

AMERICAN PREDATORY LENDING AND THE GLOBAL FINANCIAL CRISIS
ORAL HISTORY PROJECT

Interview with
Roy Barnes

Bass Connections
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PREFACE

The following Oral History is the result of a recorded interview with Roy Barnes conducted by Jon Rosen on July 29, 2021. This interview is part of the Bass Connections American Predatory Lending and the Global Financial Crisis Project.

Readers are asked to bear in mind that they are reading a transcript of spoken word, rather than written prose.

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Interviewee: Roy Barnes
Interviewer: Jon Rosen

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Jon Rosen: I'm Jon Rosen, a student at Duke Law School and a member of the Bass Connections American Predatory Lending and Global Financial Crisis team. It is Thursday, July 29, 2021. I'm speaking with Roy Barnes, the Governor of Georgia from 1999 to 2003, for an oral history interview. Governor Barnes joins me via zoom. Thank you so much for joining me today.

Roy Barnes: Thank you.

Jon Rosen: I'd like to start by establishing a little bit about your background. I believe that you received your undergraduate and law degrees from the University of Georgia. Is that correct?

Roy Barnes: It is.

Jon Rosen: You were first elected to the Georgia Senate in 1974. Why did you decide to get involved in politics?

Roy Barnes: I'd always had an interest in politics and my father ran an old general merchandise business that was the gathering place for folks to talk. Politicians came by to campaign there. I liked it. So, when I got out of law school I had a military commitment. [Before and] after I finished that, I worked for the Cobb County District Attorney's Office. Then I ran for office in 1974.

Jon Rosen: When did you decide to focus on consumer protection financial related issues? How did that come about?

Roy Barnes: After I left the District Attorney's office and was elected, I couldn't serve - I couldn't work for the District Attorney and be an elected official. So, I went to practice law with the former D.A. [District Attorney] who had retired, Ben Smith. We had a very general law practice. We took everything and a lot of it would be consumer issues; folks coming in, complaining about a note, a debt, or losing their car. Over the years, I became very concerned about how consumers were being taken advantage of in consumer transactions, including residential transactions. Then in the 1980s, when I had my own firm, I became involved with a suit against Fleet Finance where they were, in my view, stripping equity out of houses [owned by] unsophisticated borrowers and houses that have equity in them, because they were older folks and older houses.

I filed a class action suit against Fleet Finance. I became really involved in it and [other] consumer issues. Over the next few years, before I was elected governor, I had litigated a lot of consumer issues. I liked it. Nobody else wanted to fool with it. The other lawyers around town didn't want to fool with a deficiency notice or something like that. So, I ended up getting a lot of consumer cases and the more I researched and became involved in it, the more interested I became in consumer issues.

Jon Rosen: I wanted to ask you about the Fleet Finance case. Can you just expand on that and what the practices were by Fleet Finance that led you to bring the suit?

Roy Barnes: Yeah, there were a multitude. One is they would go in to neighborhoods, generally neighborhoods of folks that have been there for years and had very modest houses, lot of minority owners. They'd say, "don't you think you need a new roof or don't you need some new windows? Well, we've got this 2% loan that you can do." So, they would sign a security deed. They didn't tell them that the loan had an escalator in it after 12 or 18 months, 2 years at most, what the ultimate interest rate was, and that the interest rate was computed on a daily compounding, which is another little trick that occurs. It was very predatory and those issues are the ones that we litigated, violations of the Georgia Consumer Protection Act [and] fraud - old common law fraud, it's remarkable what it covers.

So those were the issues. We got past the motion to dismiss. We got past a motion for summary judgment and [got the class] ... certified. Then there was some other litigation that existed not only in Georgia, but in several states. They finally came and wanted to settle all the cases. The only time I've ever been interviewed by *60 Minutes* was in that case. Morley Safer came down to interview me about the case and the practices that occurred. After we finished the interview, ... I was just talking to Safer and I said, "I don't know what y'all call this up north. Down here we call it, cheating [and swindling] win." He said, "turn the mic back on, give me that line." That became the opening of the episode.

Jon Rosen: I was just wondering if you could talk about the challenges in that litigation. You mentioned that you were able to get the class certified. Were there other things like that [difficult]?

Roy Barnes: Georgia is not a consumer-friendly state. So, I had to allege an alternative basis, which became the "fraud cares", that helped us get through. The law itself was a burden. Georgia does not have a well-developed class action law, or did not, at that time. There's not many of us that do class [action] cases. Thankfully, this was before arbitration provisions and class action waivers became so dominant. ... I have had many judges in class cases tell me: "I've never had a class action before. I don't know what this is. I don't understand it.""

But generally, a good judge is eager to learn. So, we had those problems and then we had the banking interests. These were very much opposed. The legitimate banking interest was very much opposed because they felt that they might - they saw this as an opening of where we might have class actions against them. Then they tried to say, "well, you cannot class fraud." Generally, you cannot class fraud because it's so individualized. But there's an exception to that that has been well developed at the federal courts and in many states and that is where the fraud is written in [a] uniform [way], you can class it. So those are the kind of issues that we worked through. In that first case, I worked very closely with Atlanta Legal Aid - and I worked with them because they were getting complaints all the time. We had very compelling cases on a factual basis, for the class representatives.

Jon Rosen: You mentioned in that case that a lot of these homeowners that were victim of this fraud were minorities. Did you find that to be a recurring theme in that case and just kind of generally?

Roy Barnes: Absolutely. It was almost what I used to call "lending redlining". [The thought] was, "let's redline and take advantage of these folks that are lower-income, less sophisticated, and have good equity in their homes." That's just a scheme that was uniformly called equity stripping, where you could go in put in new windows, up the interest [rate], take the house and get the equity on the house. Georgia is a non-judicial foreclosure state, which became important to me later in the Predatory Lending Act that we passed. If you don't seek a deficiency, then you don't have to even go to court. If you seek a deficiency, you do. That fit in very well with these [companies] that were doing predatory lending because they were equity stripping anyway - they didn't want a judgment for the deficiency as such.

After it's knocked off in front of the courthouse steps, unless it's bid in for larger than the amount that is owed, Georgia does not have a provision in this law and still does not have it that [the proper] has to bring fair market value and you have to give the excess to the debtor if you bid it in too cheaply. It was a very insidious scheme to me, and I think to most folks. Ultimately, Fleet Finance settled with us, of course, they left the state, and that was the best things that ever happened. I used to have bankers, when we were taking up predatory lending acts saying, "you're going to force all these lenders out of the state." I said, "it'd be the best thing that ever happened to the state if they left." I saw that experience, and then I litigated a lot of the individual cases that did not fit within the parameters of the settlement. They opted out and I ended up trying some of those cases and such. That was kind of the case that really started my interest, even though I started doing a lot of consumer stuff before.

Jon Rosen: In 1993, you proposed a bill in the Georgia House that would have required mortgage lenders to be licensed and regulated by the Georgia Banking Department. Can you just talk about that effort and why it was important?

Roy Barnes: It was a compromise. At that time, I was very interested in not only getting rid of these folks - but they were unregulated - I [also] really wanted to do away with non-judicial foreclosure, for high interest loans at least. I couldn't get that passed. So, the compromise that came out of it is that we would license these mortgage brokers so that we could regulate them. That was what passed at that time. The Licensing Act was really a compromise of a much more comprehensive act that I just couldn't swing. I was a member of the House; I'd left the Senate by that time. I'm a Democrat. At that time, it was a very Republican district that I represented. I had opposition, as you might imagine. In 1990, I had run for Governor [on a] pretty strong consumer basis. And I got beat. I was out for two years and then I ran back for the House. I ran for the House, instead of the Senate. That's when I introduced that bill as a result.

Jon Rosen: You mentioned that you had to compromise being a Democrat in a Republican District, was that kind of compromise basically along party lines or was it more nuanced than that?

Roy Barnes: No. I had as much trouble with the Democrats as I had with the Republicans. Most of the legislators, particularly from rural areas, would serve on local bank boards and everything else. I did too. My brother and I owned controlling interest in a couple of banks, but I didn't believe in taking advantage of folks. We wouldn't write any high interest loans. We wrote just commercial loans and residential loans that were market rate. But a lot of these smaller banks, they make good money on what's called GILA [Georgia Industrial Loan Act] loans, Georgia Industrial Loan Act loans and the interest rate can be with the add-ons and everything else. It could be 40% to 50% APR [Annual Percentage Rate].

Jon Rosen: You ran for Georgia Governor in 1998. What made you decide to do that and what were your priorities during the campaign?

Roy Barnes: Healthcare was an emerging issue, still is. Healthcare was a big part of that. The other issue was education, as you might imagine, and consumer protection. Now, part of the problem in making consumer protection a political issue is, until an egregious issue arises that is well known, consumer protection is really just too complicated for members of the general [public] to grasp and for the people to demand. Of course, the lobbyist for the banking and financial institutions down there, they would tell them that I was just a nut and trying to do all this stuff to upset them, that I was going to hurt Georgia's growth - all the general scare tactics that you get. Though I talked a lot about consumer protection, it wasn't the focus. But I knew that if I got elected, it was going to be the focus.

Jon Rosen: As Governor, in February, 2002, you proposed the Georgia Fair Lending Act. What were the issues that you were seeing in Georgia communities that led you to propose that legislation?

Roy Barnes: The abuses of the Fleet Finances had not been cured. Yes, Fleet Finance was gone, but because it was so lucrative the same type of schemes [prevailed], I was seeing [them] time and time again. By this time, I'd become a regular at Atlanta Legal Aid. I could tell by the number of cases they had coming in, what I was reading, and by what was coming into my law office, that this was still a big problem. I'd like to tell you that I foresaw the great crash that was going to come in 2008, but I didn't. There was a little dip then and I knew that the type of borrowers [in these cases] were paycheck to paycheck, and they could not pay the excessive interest and that they would be in danger of losing the home.

I had the interest that was left over from the Fleet Finance days. 2002 was my last year. I didn't think it was going to be my last year, but it was. I had changed the Georgia flag the year before. So, education and infrastructure were the first two years, the third year I'd taken on the Confederate battle flag, which was three fourths of Georgia's flag. It was a terrible fight. I almost had a revolution reaction backlash, which ended up beating [us]. It was 2002 before I thought I had built up enough political capital to try something controversial like this. I'd done some research and North Carolina had a very good bill. I depended heavily on North Carolina.

There was another group that helped several of the consumer groups, knowing my interest had come to. There were groups that had brought me suggestions and I took all the suggestions. But then I wrote that bill, mostly myself. Of course, my staff finished it out, but I told them what it was. It was a very difficult passage. ... What I call the legitimate lenders, the banks, they were just raising [hell] about it.

I had a very good friend who was CEO [Chief Executive Officer] of Synovus. His name was Jimmy Blanchard. He's retired. I called him in to the office one day. They were headquartered in Columbus. Now they're headquartered in Atlanta. I said, "Jimmy, I don't understand why y'all are fighting this bill." He told me, "After you started-" and Synovus is a large bank. I mean, it was. Now, it's, I guess, \$20 billion, but it was even then it was \$5 [billion], which was large for Georgia. He said, "I checked on how many of these loans we had at all of our banks all over the Georgia." I can't remember what it was, 10 or 12. He said, "we had [10 or 12]. They're not going to be - these loans are going to be redone." He said, "the bankers are afraid that you're going after them. It was kind of like a domino effect." And I told him, "Jimmy, you need to tell them. I was raised in the business. I understand that you got to have a strong financial system, but you can't take advantage of folks like this. And I'm not going after the banks for legitimate lending." He helped me with them. But I still had difficulty.

I remember I had the whole House Banking Committee out at the Governor's Mansion one morning for breakfast and I knew every one of them, because I had served on the Banking Committee when I was in the House. And I said, "what is wrong with you? I just can't believe this." And they said, "we're just getting so much pressure back from home town banks. They're killing this." I said, "let me see what I can do about it." I called in representatives of all the banks, the big banks, the community banks, and everybody else into my office. I said, "let me tell you something. we're going to pass this bill. Now, you can have it one of two ways. I've got a vacancy as Superintendent of the Banks. "If y'all don't back off of this bill, I'm going to have a nationwide search for the most liberal consumer activist I can find in the nation and I'm going to appoint him Superintendent of the Banks. So, you can have it one way or the other." And I got up and left. That rolled them back. That's when I was able to get it passed.

The provisions of it - I had the assignee liability, holder in due course [in the bill], which you know very well, [it's] learned in law school. When you have the holder in due course, it cuts off all the defenses from the original debt. You can't claim fraud against a successor. Of course, all of these loans are packaged and sold. What they were doing at the time were all of these derivatives and everything - and they would put this high dollar paper into those derivatives so they could push up the value of the other assets. We got a provision in the bill, which I think was one of the most important provisions that you could not do away with successor liability by bringing in holder in due course for sale on high interest debt. I knew that would stop it. If they couldn't sell it on Wall Street, I knew that they'd quit making the loans. It had other provisions that I'm sure you've read in the original bill that came along with it. I had to compromise some on it. I wanted to do away with non-judicial foreclosure. I tried another end run for all of this. I never could get back completely but I did get some reforms on it and everything else.

I was proud that we got it passed, but it was very difficult. I will tell you this, I always said the toughest bill I ever passed as Governor was that predatory lending bill. [It was] even worse than the change of the flag, which was hugely controversial. We had demonstrations everywhere about it. We had people holding up signs, calling me Osama Bin Barnes, all of that stuff. You stole my heritage. You're a race traitor. The Confederacy is now - race is the third rail of American politics, particularly in the South. Luckily, we've moved on from a large part of that. But the passing of the predatory lending bill was harder than it was to pass the flag. The flag was difficult, but that predatory lending bill was about all I concentrated on during that session. I talked to every legislator that I could find and get to come down to the Governor's office. Sometimes I went up, waited outside the House or Senate chamber, so I could find one of them to talk to if they wouldn't come down.

Jon Rosen: [W]hat did you make of Georgia's statutory and regulatory consumer protection apparatus before you introduced the bill?

Roy Barnes: It was weak. The year after I left, after I was defeated, they repealed the best parts - they repealed the successor liability. The bankers won in the end, much to the detriment of the citizens of Georgia. I consider Georgia's consumer protection very weak before and I consider it very weak now. I think this was just a shining exception that - and if I had another term, I would have institutionalized it so much that it would have been more difficult. But obviously, I came out [of the General Assembly] in 2002, right into a re-election campaign, and then I was defeated that fall. So, it hadn't got institutionalized enough for people to see the benefits. Now, I do have to say the media was generally with me on all this. Particularly, the newspapers did in-depth articles about the abuses that were occurring. They generally were very supportive.

Jon Rosen: I'm just wondering if you could just expand on that, the dynamic between the media being generally supportive and then legislators being against it, as you mentioned in 2003, they repealed a lot of the bill.

Roy Barnes: They did. One of the reasons is, even by 2003, the influence of mainstream media was dissipated. Now that's accelerated over the 20 years that has occurred since that time. But if you're in Hahira, Georgia, which is the deep South Georgia, you're not much worried about what the *Atlanta Journal Constitution* says about your vote. People don't keep up with what his legislator does until it is brought to their attention. I never understood why politicians' challengers didn't explore it, as all modern politicians did. It was very popular among the people. They understood because they saw it. The other thing at the time they knew - this is what really scared the banks - I was going to go after the pay day lenders next.

The federal government, through the preemption in the Federal Deposit Insurance Act and directions of the Office of the Comptroller of the Currency [OCC], they have cut that out. But I was - because they say that you can charge the rate that's allowed where the bank was issued. That's the reason North Dakota has become a financial center in the middle of nowhere. It's because North Dakota has no usury rate. So, they knew that I was going after that. But all of those things are very popular politically and I never understood why challengers didn't use those issues. They were so afraid of those

lobbyists and that they wouldn't get those contribution checks from the banks - they wouldn't get this and wouldn't get that - that they just did the whim of the lobbyists, which I think is very unfortunate.

Jon Rosen: Going back to the 2002 bill, you mentioned that you drew inspiration from North Carolina's 1999 anti-predatory lending law. Can you just talk about that a little more?

Roy Barnes: I watched when the financial crisis hit, starting really in 2010 and 2011. It took a while. North Carolina had a fraction of the foreclosures that we did. Georgia was in the top three or four for foreclosures during the financial crash and at the top in the bank [closures]. I always compare that with what North Carolina was doing. North Carolina is a state very similar to Georgia. I mean, our demographics are similar, our people are similar, our budgets are similar, our population is within a 100,000 or 200,000 of each other. I think that was a result of the good law that existed in North Carolina and the repeal law that we had in Georgia. Our bill that we passed ended up being a little stronger than North Carolina. But then they repealed the best parts of it. What they've got left is just general procedures and practices that are allowed, but no specific remedies. North Carolina - I looked at all of the states and I wanted a Southern state, because I wanted to say, "this is not some New York or California nutty proposal." When I would meet with legislators, I would hold up the North Carolina statute. I said, "listen, our sister state is North Carolina. Our twin sister, they've done it." So, North Carolina was very important to me because it was a Southern state who had done the right thing.

Jon Rosen: ...Did you find that there were other Southern states or otherwise that tried to follow in the same direction?

Roy Barnes: No. Not one. North Carolina was alone among Southern states that had done anything. The Southern states are the most anti-consumer states, your research has probably shown. New Jersey has some good statutes. Pennsylvania has got some good statutes. But I can't sell to the Georgia legislature that we should do what New Jersey does. I could sell to the legislature, and did sell, that we should do what North Carolina did. But there was no other state. North Carolina was alone. I don't know the history of how they ever passed that bill, but I tip my hat to them. It was in 1999, I think it was, that it passed. Jim Hunt - I don't remember if Jim was still Governor up there - was a progressive Governor for four terms. He was also one of my best friends and still is. We talk every week. We talk about policy, things that we did together, and we did a lot of things together. But North Carolina was alone. It was the lone state in the south that had anything that was helpful.

Jon Rosen: Going back to the 2002 fight, what were the coalitions for and against the bill and in the legislature? Did it fall on party lines or was it more nuanced than that?

Roy Barnes: I had problems with Democrats. I got some Republican votes going and this has been 20 years ago. There were a lot of good moderate Republicans at the time. So, I got some Republican votes. I didn't get the majority of the Republican votes, but I did get some and [that] offset some of the Democratic votes that I lost. After I broke the back of the bankers, the Democrats were more concerned about whether they were on board with my agenda than they were about anything else. That's what helped. The coalitions for it

were standard consumer groups, the legal aids. What are they called? It's in North Carolina. I can't remember [the name but] there's a consumer group [Center for Responsible Lending] there.

The consumer group out of Boston [National Consumer Law Center] helped us. And the best help came from a group that was led by - my mind is blanking right now remembering the acronym of the group. They brought folks with yellow t-shirts [NACA— Neighborhood Assistance Corporation of America] to the Capital. And they packed the capital day after day. They were very helpful. The groups against it were [the] Chamber - chamber fought it - and the banking groups. Of course, the banking groups took the forefront. They were supported by the high interest lenders. But the banks were smart enough to keep them in the back. It became a fight between the banking groups and the consumer groups.

Jon Rosen: Were there key legislators in the Georgia House or Senate that had key roles in shepherding along the bill?

Roy Barnes: Yes, there were. My floor leader in the House was Charlie Smith. He was a lawyer too, Representative Charlie Smith. He was very good. He'd served on bank boards. His family had owned a family bank down in Southeast Georgia around the coast, Camden County. Charlie understood how to push the bill. He could answer the banking questions. He was very key in it.

In the Senate, my full leader was Senator Steve Thompson. He and I served on a bank board together. He had worked for a bank and was a banker. He was able to dispel a lot of the fear stories that we're going to lose everything, nobody's going to be here to loan money, business is going to fail, and all of these other "the sky's falling" type of claims. They were two very strong advocates that helped me push. The Lieutenant Governor, Mark Taylor, was helpful. The Speaker, Tom Murphy, in the House was helpful because he was an old plaintiff's lawyer. He had seen some of the abuses. Even though he was trying to balance his members and the bankers and everything, he was helpful. He helped me make sure that we got a vote, make sure that we had votes lined up. They were very good. They were the ones that mainly changed [it]. The others that helped were some of the African-American legislators, Grace Davis and others like that, who lived in these communities that I was trying to assist. They could articulate [the problem] very well [and] what was going on in those meetings.

Jon Rosen: You mentioned the process of getting the banks to sign on. How did you incorporate their concerns or other stakeholder concerns? Did you have to make compromises on the bill?

Roy Barnes: I did. The biggest compromise they were afraid of was the non-judicial foreclosure. They were afraid that I was going to do away with all non-judicial foreclosures. They wanted everything to be non-judicial foreclosures. Finally, the Speaker really forged that compromise. He said, "you got to give up non-judicial foreclosure. If you do that, I'll make sure that they back off. You already have them scared to death." They came back to me and they said, "alright, if we do this, who are you going to appoint Banking Superintendent?" I told them, "It would be someone in the department that was already

there, or that came from one of the banks in Georgia." That satisfied them, when I told them that. They said, "okay, we'll do that." They had me beat in the beginning. It was very tough. I remember my Chief of Staff said, "when you take on these bankers, you take on some tough folks." I said, "tell me about it. I mean, I was in General Assembly for 22 years, I've seen it all over the years."

Jon Rosen: You just mentioned the fight about judicial or non-judicial foreclosures. Can you talk about judicial foreclosure and why it was important for you to try to get it?

Roy Barnes: It's very simple. Non-judicial foreclosures are done by the bank, without any judicial supervision. Judicial foreclosure you have to - even after you knock it off on the courthouse steps - have it approved as fair and that it brought fair market value. It invoked judicial supervision. I personally believe that ... non-judicial foreclosure is okay for sophisticated borrowers. But I don't think that most people that just buy one or two houses in their lifetimes or are low income should be [subject to] non-judicial foreclosures. The Republicans control the General Assembly now and the Governor's office. I think it'd be very difficult to pass any change. It was difficult enough when I had a Democrat majority. I'm not sure that you'd ever get that done [now].

Jon Rosen: Can you just explain a little bit why the banks were against the change to judicial foreclosure?

Roy Barnes: It's because it slowed them down getting possession and it does increase their costs. But, they generally attach those costs to the debt. They have a right to under the omnibus notes that they have. It slows them down and banks do not like anything that requires judicial intervention. That's the reason they write those notes and all that that fine print on it has been litigated over decades. They want to be able to control their paper without any type of judicial supervision.

Jon Rosen: For the 2002 bill, Fannie Mae requested an exemption from having to comply with it. What did you make of that?

Roy Barnes: I absolutely hit the roof. I talked to everybody at Fannie Mae that I could get my hands on. And the bankers used that as an example of how this was going to crash the residential housing market and the commercial market. Yes, they requested exemption for the same reason that because - Fannie Mae sells mortgage-backed bonds and collateralized mortgage obligations [CMOs]. They didn't want anything that would interfere with their use of the secondary market. I told them, "Quit insuring these loans." Fannie Mae was fat and happy and didn't operate under the direct supervision of the government. When the crash came, the federal government had to bail them out in order to keep the secondary market. At the time, they were a big player and they didn't have to answer to popular concerns.

Jon Rosen: Were you concerned at all about parallel efforts to preempt the Georgia law or exclude federally chartered lenders?

Roy Barnes: I was very concerned. There's been some books written that mention all this. I learned later that all the lenders and all had a meeting in Miami, I believe it was, which they said "what's passed in Georgia is going to spread like wildfire, unless we stop it." That's the reason they pushed - you might imagine in the election of 2002 I did not receive much banking support. They backed my opponent and repealed the law. That's what they wanted to do. No state has really done anything, to my knowledge, since that time. I thought after the crash, 2008 through about 2013, that there would be a lot of reaction back. The CFPB [Consumer Financial Protection Bureau] came in and there was reform out of that. But, as we've seen, the change in administration can make the CFPB pretty useless. I supported the creation of the CFPB.

After I was beat, I went back to practice law and one of the first cases I filed was under the Military Lending Act, which capped interest for active-duty personnel and their family at 36%. I filed a class case against title loans that were charging 25% a month and 300% APR. It went up to the 11th Circuit and the judge denied the motion to dismiss. Later, we got past summary judgment and right before trial we settled that case. Title loans are the next thing that need improvement. Those are really egregious. I mean, 300% APR is just terrible. Georgia remarkably has a pretty good payday lending prohibition. The reason was that the small loan companies were afraid that payday lenders were going to take all their customers. This is one of the ironic things that happens in politics. The [GILA Lenders] became the big proponents of doing away with payday lenders. And the payday lenders tried to rely upon a rent-a-bank scheme, where they rent a national bank charter to process everything and loans were redone.

I did five class cases against payday lenders when I came back [from] the Governor's office. The judge finally allowed me to depose the CEO [of one of the payday lenders]. One of the things we found out in that is that the loan was made in the national bank. It was bought by the payday lender at the close of each day. So, it really was just - and they got small fee. The OCC has done away with most of those rent-a-bank schemes. It's a good example of what government can do. We have a lot less payday lenders than we used to have. A lot of them are trying to operate off shore now.

Jon Rosen: ... In 2002, you ran for reelection as Georgia Governor. What was your experience during the campaign talking about the Georgia Fair Lending Act and the support and opposition you received from that?

Roy Barnes: I had a very difficult time of breaking through on anything that I did, because there was so much anger about the flag. You would have thought I had repealed the plan of salvation. It was very difficult. We used it some, but it could not overcome the backlash of the flag change. One of the first things that my successor did was repeal the [Anti-]Predatory Lending Act. I won't say that it helped me much. There's a lot of discussion among academics that it was the right thing to do. Most of the folks that I was trying to help voted against me, except for the African-American voters.

Jon Rosen: You just mentioned it, but can you talk about your view of, in 2003, when the new governor came in [and] the effort to repeal most of the law and what you thought of it?

Roy Barnes: That law went through in just a few days, because there was no countervailing force. I was gone. The Democrats that were left had lost the Senate when I had lost the Governor's race. Then they lost the House two years later. All you could hear among the lobbyists was, "well you see what Barnes did in all of this and you see what happened to him. The best thing you can do is stay out of it." That was the message that was conveyed. It was repealed. There was a fight against repeal, but it was unsuccessful. The fight was mostly with minority legislators who saw it, knew, and understood - because it was in their community. The irony of it is the ones that get taken advantage of as much as minority communities were rural white communities, particularly with a lot of the mobile homes and modular houses. A lot of that stuff is high interest paper. But to those white rural voters, the Confederate flag was more important than controlling that interest rate on their homes.

Jon Rosen: In the news coverage around the lobbying efforts to change the law in 2003, journalists highlighted the significance of Standard and Poor's decision to not rate home loans under the Georgia law for fear of legal liability. Can you talk about your view of that?

Roy Barnes: That's another thing that made me mad. What gets me is with the S&P [Standard and Poor's] and all the others, they say, "oh, we don't approve of these loans." Then when you do something that stops these loans, they say, "well, wait just a minute. We're going to downgrade even the good loans." It was not helpful. I mean, it provided the push for the repeal. There is no question about that. I'd like to know the backstory of how S&P ever issued their opinion on that. I got an idea that some of the large banking interests asked S&P to do that. And because of the cozy relationship that we know that existed between the rating agencies and the banks - as we found out in the crash - they were rating all of this paper as A and AA and even AAA that was nothing but trash.

I got an idea that if I could ever trace that backstory, there'd be some interesting results there..

Bill Brennan, who was at legal aid, and I used to have long conversations about this. Bill and I said we were going to start a bank. It was going to be called "the bank of poor folks and bad credit" and that we were going to loan them higher than the standard grades, but we were not going to loan them exorbitant rates. And he says, "I think that we would do okay." One of the things that we've found is that they always talk about the higher risk, but they were good payers. These folks that had this high-risk paper, the reason they were so reluctant to give it up is - they paid it - because they have to keep their house. Obviously, they had to keep their house. So, they would pay and they were regular with things. We had some studies that show that the default was no higher in these higher rate papers than it was in the standard paper. Preferred [loans] had a little better experience. But just the standard rate paper, where the defaults were not any different, are margin at best. So why in the world would you charge somebody three and four times the standard rate if they're paying like the standard rate? Maybe with bad credit you have to pay an extra two or three points, maybe five, but not 10 to 20 points.

Jon Rosen: Over the last decade, we've seen a number of narratives emerge to explain the financial crisis. How do you understand what caused the crisis?

Roy Barnes: I think that the crisis occurred because Wall Street - I blame it more on Wall Street than I do anybody else. When Wall Street securitizes all of this paper and you don't have any successor liability, the banks are encouraged to make as many bad high interest loans they can, because they know they can get out of it without having to suffer the consequences. So, I think the securitization of the loans and also getting into some exotic products on the synthetic derivatives - I still don't know what a synthetic derivative is, I've tried to figure it out. I pretty well understand finance. But they got into where it became fee-driven rather than quality-driven. All of these products. When you do that, you're going to have a calamity and you're going to have another calamity. Luckily, banks are in better shape than they've ever been, because they've raised the capital requirements. I think that at the same time for this group of borrowers that are vulnerable, unsophisticated borrowers, they are greatly underserved. I blame that on the banking system. I blame Wall Street for giving them a way out. I blame the banking system for not fully serving their community.

Jon Rosen: Looking back on the crisis now, what do you see as the most important lessons for state level policy makers?

Roy Barnes: The greatest lesson is: don't allow your citizens, the most vulnerable of your citizens, to be victimized, no matter what the financial institutions say of that. ... [T]here's been a preemption, as we've discussed, on interest rates by the federal government. We used to have a statute in Georgia that was commonly called a "Second Mortgage Act" and it put strict limits on what you could charge for interest rates on second mortgages. It was a great statute. Most states had them. All those got wiped out when, in the 1980s, the bankers finally convinced Congress and the regulators to preempt all of that.

If I had one thing for Congress to do, it would be to allow states to set reasonable usury rates. The only usury rate we have in Georgia is the criminal usury rate and that's 5% a month and 60% a year. Now, does that mean that you don't have good consumer protection? No, but it would allow somebody like me, who will come along at the end, that will have this interest to be able to legislate in this area more thoroughly across the scheme. Congress, the OCC, and the FDIC [Federal Deposit Insurance Corporation] talk about the CRA [Community Reinvestment Act] requirements. The greatest CRA requirements they could have is requiring banks to make - what the CRA says - loans to all of the communities, not sell them all, and to have them at a moderate rate. I'm a capitalist through and through. I mean, I really am. I believe everybody is entitled to more. The greater the risk, the more they're entitled to. I draw the line though when it becomes abusive to folks that do not have access to capital like the rest of us and the only access to capital, they have is the equity in their home and a credit card. Both of which are high-interest rate loans. That needs to be changed. So, policy makers, do something for the folks that sent you there.

Jon Rosen: We're nearing the end of the interview. Is there anything I didn't ask about that you'd like to talk about?

Roy Barnes: No. I think this is a dry area. It is not one that is sexy and that has big headlines, until you have a national catastrophe that almost takes this economy down. But it is probably the most important issue domestically. The percentage of home ownership is falling. For

years we had more and more people owning homes - and that's a good thing. If they're invested in their communities, it's a great thing. It produces good citizens and good schools. Now it is falling. And it is falling because of the actions of legislators and members of Congress that either do not understand, or do not want to understand that on these high interest rate vehicles there has to be some restrictions. At the same time, you have to require banks to serve the whole community with moderate rates.

It does you no good if you force [out] all of the folks out that are high interest rate lenders, if you don't allow access to capital for those that are lower income. But we have done an extremely poor job of banking for low-income Hispanics [and others], all of those outside the banking system. When they're outside the banking system, they get victimized. That's the reason they go to [payday lenders and] pawn shops. They go to small loan companies and they go to payday lenders. That's wrong. If I were a regulator I would say, "why in the world are people going to them when they could go to a bank?" The reason is the bank doesn't want to make a \$1,000 or \$2,500 loan. Maybe the regulators need to say, "all right, listen, for every loan that you make of less than \$5,000, you don't have to do all the reporting work. You have a minute saved." But nobody is talking about this. This is just a silent issue that's just the way it is. That's not the way I believe. I believe that we all have a responsibility to everybody.

Jon Rosen: Thank you so much, Governor Barnes, for taking the time. It was great to speak with you.

[END OF SESSION]