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Written Testimony of Andrea Bopp Stark, National Consumer Law Center

In Opposition of LD 1015/HP 651

“Establishing the Commission to Study the Foreclosure Process”

April 3, 2023

Good morning Senator Carney, Representative Moonen, and members of the Joint Standing Committee on Judiciary. My name is Andrea Bopp Stark. I am a senior attorney at the National Consumer Law Center, a nonprofit organization headquartered in Boston that uses its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. Thank you for the opportunity to offer oral and written testimony to you in opposition to LD 1015/HP 651.

One of my focus areas at NCLC is preserving homeownership and avoiding unnecessary foreclosure. Before joining NCLC I practiced law for many years in Biddeford, and represented numerous Maine families struggling to save their homes from foreclosure. I grew up in Portland and now live in Saco with my family.

As explained more fully below, we oppose LD 1015 for 3 main reasons. First, the foreclosure system in Maine was essentially on hold from March 2020 to January 2022 during the pandemic. Studying the foreclosure system during such a highly anomalous time would produce skewed results. Second, while opponents will claim that the length of Maine’s foreclosure process adds to the cost of credit and restricts access to credit for homeowners, there is no evidence supporting this correlation. Third, there was a comprehensive study done of the foreclosure process in 2014 and doing one now would not only be fruitless because of timing but also duplicative and a waste of the legislature’s valuable time and resources.

A study conducted in the highly anomalous post-pandemic era would produce skewed results. Think back to this day three years ago. It is hard to believe that three years ago today, our lives were put on pause. As the COVID-19 pandemic ravaged the country and infected millions, millions more were unable to work, buy food for their families, or pay their rent or mortgage to stay in their homes. Congress acted swiftly with the Coronavirus Aid, Relief, and Economic Security (CARES) Act which provided much-needed relief for homeowners who could not pay their mortgage due to the pandemic. This included a foreclosure moratorium for federally backed loans that went into effect nationwide. That, together with rules promulgated by the Consumer Finance Protection Bureau (CFPB) effectively stayed foreclosures for almost two

years. The pandemic and moratoria have caused some backlog of foreclosures in the Maine judicial system but because of the relief put in place, it is not at the numbers some expected.

While lenders may be impatient, and therefore eager to move the cases along, this juncture is a most inopportune time to engage the resources necessary to establish and convene a commission to study the foreclosure process. The current foreclosure case load was caused by extraordinary circumstances that are unlikely ever to be repeated and do not represent how the Maine foreclosure system usually functions. To study and base policy on a time period that includes these last three years would result in skewed findings that could not be universally applied to a post-pandemic system.

If anything, the last three years proved that the Maine judicial foreclosure system actually coped quite well with the stresses placed on it by the pandemic, demonstrating that it is a resilient system. The loans will make their way through the judicial system and the system will right itself over the next few years. Moreover, as you will read in the testimony of Jonathan Selkowitz from Pine Tree Legal Assistance, Maine's foreclosure mediation program has and will continue to assist parties in resolving foreclosures as expeditiously and fairly as possible. It does not make sense to conduct a study of a system that has been on hold for the last three years.

The length of Maine's foreclosure process does not correlate to higher credit costs or less access to credit. There is a proposition by lenders that increasing the protections provided to homeowners, including protections built into Maine's judicial foreclosure system, will increase the cost of credit and decrease the availability of credit for Maine residents seeking to purchase or refinance a home. This theory is not accurate, especially now when most mortgages are bundled and sold in bulk to trusts and other entities. The mortgages are not all from Maine. They are from different states. It is these packaged mortgages from all different states that determine the price of those mortgages. The cost of credit now is largely set by the secondary market, not the foreclosure timeline in Maine.

Even if there is a correlation between the length of the foreclosure process and increased costs, this does not mean the cost of credit has increased or access to credit has decreased. The opposite theory seems more likely- that the existence of better protections and a more careful pre-foreclosure process creates more carefully originated and serviced mortgages, which limits the exposure and risk of default from those mortgages. This would mean that enhanced consumer protections for mortgage loans, including Maine's comprehensive judicial foreclosure process, actually should lower the cost of mortgage loans in this state.

The proposed study is duplicative and unnecessary. A comprehensive study of the judicial foreclosure system was conducted by then Attorney General Janet Mills in 2014, in which I participated. Attorney General Mills conducted a working group that met 15 times and reported back to the Joint Standing Committee of the Judiciary with recommendations. As you will learn from the testimony of Thomas Cox and others, many of those recommendations were implemented to help increase the efficiency of certain foreclosures such as those of abandoned and vacant properties. As you will also learn, the lenders and servicers are not using those laws. Yet they want to now convene another working group, devoid of any housing or consumer

advocates, members of the judiciary, or even homeowners, to evaluate the foreclosure process in Maine, that has been effectively on hold for the past three years. There is no basis for convening another working group at all, and doing so at this time would yield skewed results that would be harmful to stakeholders if the study includes the anomaly of the last few years. Such a commission would use valuable resources that should be spent on matters truly needing your attention.

For these reasons I urge you to oppose LD 1015/HP 65, "Establishing the Commission to Study the Foreclosure Process."

Thank you for considering in opposition to this important legislation. Please feel free to contact me if you have any questions.

Sincerely,

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