KAMALA HARRIS CELEBRATES HER ROLE IN THE MORTGAGE CRISIS SETTLEMENT. THE REALITY IS QUITE DIFFERENT.

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Sen. Kamala Harris speaks during a campaign stop in Ankeny, Iowa, on Feb. 23, 2019. Photo: Daniel Acker/Bloomberg via Getty Images

Pretty much every major Democratic official involved in responding to the foreclosure crisis during the Obama years did an unforgivably terrible job. That's how we wound up with 10 million families losing their homes, an unprecedented disaster that touched every corner of America and triggered the populist backlash we're living through today.

There isn't a particular individual to single out and blame for the party's failure, and that's not what this story is doing. Kamala Harris's role in the affair was no more or less tragic than anyone else's. But now that she's running for president, Harris is not only eliding responsibility for her part in the failure, but claiming it as an outright success. That claim doesn't withstand a moment's scrutiny.

"We went after the five biggest banks in the United States. We won $20 billion together," Harris said in her initial campaign address in Oakland, California. She has highlighted the settlement for years as an example of her record of taking on powerful interests.

Harris is referring to the national mortgage settlement, a massive deal made with Bank of America, Wells Fargo, JPMorgan Chase, Citigroup, and Ally Bank (formerly known as GMAC) in 2012, when she served as California attorney general. And that settlement is best understood as a second bank bailout, protecting legally exposed mortgage fraudsters while doing little to prevent evictions. In fact, more families lost their homes as a result of transactions facilitated by the national mortgage settlement than those who got a sustainable loan modification to save them.

Equating a toothless settlement with a sufficient penalty for criminal fraud sets a meager baseline for what constitutes punishment, virtually ensuring subsequent crimes. If we will ever dismantle a system that delivers one set of laws for the powerful and another for everybody else, we must be honest about the glaring inadequacies of the past. Harris often uses the phrase "let's speak that truth" as a throat-clearer in speeches. Well, let's speak some truth about the national mortgage settlement.

Let's first understand what the settlement was about. During the run-up of the housing bubble, banks acquired thousands of subprime mortgages and turned them into securities. They created trusts as repositories of the mortgages, with bonds flowing out to investors around the world. All of this produced explosive demand for new mortgages, hooking millions more with subprime debt and inflating the bubble that later popped.

Governed mostly under New York state law, the trusts had to receive the mortgages before a stipulated closing date, with no grace period after the fact. But banks simply didn't execute the transfers, breaking the chain of ownership on virtually all securitized mortgages in the housing bubble years. As a result, mortgage-backed securities were backed by nothing.

When the collapse of the bubble ushered in a flood of mortgage defaults, the trust administrators lacked the legal authority to foreclose. In an industrial-scale cleanup, law firms, mortgage servicing companies, and third-party subcontractors fabricated, forged, and backdated documents to paper over the failed securitizations.

This cover-up was not infallible, and the subsequent chaos — foreclosures on homes with no mortgage, foreclosures on people who never missed a payment, and multiple companies seeking foreclosure on the same property — revealed the fracturing of a property records system that had served America well since the 1630s. Mortgage companies were also caught piling on illegal fees, pushing customers into foreclosure, and lying to borrowers seeking loan modifications. Eventually, this mountain of false evidence and fraud burst into public view. By the fall of 2010, the leading mortgage companies in America stopped foreclosing on people, because they couldn't do it anymore legally.

The stakes couldn't have been higher. Trillions of dollars in securitized mortgages were apparently corrupted; title insurance companies were refusing to insure them until the mess was resolved. Following the law on these loans would have wiped out most of the major banks in the United States. Law enforcers had the leverage necessary to end the foreclosure crisis by allocating losses from the crash equitably, while punishing those responsible to prevent routinized fraud and abuse from ever happening again.

These options were not just wild fantasies. Then-Federal Deposit Insurance Corp Chair Sheila Bair wrote up a proposal at the time to take down all delinquent mortgages to current value and have homeowners and banks share in the upside when prices recovered. Experienced prosecutors like Bill Black, who helped put nearly a thousand bank executives in prison after the savings and loan scandal, were devising methods to hold financial crisis actors accountable. A collection of housing advocates, expert analysts, foreclosure victims, and defense attorneys were demanding such meaningful resolutions and pleading with Harris and other law enforcement officials to join them.

But in that crucial moment, nobody bothered to investigate the breadth of the fraud and how many were affected, instead moving directly to negotiating what facsimile of a penalty would be tolerable to the banks. A 50-state foreclosure fraud task force was formed to be the vehicle to clean all this up and get the system humming again.

Harris wasn't in office when negotiations commenced in the fall of 2010, and while she nominally joined the task force executive committee after her election as California attorney general, for her first several months in office she kept relatively quiet on the matter. She was not the first attorney general to break from the investigation; New York's Eric Schneiderman and five other Democrats got there first, and Schneiderman largely led the resistance.

A coalition called Californians for a Fair Settlement formed (with Schneiderman's help) to separate Harris from the negotiations. They jammed office phone lines with constituent calls, and eventually got Gavin Newsom, at the time Harris's biggest potential rival in state politics, to sign a letter opposing the emerging deal. (Newsom has since endorsed Harris's presidential candidacy; the two share campaign consultants.) A month of persistent grassroots pressure and challenges to her political advancement led to Harris's dramatic break with the talks, after a day spent with bankers trying to salvage them.

When Harris departed in September 2011, the deal being discussed by the task force with five banks was for around $20 billion; the final deal, which she returned to in February 2012, totaled $25 billion. The Obama White House, which wanted to take action against banks in an election year, put extreme pressure on the dissident attorneys general and got them to roll over for a relative pittance. And even this headline number wildly overstates the penalty for the banks and the benefit for homeowners.

The national mortgage settlement only included $5 billion in actual hard dollars: $3.5 billion to the states, and another $1.5 billion in “sorry you illegally lost your home” checks for foreclosure victims. The checks totaled $1,480 each, barely a month's rent in California. As for the state relief, Harris and her fellow negotiators never mandated that the money go toward helping homeowners. So, like many others, California Gov. Jerry Brown purloined most of the state's $410 million share to fill holes in the budget. Years later, private litigants sued the state for robbing the settlement fund and won, but the state has yet to return the money, years after it could have done much good.

When Harris talks about how she “won $20 billion” for the state, she isn't referring to those hard-dollar provisions. She means the consumer relief portion of the settlement, which were credits given to banks for assisting struggling homeowners with their mortgages. The credits were lower than the raw dollar figure, but Harris always highlights the higher number. In addition, banks could modify loans they serviced on behalf of investors, who took the actual hit. This means that banks paid much of their fine with other people's money.

Of the $20 billion Harris touts, nearly half of it, $9.5 billion, came in the form of short sales, in which homeowners sell their properties for below the mortgage balance without having to make up the difference. That can be helpful to someone's credit score, but it results in losing the home, the exact opposite intention of the settlement. And because California is a "non-recourse" state, lenders are prevented from seeking mortgage balances from borrowers after a home sale anyway.

In 2013, Harris's predecessor, Sen. Barbara Boxer, got a ruling from the Internal Revenue Service that short sale forgiveness in California represented no material value to borrowers. In other words, this supposed "gift" for homeowners from Harris's settlement totaled $0.00.

Another $4.7 billion of relief in California involved forgiveness of second mortgages like home equity lines of credit, which were deeply delinquent and "essentially dead," according to mortgage experts. That forgiveness did not prevent lenders from pursuing foreclosure on the same families over their primary mortgages. And banks were getting credit toward their total for something they'd have had to do anyway: writing off debt that would never be collected.

So over 70 percent of Harris's $20 billion settlement either removed people from their homes or canceled unrecoverable debt. A little less than 33,000 California families actually got principal reductions on their primary mortgages, the most sustainable type of relief.

Sadly, California made out better than the rest of the country. Nationwide, while the settlement's architects promised 1 million principal reductions, only 83,000 received them. Set against the millions of foreclosures in this period, to call it a drop in the bucket is generous. And praising Harris for making the best of a shameful deal is faint praise indeed.

Harris has noted a tension between exacting adequate punishment for mortgage crimes and delivering speedy relief to homeowners. But nearly 16 months elapsed between the initiation of the 50-state "investigation" and the settlement, and none of that time was actually spent investigating. The actual relief for homeowners was totally inadequate.

For the banks, the settlement was cause for celebration. Despite being caught red-handed in a litany of abuses, they paid off their penalty by either using other people's money or performing routine functions. The actual impact made barely a dent in their profits. And they got a broad release from prosecution, putting their intense legal exposure behind them.

Needless to say, no bank executive went to jail for these crimes. In exchange for agreeing to the settlement, Schneiderman got to co-chair an overhyped federal-state task force that would allegedly serve as the real vehicle for criminal accountability. (Harris also wanted the gig, but Schneiderman out-maneuvered her for the position.) The task force wound up being a repository for existing cases, issuing no criminal subpoenas and merely securing more weak settlements.

Harris initiated a "mortgage strike force" to prosecute individuals, but it only brought a handful of cases, and the ones her campaign touts as triumphs were against penny-ante "foreclosure rescue" scams, not the bankers who maneuvered homeowners into foreclosure in the first place. Harris passed up the opportunity to charge OneWest Bank, then chaired by current Treasury Secretary Steven Mnuchin, with what her own investigators called "widespread misconduct" in state foreclosure cases.

Overall, the national mortgage settlement was a blight on this country, a tragic missed opportunity to rebalance the unfair burden thrown on homeowners for a financial crisis they did not cause. The architects of the settlement should be embarrassed by the very mention of it. If this is what we hold up as justice, then we have none.

Surely Harris must have better things in her record to talk about. She authored the California Homeowners Bill of Rights, which gave borrowers more protections against foreclosure, although attorneys have questioned its spotty enforcement (one major mortgage company had never even heard of the Homeowners Bill of Rights, years after its passage). And she did hire an aggressive settlement monitor, Katie Porter, who got personally involved in cases and delivered better outcomes for homeowners; Porter is now a first-term member of Congress.

But Harris is specifically praising herself for the national mortgage settlement, and that's just appalling. Letting the biggest banks in America get away with the largest consumer fraud in American history is nothing to celebrate. It's more deserving of an apology, for abandoning vulnerable Americans in their hour of need and damaging the noble cause of equal justice under law.

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