the dealer or the fair market value of the commodity.[184]

The state legislatures have also tinkered in comparable ways with payday lending. In 2010, Wisconsin became the last state to enact at least some form of payday lending legislation.[185] Typically, states limit the financing fees charged in conjunction with a loan, loan amounts, and the number of rollovers within a given transaction.[186] Some states have also explicitly brought payday lenders under state usury laws, which impose limits on interest rates.[187]

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181. *See, e.g.*, Editorial, *Cracking Down on Payday Lenders*, N.Y. TIMES, Aug. 29, 2013, http://www.nytimes.com/2013/08/30/opinion/cracking-down-on-predatory-payday-lenders.html?_r=0; Erik Badia & Lukas I. Alpert, *New York Passes Country's Toughest Law on Rent-to-Own Businesses, Interest Rates Capped*, N.Y. DAILY NEWS, Aug. 6, 2010, http://www.nydailynews.com/new-york/new-york-passes-country-toughest-law-rent-to-own-businesses-interest-rates-capped-article-1.200973; Sudeep Reddy, *States to Protect Borrowers Who Turn to Cars for Cash*, WALL STREET J., July 19, 2010, http://online.wsj.com/news/articles/ SB10001424052748704746804575367250783943906.

182. Susan Lorde Martin & Nancy White Huckins, *Consumer Advocates vs. The Rent-to-Own Industry: Reaching a Reasonable Accommodation*, 34 AM. BUS. L.J. 385, 396–97 (1997).

183. *Id.*

184. *Id.* at 396.

185. *See* Patrick Marley, *Payday Lenders Back in Business with Looser Regulations*, MILWAUKEE WIS. J. SENTINEL, Dec. 9, 2012, http://www.jsonline.com/news/statepolitics/payday-lenders-back-in-business-with-looser-regulations-jt7useg-182755581.html (noting Wisconsin passed a bill limiting payday loans to fifteen hundred dollars or thirty-five percent of an individual's monthly income, whichever is less).

186. Mendenhall, *supra* note 2, at 318 (identifying typical state regulations for payday lenders).

187. *See* Mendenhall, *supra* note 2, at 319 (discussing the usefulness of usury laws in regulating payday lending and protecting consumers); *see also,* John D. Skees, *The Resurrection of Historic Usury Principles for Consumption Loans in a Federal Banking System,*

No uniformity exists among the states that impose such caps on payday loans, but it appears than an interest cap of thirty-six percent is emerging as an unofficial national standard.[188] As of 2012, seventeen states and Washington, D.C. had a thirty-six percent interest cap.[189] The percentage seems arbitrary on its surface, but it is modeled after a federal law that caps interest on loans to active duty military personnel at thirty-six percent.[190]

Title loans, like payday loans, are regulated by states by either banning them, allowing them to operate under "pawnshop exceptions," or by "authorizing and regulating them through statutes geared directly at title lenders."[191] Unlike payday loans, there is not as clear a consensus on what specific interest cap there should be with title loans, however, states are in the initial stages of establishing caps.[192]

Some states also limit the size of the loan that can be offered by a title pawn and restrict the number of rollovers or require that after a set number of rollovers title pawns must begin reducing the loan's principle.[193] The simplest limit on the size of a loan is a fixed dollar amount that would apply to all title loans regardless of the resale value of the motor vehicle for which the title is offered as collateral.[194] A common statutory amount is $2,500.[195] Some of the more innovative state laws, however, attempt to limit the size of the loan based on the borrower's ability to repay the loan.[196] This would require that the title pawn examine the borrower's

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55 CATH. U. L. REV. 1131, 1137–38 (2006) (stating state usury limits are a service to citizens because the limits prevent interest rates that are "per se too high").

188. Martin & Longa, *supra* note 151, at 525 n.3.

189. *Id.*

190. Mendenhall, *supra* note 2, at 327 (noting the Servicemembers Civil Relief Act of 2003 (SCRA) enacted limitations on lenders making "loans to military personnel and their families").

191. Hawkins, *supra* note 148, at 538.

192. *See* QUESTER & FOX, *supra* note 119, at 15 (discussing ways to establish fair and affordable loan terms). A number of states do not limit the interest rates title lenders may charge, "including Illinois, Missouri, New Hampshire, New Mexico, Oregon, and Utah." *Id.* Other states, such as Tennessee, Georgia, Mississippi, and Montana allow interest yielding around a two hundred and sixty to three hundred percent annual rate. *Id.* However, Florida has limited interest to thirty percent and Kentucky has limited title loan charges to thirty-six percent. *Id.* Kansas caps interest at thirty-six percent. Hawkins, *supra* note 148, at 576.

193. Hawkins, *supra* note 148, at 584 (highlighting that some states "limit the number of times a customer can rollover a title loan[,]" whereas other states, like Tennessee, require the lender to start reducing the principal owed on the loan after a certain number of rollovers have occurred).

194. *Id.* at 586.

195. *Id.* at 587

196. *Id.*

current and expected income, other indebtedness, employment, and credit rating to gauge the borrower's overall financial wherewithal.[197] Illinois, meanwhile, bars any loans with a single payment exceeding fifty percent of the borrower's monthly income.[198]

C. *Can the Judiciary or Legislature Protect Poor Consumers?*

Do the leading judicial decisions and the important state laws related to rent-to-own, payday lending, and title pawn businesses protect the urban poor from exploitation, or at least have the potential to protect the urban poor? One has reason to think not. This is largely because rent-to-own operations, payday lenders, and title pawns have sophisticated, adjustable business models that use core agreements which enable them to elude whatever snares well-intentioned judges and legislators set for them.

Todd J. Zywicki, a skeptic of usury regulations in general, has cogently outlined the ways businesses preying on the poor can circumvent the regulations.[199] In Zywicki's opinion, "liberal reform" invariably produces negative unintended consequences exceeding any benefits.[200] The businesses might, for example, engage in re-pricing, the process by which lenders increase the price of unregulated parts of the transaction or on related products in order to offset what might be lost to usury limitations.[201]

A rent-to-own outlet, for example, is quite willing to bundle the core transaction with insurance sales or additional fees.[202] If usury caps limit what may be charged for an installment sale, the cost of insurance could easily be raised. "The final result," Zywicki argues, "will be to vitiate many of the intended benefits of the regulation by circumventing the intended effects of the price controls. This would make consumers worse off as a group by encouraging a new pricing system that is less efficient and less transparent than that which would otherwise prevail."[203]

Additionally, businesses might engage in product substitution in order to avoid rate caps.[204] Product substitution arises when certain regulations

197. *Id.* (noting some statues make it clear this "does not require a formal credit check").

198. *Id.* at 587–88.

199. *See* Zywicki, *supra* note 122, at 427–32 (discussing three unintended consequences of usury regulations: term re-pricing, substitution, and rationing).

200. *Id.* at 427.

201. *Id.* at 428.

202. Hawkins, *supra* note 2, at 2055–56 (including preferred customer programs and behavior-driven fees).

203. Zywicki, *supra* note 122, at 429.

204. *Id.* at 430–31.

make it impossible for the lender to price its products in a way that would make the transaction economically feasible.[205] A payday lender, for example, could offer a rent-to-own arrangement or a title loan, or even operate as an old-fashioned pawnbroker, assuming the latter possibilities are unregulated.[206] Some commentators, for instance, have claimed that the growth of auto title lending in some states resulted from regulations that eliminated payday lending."[207]

Then, too, payday lenders in Wisconsin shifted to what they call "installment loans," extremely high-interest loans that are not covered by the state's payday lending regulation.[208] Some of these installment loans have annual interest rates of over 500 percent.[209] An outside observer might think borrowers would realize these loans are exploitative, but "many of the people who accept [them] are unsophisticated and unable to understand the ramifications of such loans."[210] One disappointed Wisconsin legal services attorney observes that the industry "just kind of morphs depending on the law to regulate them."[211]

In the end, rent-to-own outlets, payday lenders, and title pawns still do business and continue to focus on the urban poor more so than any other group. After its loss in the Perez litigation, Rent-A-Center agreed to pay class action plaintiffs in New Jersey $109 million to reimburse them for the amounts their payments exceeded the amount allowable under New Jersey's usury law.[212] Even in light of this huge settlement, the company seemed genuinely indifferent. For the first quarter of 2007, Rent-A-Center reported revenues of $755.3 million, and a company spokesman said Rent-A-Center would finance the settlement through its regular operating budget.[213]

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205. *Id.* at 430.

206. *See id.* (providing a similar example where a title lender is unable to price its risk sufficiently with a title loan so he offers the borrower a pawn loan, payday loan, or rent-to-own option instead).

207. *Id.* at 431.

208. Marley, *supra* note 185.

209. *Id.*

210. *Id.*

211. *Id.*

212. *$109 Million Rent-A-Center Class Action Settlement for New Jersey Customers*, WILLIAMS CUKER BEREZOFSKY ATTORNEYS AT LAW, http://www.wcblegal.com/news.php?action=view&id=18 (last visited Oct. 26, 2013) (stating the reimbursements are for customers who entered into agreements with Rent-A-Center between April 23, 1999 and March 16, 2007).

213. Michael Booth, *Suit Over 'Rent-to-Own' Agreements Settles for $109 Million in New Jersey*, N.J. L.J., May 3, 2007, http://www.law.com/jsp/article.jsp?id=900005554990&Suit_Over_RenttoOwn_Agreements_Settles_for_109_Million_in_New_Jersey&slreturn=20130823150140.

Despite their losses in the courts and regulation from the state legislatures, payday loan outlets have come to outnumber McDonald's and Starbucks stores combined.[214] In California, a state known for its progressive consumer legislation, title pawns do $20 million in business annually.[215]

Moreover, due to courtroom decisions and legislative enactments, the rent-to-own, payday lending, and title lending businesses have been legitimized. That is, while the courtroom decisions and regulatory legislation evidence some degree of willingness to police these tawdry businesses, the decisions and legislation implicitly recognize the businesses' right to continue their operations. Courts and legislatures do more than prescribe and proscribe; they also recognize and countenance. Buoyed not so much with the state's stamp of approval as the state's tacit acceptance, these suspect businesses are, at least in keeping with their own business models, doing well.

VI. Conclusion

From a legal perspective, it is tempting to say judicial decisions and legislative enactments are locked in a battle against the sophisticated contractual agreements proffered by the rent-to-own, payday lending, and title pawn businesses. However, this is not an accurate representation of the current situation. It is more accurate to say that the rent-to-own, payday lending, and title pawn businesses have found and secured their places in the contemporary economy. Their business models and standardized agreements are quite suitable, and selling commodities to the urban poor at high prices and lending money to the urban poor at extraordinarily high interest rates are viable American enterprises.

Perhaps, in this sense, we should not be surprised by the exploitation of the urban poor. The rent-to-own, payday lending, and title pawn businesses, after all, do not have a monopoly on using people and manipulating their hopes and dreams to turn a profit. They also do not have a monopoly on charging the urban poor more. One study has found a price differential between wealthy and poor neighborhoods of ten to fifteen

214. Martin & Longa, *supra* note 151, at 526.

215. *See* David Lazarus, *Lenders Levy Up to 120% Interest – Legally/Loophole Lets Firms Target the Poor, Military Families*, S.F. Chronicle, Sept. 29, 2004, http://www.sfgate.com/ news/article/Lenders-levy-up-to-120-interest-legally-2690850.php (noting because of a loophole in California law, money lenders can charge up to one hundred and twenty percent interest in addition to repossessing vehicles as collateral).

percent for everyday items.[216] One journalist characterizes this price differential as a "ghetto tax."[217]

The most troubling aspect of these businesses is that each, in its own way, consciously attempts to place the urban poor on a "debt treadmill." Profits go up when the urban poor cannot pay up. Hence, these businesses not only exploit poverty, but they increase and perpetuate it.

Should this be tolerated? Some practices so fundamentally affront our shared values that they should quite simply be prohibited. It is one thing to exploit the urban poor; it is another to systematically worsen their socioeconomic condition and subject them to greater control and subservience. In other words, we might tolerate exploitation in our market economy, but we should not tolerate subjugation. You may take people's money and the value of their labor, but you should not be able to put a permanent economic yoke on them to the point of their subordination. By deliberately making the urban poor even poorer, the rent-to-own, payday lending, and title pawn businesses do just that and should be banned.

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216. Debabrata Talukdar, *Cost of Being Poor: Retail Price and Consumer Price Search Differences Across Inner-City and Suburban Neighborhoods*, 35 J. CONSUMER RES. 457, 457 (2008).

217. Eckholm, *supra* note 7.