THE SKY DOESN'T FALL

Life After Payday Lending in South Dakota

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Cover photo is courtesy of South Dakotans for Responsible Lending.

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Executive Summary

For more than a decade, payday loans, car-title loans, and high-cost installment loans in South Dakota have carried charges exceeding 300% annual percentage rate (APR). In 2016, South Dakotans approved lowering the cost of payday loans, car-title loans, and installment loans to an annual interest rate cap of 36%, inclusive of all fees and charges. The vote in favor of the rate cap was overwhelming. In policy discussions about high-cost small dollar lending, one of the most frequently asked questions is: what happens when a state enacts a rate cap? This paper seeks to add to this body of knowledge by providing insight into how consumers, communities, and credit availability are faring in South Dakota, two years after the enactment of a rate cap.

In this paper, we review several data sources including loan usage rates, small claims files, credit data (such as the volume of Payday Alternative Loans and unsecured loans), polling of South Dakotans' views after the passage of the rate cap, and community interviews. These community interviews also formed the content of the documentary, *Let My People Go: South Dakotans Stop Predatory Payday Lending.*

This work in South Dakota provides an example of a community-driven, state-level reform effort. Its story provides a template of how other states can contemplate and potentially achieve a 36% rate cap. It shows positive developments after the passage of a rate cap, including continued lending by banks and credit unions; redevelopment of former payday loan storefronts; and widespread support for the 2016 reforms. Finally, this paper contrasts current developments at the federal level which seek to favor payday lenders and threaten to override state laws like South Dakota's voter-affirmed rate cap. For example, if allowed by federal regulators, rent-a-bank schemes would enable high-cost lenders to evade rate caps and remove state control, leaving millions of people vulnerable to the harms of high-cost lending—even when it directly contradicts the affirmative public policy decisions of their home states.[1]

Key Findings of this Report Include:

1. Payday lending causes immediate and long-term harms through high interest rates, forced reliance on the loan product, and consequences of debt collection that last years beyond the original loan term.

2. Other options are available to South Dakotans following the 36% rate cap, including small dollar loans and other financial strategies.

3. Storefronts formerly occupied by payday lenders that extracted millions in wealth from South Dakotans, now are revitalized as restaurants, churches, credit unions, and other community contributing businesses. With the rate cap in place, South Dakotans save $81 million a year annually in fees that would have otherwise been paid on high-cost loans.

4. Two years after the enactment of the rate cap (2018), South Dakotans still show continued strong support for 36%. Both borrowers and voters show strong concern if the South Dakota legislature were to repeal the 36% rate cap.

The Harmful Foundation of Payday Lending

Marketed as a quick, customer-oriented financial solution for people in need, payday loans most often do the exact opposite of their claims, resulting in a continuous cycle of harmful debt. This cycle of debt is the cornerstone of the business model, as high APRs, harmful collection practices, and long-term financial consequences all come at great cost to the consumer. The payday lending business model is a debt trap machine, comprised of six interconnected cogs (Figure 1).

"Once they got you, they got you good. They sign that paper, they give them that information, and by golly, after that you're done. . . ."

-Voice of Sioux Falls Borrower from *Let My People Go: South Dakotans Stop Predatory Payday Lending*

"They are so easy… so easy to get. But paying them back is hard. It's [a] struggle. . . [I]t was like a cycle that never ended."

-Wambli Bear Runner, Black Hills Community Loan Fund Client

Figure 1. The Payday Loan Business Model Relies on a Long-Term Cycle of Debt

Source: *Let My People Go: South Dakotans Stop Predatory Payday Lending* (2018).

First, a payday lender makes a loan to a borrower without determining his or her ability to repay the loan. Payday lenders generally only require some proof of income and identification to obtain the loan, ignoring current expenses, debts, and stability of income the borrower may have, relative to the loan amount. Second, the payday lender obtains access to the borrower's bank account as a condition of the loan, either by holding the borrower's post-dated check or by electronic debit authorization. This direct access to the borrower's bank account puts the lender first in line for repayment on a borrower's payday, which is also when the loan payment is due. Third, when the payday lender collects the loan payment on payday, they often leave the borrower without sufficient funds to meet their remaining obligations, thus providing the payday lender the opportunity to make a new loan and start the cycle over again. Nationally, payday borrowers average around 10 loans annually, often in succession. Seventy-five percent of payday loan fees accrue from borrowers stuck in 10 or more loans.[2] By contrast, only 2% of payday loans go to borrowers who take out one loan and do not return for a loan within one year.[3] Living evidence is found in these data: if on average, borrowers take out 10 loans and borrowers with more than 10 loans generate the majority of fees for the payday lenders nationally, the cogs in this machine are the consumers.

The payday loan business model relies on a consumer debt cycle, with borrowers typically taking out 10 loans per year, and often many more.

The harms caused by payday lenders expand far beyond the initial loan period. Payday loans are associated with a cascade of long-lasting financial consequences such as increased likelihood of experiencing insufficient fund fees, bank penalty fees, involuntary bank account closures, and bankruptcy.[4]

Borrowers also often suffer aggressive debt collection, including lawsuits brought by payday lenders years after the original loan. To capture this aspect of the consumer experience, we reviewed small claims court files of consumers who were sued by Dollar Loan Center, a payday lender that operated in South Dakota before the rate cap. These court files give a glimpse into the long-term negative impacts of the debt trap on consumers in South Dakota that last well beyond the initial loan. The case files not only reveal the details of the debt collection suit itself, but also contain the lender's internal records of its lending history with the borrower.[5] In these legal documents, the evidence of the debt trap is clearly shown.

Case Study 1: Ensnared in the Debt Trap

Case Study 1 highlights not only the debt cycle, but the hook of loans with a low teaser rate; the number and succession of the loans; and how the original three-month $2,000 loan turned into two years of indebtedness that ended in a lawsuit despite the fact that the borrower had already paid thousands of dollars in interest and fees (Figure 2 and 3).

Figure 2. A Close Look at Borrower 1's Account Summary Illustrates How Payday Lenders Create a Debt Trap

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ACCOUNT SUMMARY

Total # Of Loans	13	Total # Of Payments	83	Total # Of Late Payments	43	Total # Of Days Late	193
Total Principal Loaned	$19,716.00	Total Paid	$25,790.23	Total Principal Paid	$17,246.08	Total Interest & Fees Paid	$8,544.15

LOANS

Loan #	Type	Status	Applied	Approved	Due Date	Loan Amount	Principal Paid	Interest & Fees Paid	Total Paid	# of Payments	Rate	Store
808388	Signature	Paid in Full		09/01/2011	11/30/2011	$2,000.00	$2,000.00	$832.49	$2,832.49	10	5%	LaCrosse
851258	Signature	Paid in Full		11/23/2011	05/17/2012	$1,291.43	$1,291.43	$901.29	$2,192.72	15	260%	LaCrosse
936590	65 week	Paid in Full		05/10/2012	07/12/2012	$554.32	$554.32	$202.20	$756.52	6	260%	LaCrosse
968069	65 week	Paid in Full		07/05/2012	08/09/2012	$1,258.49	$1,258.49	$199.96	$1,458.45	4	260%	LaCrosse
982918	65 week	Paid in Full		07/31/2012	09/06/2012	$1,493.08	$1,493.08	$349.55	$1,842.63	4	260%	LaCrosse
1003211	65 week	Paid in Full		09/04/2012	12/27/2012	$1,929.03	$1,929.03	$1,221.38	$3,150.41	9	260%	LaCrosse
1069508	65 week	Paid in Full		12/13/2012	04/04/2013	$1,896.20	$1,896.20	$1,302.10	$3,198.30	9	260%	LaCrosse
1130221	65 week	Paid in Full		03/28/2013	06/27/2013	$1,899.06	$1,899.06	$1,309.59	$3,208.65	6	260%	LaCrosse
1188677	65 week	Paid in Full		07/02/2013	07/26/2013	$600.00	$600.00	$62.77	$662.77	3	260%	LaCrosse
1198737	65 week	Paid in Full		07/17/2013	08/23/2013	$968.47	$968.47	$162.36	$1,130.83	4	260%	LaCrosse
1215647	65 week	Paid in Full		08/12/2013	08/22/2013	$1,413.22	$1,413.22	$50.34	$1,463.56	2	260%	LaCrosse
1219394	65 week	Paid in Full		08/17/2013	11/29/2013	$1,813.16	$1,813.16	$1,027.71	$2,840.87	7	260%	LaCrosse
1278189	65 week	Written Off, Collection Agency		11/18/2013	01/24/2014	$2,499.44	$29.52	$1,022.41	$1,051.93	4	0%	LaCrosse

Source: South Dakota Small Claims Court Files. Accessed May 2018.

Figure 3. Key Points from Borrower 1's Transaction History (above) Explain the Harm of the Debt Trap

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# of Payments	Rate	Store
10	5%	LaCrosse
15	260%	LaCrosse

Total # Of Loans	13
Total Interest & Fees Paid	$8,544.15

Source: South Dakota Small Claims Court Files. Accessed May 2018.

Borrower 1 made weekly payments on her initial loan of $2,000, which was due in three months with a teaser rate of 5%. After 10 payments, the week before the original loan's due date, the lender flipped her into a new loan—this time at a rate of 260%.

A week before the second loan was due, the lender flipped Borrower 1 into a third loan. As shown in the image above, the pattern continued, with the lender giving her 13 loans consecutively, each within a few days of the other's upcoming due date.

After spending over two years being driven deeper into the debt trap and paying over $7,500 in interest and fees flowing from a $2,000 loan, Borrower 1 ultimately defaulted and was sued for $5,044.59.

Over the course of 80 payments over two years, an initial $2,000 loan resulted in total payments of over $7,500 in interest and fees, illustrating the financial devastation payday lending inflicts.

Case Study 2: The Stress of Payday Loans

Case Study 2 provides a glimpse into the emotional and physical distress caused by payday loans' burden, especially when piled on top of other monthly obligations. In July 2015, Borrower 2 took out a loan for $200. By July 2016, the lender had flipped her into six loans, and she had paid over $2,200 in interest and fees.

Figure 4. Example Transaction History of a Payday Borrower Contacted by Lender to Collect Overdue Payment

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07/25/2016 12:11:36 PM	1808775	CLLD CP- Cust started hysterically crying on the line- stated not sure what to do she just does not have the $$ right now- stated is behind on car pmt and mortgage pmt and is negative $$900.00 in her acct right now - asked cust to see if she can defer a car pmt to help her out- Cust stated will try to figure something out and will speak with MNGR tomorrow

Source: South Dakota Small Claims Court Files. Accessed May 2018.

Borrower 2 reached out to the lender several times to let them know she was struggling and could not make her payments. Notes from her file indicate that one year into the debt trap, when her account was $900 in the negative, she called, "hysterically crying," saying that she did not have the money. She explained that she was behind on her mortgage payment and her car payment. In response, the lender's representative asked her to see if she could defer a car payment. After Borrower 2 made several similar calls pleading for help, unable to escape the debt trap, she defaulted and was sued for $3,415.68.

The "David and Goliath Battle": The South Dakota Payday Lending Story

"I had one individual calling me, crying because she had three $300 dollar loans that she had been paying on for several months and of course hadn't made a dent in the overall principal and they [the lender] pulled out over $900 dollars out of her checking account. This was in November. . . one month before Christmas. She had no money to pay her bills, to get food for her children. . . ."

–Onna LeBeau, Executive Director, Black Hills Community Loan Fund

"They can tell us all that this is just about helping people, but it's an intentionally crafted defective financial product that is marketed to the financially unsophisticated. . . . They're bilking billions of dollars out of poor neighborhoods, and the taxpayers get to clean up the mess. I want to get them out of the middle, and let society help these people in other ways."[6]

–Steve Hickey, Pastor and Former Member, South Dakota House of Representatives (R)

Payday lending was first codified by the South Dakota legislature in the early 2000s.[7] This timing is consistent with a national trend of payday lenders going from state to state seeking explicit authorization of their business practices. The South Dakota legislature codified car-title lending in 2006.[8] Car-title loans are similar to payday loans, except the lender takes access to a borrower's car title, rather than a borrower's bank account, to coerce repayment and reborrowing on an unaffordable high-cost loan. For more than a decade, payday and car-title lenders legally charged South Dakotans over 300% APR on payday loans, car-title loans, and high-cost installment loans. For payday loans, the cost reached 574% APR on average.[9]

In efforts to address the harm caused by high-cost loans in their communities, South Dakotans pushed state law reform efforts for several years. Prior to the 2016 ballot initiative, Steve Hickey, a Republican legislator and pastor, pushed for relatively modest changes through the legislature. These legislative efforts, however, were heavily opposed and stalled by the payday lenders.[10]

In reflecting on that time, Hickey notes, "*My interest in the payday loaning issue came from not my legislative work initially. It came from my work in the people helping business. I was a church pastor for many years and for four or five years in the legislature I tried to regulate this industry, and there was just no will for that in the state of South Dakota. It got shut down at every committee and I decided to take it to the voter."*

Likewise, Erik Nelson of the South Dakota AARP, states, *"One of the frustrations that representative Steve Hickey at the time and previous members of the South Dakota legislature had run into during a ten, 12 year stretch throughout the 2000s was that efforts to address payday lending rate caps through the South Dakota legislature always ran into brick walls, and there was at least three, four, five efforts, and this was before my time as a lobbyist out there. . . . [T]here was bills brought forward that would have addressed payday lending rates, and they did not make it out of committee, which has ultimately led to the taking it to the people."*

To bring the issue of payday lending directly to South Dakota voters, Hickey teamed up with a long-time political rival and Democratic strategist Steve Hildebrand.[11] Despite their differences on other issues, they shared common ground in their concerns about payday lenders' practices. Together, with the help of economics professor Reynold Nesiba (now a state senator, 15th District Representative [D]), they formed South Dakotans for Responsible Lending, a statewide, grassroots, volunteer-led effort, to let the voters decide the future of unlimited interest rates on these predatory loans. As Hickey notes, when they created South Dakotans for Responsible Lending in this way it *"brought people on the right and on the left together in a very healthy way."*[12]

This use of a ballot initiative to cap interest rates is particularly poignant in light of South Dakota's unique history. The vehicle of ballot initiative originated in South Dakota in 1898 and remains a hallowed part of the state's history and political process. Additionally, South Dakota was the starting point for the nationwide retreat of state-level usury caps. In 1978, the U.S. Supreme Court held, in a landmark ruling, that national banks' credit cards did not have to comply with the interest rate limits of the state in which the consumer was located, just the laws of the state in which the bank was located. Following this ruling, South Dakota was the first state to repeal its interest rate limits, in 1980, in order to attract credit card companies to the state to headquarter their lending activities across the country.[13] While the 2016 ballot initiative addressed the rate cap for payday lenders, car-title lenders, and other high-cost installment loans, it did not reach the rates charged by banks, credit unions, or other financial institutions. The affirmation and restoration of a rate cap in the context of South Dakota's role in interest rate deregulation is nevertheless remarkable.

Putting an initiative on the ballot in South Dakota is no small task. South Dakota law requires that the threshold number of signatures be submitted to the Secretary of State one year prior to the election in which the initiative will be presented to the voters. This means the process generally gets underway about two years prior to the actual vote. Signatures can only be gathered once the petition has been approved by the Secretary of State and has survived any legal challenges that an opponent may bring regarding the fairness of the approval process. In this case, the rate cap ballot, Initiated Measure 21, was filed on July 7, 2015 and approved by the Secretary of State on December 28, 2015.[14] The lenders' litigation challenges brought against this process were ultimately unsuccessful.[15]

South Dakotans for Responsible Lending organized volunteer efforts to gather petition signatures from across the state: at churches, farmers' markets, state fairs, and cultural events. These volunteer efforts helped lift up the stories of people directly impacted by the harms of these loans.

Cathy Brechtelsbauer, a volunteer leader of the state's Bread for the World members, who were active signature gatherers, said, *"During my signature gathering, I would go a lot of places and I would meet people who would tell me they knew somebody that had a payday loan, or they had a payday loan. So, I wrote down quotes from people about these loans because myself, I hadn't encountered this in my life, but a lot of people have."*

Below are examples of stories Cathy Brechtelsbauer collected:

- "I borrowed $400 for tires. I think I paid $400 about 4 different times."
- "I borrowed $1700. I've been paying $200 a month for two years. They just told me I still owe $1100."
- "It took my whole childhood for my mom to pay off her loan. And we were hungry."
- "I have a car title loan. I've had it for six months. It's at 304%."
- "I had to go without my heart medicine or any meds for 4 months to finally get that loan paid off."

South Dakotans for Responsible Lending's signature-collection efforts were complicated by the payday and car-title lenders' attempt to thwart them. As Hickey describes it, "*The most devious thing they did was they financed a competing and deceptive ballot initiative to counter ours that looked better than ours. Ours was a rate cap of 36%, and they manufactured one that looked like it was at 18%. But, it was a total fraud and a lot of money was behind it."* The lenders' initiative, Amendment U, which was to be a constitutional amendment, claimed to provide an 18% interest rate cap, but in reality created no cap at all.[16]

Figure 5. An example of a voter information card from South Dakotans for Responsible Lending. These cards were one example of an educational tool shared with voters to reduce confusion between Amendment U and Initiated Measure 21.

Source: South Dakotans for Responsible Lending Facebook Page.

Both the payday lenders' decoy initiative and the South Dakotans for Responsible Lending 36% rate cap initiative qualified to be on the ballot for the November 2016 election. Between November 2015 and November 2016, the battle to inform the voters heated up, and the efforts by everyday people to help get the word out continued to grow, from people gathering at Halloween to paint pumpkins with the pro-rate cap message to enlisting the help of famous cartoonist and South Dakota resident, Chris Browne (creator of Hagar the Horrible), to design flyers in support of the rate cap (Figure 6).

"When the ballot measure was in the air, of course Black Hills Community Loan Fund stepped up and we would share any posts that were going through on Facebook to make sure that people understood, and we would try to explain the difference between the good measure and the bad measure."

–Onna LeBeau, Executive Director, Black Hills Community Loan Fund

Figure 6. Example of Voter Information Card Illustrated by Cartoonist and South Dakota Resident, Chris Browne

END
payday loan
DEBT TRAPS

Vote **NO on "U"** *and* **YES on 21.**

"U" = Unlimited interest! Ugh! Amendment U is the payday lenders' plan to keep charging 574% APR (the average payday interest in South Dakota) and to trick voters with a fake 18%. Keep it out of our State Constitution.

Initiated Measure 21 puts a real 36% limit on payday loan interest and fees!

www.EndUsurySD.org, Facebook: End Usury SD
Caring for low-income families, seniors & veterans: Bread for the World-SD,
Presentation Sisters of Aberdeen, National Association of Social Workers -SD Chapter
Paid by NO on 'U'sury, YES on 21

Source: Courtesy of Cathy Brechtelsbauer.

Through these efforts, the broad-based support among voters became apparent.

Erik Nelson of the South Dakota AARP noted the statewide support among his members: *"We had members from rural areas, urban areas, east river, west river that we talked to that were very supportive of the rate cap because they live in the communities all over the state. They see the destruction that the payday lending rates or payday lenders have to their friends and neighbors and church parishioners and all those things, so we were pleased with their support of our decision to become engaged in the South Dakota for Responsible Lending group and supporting the rate cap."* Likewise, people who had been trapped in these loans put the word out, too.

Maxine Broken Nose of Pine Ridge, who had her family's vehicle seized by a car-title lender at the annual pow wow as her family and friends watched, said, *"People said, 'Can you hand out these fliers?' So, we did. We put them up everywhere we could because of what they did, and because it happened during a time when everybody gathered for the pow wow. And to have our vehicles taken, it still kind of makes me really angry that they got away with that."*

A diverse gathering of organizations put their weight behind the efforts. One of these organizations, Family Heritage Alliance, explained its support for the 36% rate cap in a press call during that time: *"[W]e are a conservative, family value, public policy organization ministry here in this great state. This kind of business goes against what we stand for at the Family Heritage Alliance. It goes against the family. It goes against faith. It goes against freedom. Trapping a family in a kind of financial servitude."* At the same press conference, an AARP representative shared, *"[W]e work with and advocate for some of the very people that predatory payday lenders target most frequently. It's no surprise then that AARP South Dakota members who were polled in 2015 reported that they're strongly opposed to our state's predatory payday lending practices."*

In the final weekend before the election, faith leaders gathered for a prayer walk to various payday loan stores in South Dakota (Figure 7). As Cathy Brechtelsbauer describes it, *"We went in a procession, and we would stop in front of these and different people would lead a prayer in front of each one. So, that was a nice way to put a cap on a year-long campaign."*

Figure 7. South Dakotans Participating in One of the Prayer Walks Led by a Local Lutheran Church

Source: Photo courtesy of Thomas Elness.

Finally, the day before the election, then-Governor Dennis Daugaard, a Republican, expressed his public support for the 36% rate cap and opposition to the payday lenders' competing efforts, noting the state has a role to play in protecting consumers.[17]

In contrast to these grassroots efforts to support the rate cap, the payday and car-title lenders spent millions of dollars to support their decoy initiative and to oppose the rate cap. In total, payday and car-title lenders spent over $3 million in their effort to pass Constitutional Amendment U and defeat the passage of Initiated Measure 21. The single largest donor, contributing over $2 million, was Georgia-based car-title lender, Select Management Resources, which is owned by Rod Aycox and does business as North American Title Loans.[18] In the final week before the campaign, payday lender Advance America spent $75,000 in advertising to block the rate cap.[19] Another tactic utilized by at least one lender was to send messages via email to their own customers to vote against Initiated Measure 21 (the rate cap), as shown in Case Study 3.

Case Study 3: "Vote No On 21"

In addition to their competing measure, payday lenders in South Dakota also made sure to contact current payday borrowers in hopes of convincing them to "vote no on 21," the 36% rate cap initiative. A notation on one borrower's account reveals the payday lender's tactic of contacting customers via email, asking that they not support the rate cap initiative. This message was sent the day before the election (Figure 8).

Figure 8. Record of an Oppose Initiated Measure 21-Related Campaign Email Sent to a Payday Borrower

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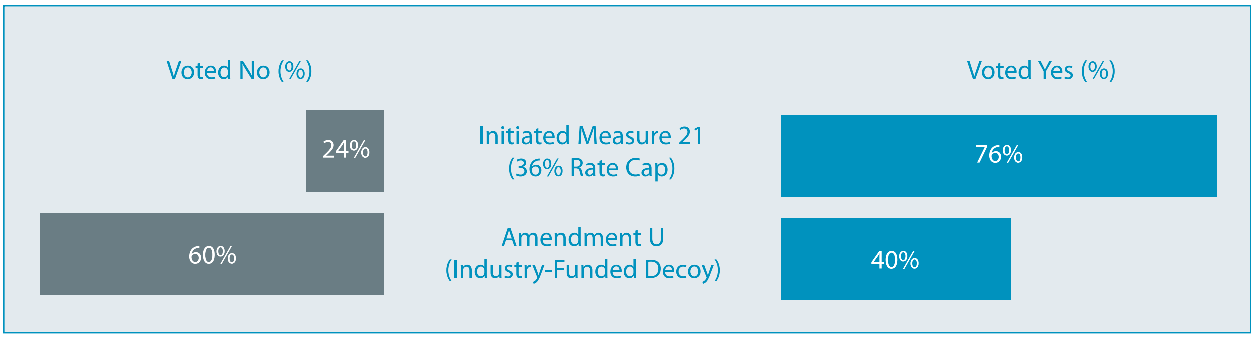
11/07/2016 12:43:00 PM 1866505 E-mail message sent: to [View] @gmail.com, on 11/07/2016, type is 'Vote no on 21'.

Source: South Dakota Small Claims Court Files. Accessed May 2018.

Despite the lenders' outsized-spending, 76% of South Dakota voters said yes to lowering the rates of payday loans, car-title loans, and other high-cost installment loans to 36% annually. At the same time, 60% of voters said no to the payday lenders' decoy constitutional amendment that would have allowed unlimited interest rates (Figure 9).[20]

Figure 9. Voters Overwhelmingly Support Initiated Measure 21 (36% Rate Cap)



Source: South Dakota Secretary of State (2016)

In reflecting on this outcome, Lakota Vogel, Executive Director of Four Bands Community Development Corporation in Cheyenne River, said, *"It was really nice to see 76% of the state come behind a measure to protect all of the individuals that lived within the state and it didn't matter if you were blue or red. Everybody really wanted to make sure everybody was protected on that 36%."*

> *The outcome: "After it sunk in, there was just this euphoria that we did it."*
>
> –Sister Pegge Boehm

Likewise, Maxine Broken Nose, who lost her vehicle to a car-title lender, said, *"I'm glad that the initiative passed, because I voted for it. . . . [W]e're getting justice in a small way. I mean, we probably won't get our money back, but it's okay. They can't do that to anyone else."* Sister Pegge Boehm, along with many others, almost could not believe the overwhelming results: *"After it sunk in, there was just this euphoria that we did it. . . . I mean, we had this motley crew and this little money and we were able to move a mountain with the faith of our mustard seed."*

South Dakota for Responsible Lending volunteer and now State Senator Reynold Nesiba, 15th District Representative (D), also a professor of economics, said, *"They spent three million dollars on their campaign, and we spent $70,000. It was really a David and Goliath battle."*

The voter-affirmed rate cap took effect in South Dakota one week after the election, on November 16, 2016. The Center for Responsible Lending projects that this voter-affirmed rate cap will save South Dakotans over $81 million a year annually in fees and interest that would otherwise be drained by the payday and car-title lenders' high-cost loans.[21]

After the Rate Cap: Did the Sky Fall? No.

> *"There's community lenders available in all communities, wherever you are, and those services are available as an alternative to payday lenders."*
>
> –Lakota Vogel, Executive Director, Four Bands Community Fund

Despite the personal stories, the initiative's support, and research documenting the harms caused by their high-cost loans, payday and car-title lenders continue their attempts to paint a dire need for their payday lending products. For example, in April 2017, Advance America, one of the largest online and in-person payday lenders, polled 200 of its former South Dakota borrowers.[22] One of the arguments advanced by the payday lenders' poll is the notion that few options exist for borrowers no longer able to obtain a triple-interest rate payday loan. Contrary to this argument, research has found that credit is available and the credit economy for individuals in South Dakota is stable. In the following section, we highlight some of the existing products in South Dakota following the rate cap and in other states without payday lending. The findings show that eliminating the payday loan debt trap protects borrowers and ensures that other options are available in the state.

Life After the Rate Cap: Better Options Remain Available

Other types of small dollar loans in the marketplace include unsecured consumer loans made by banks, credit unions, or other non-bank lenders. The rate cap set by South Dakota voters reaches unsecured consumer installment loans by non-bank lenders, but did not reach state-chartered financial institutions or national banks and credit unions. Federally-chartered credit unions are subject to an 18% usury limit, with the exception of Payday Alternative Loans (PAL) that can carry a 28% interest rate cap.[23] Data show that both credit unions' PAL loans and unsecured consumer loans made by credit unions continue to be available and have increased in volume since the enactment of the voter-affirmed rate cap (Table 1).

Table 1: South Dakota Payday Alternative Loan Volumes, Unsecured Loan Volumes, and Total Loan Count by Year

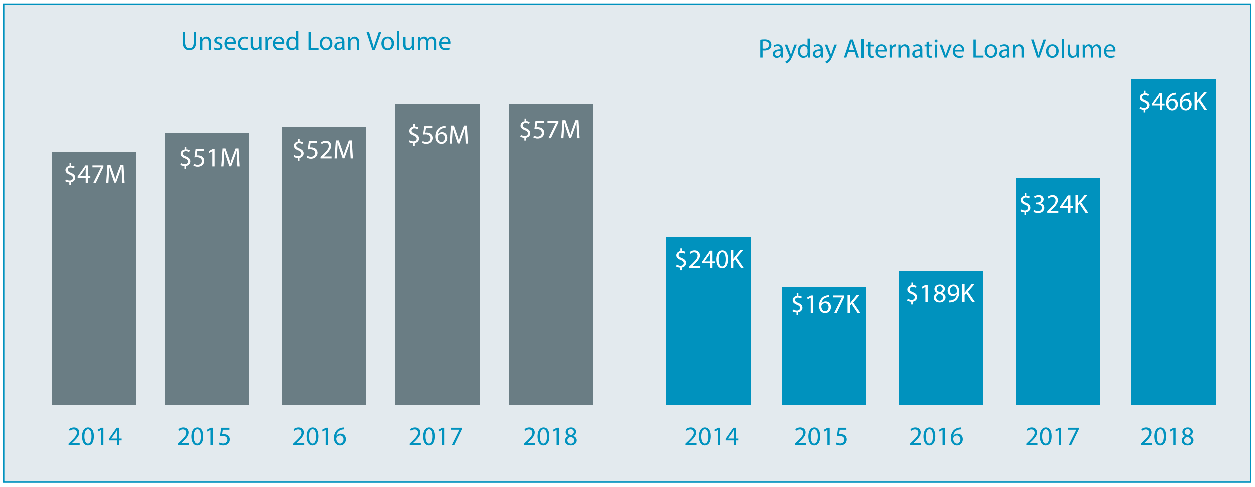
Year	Unsecured Loans		Payday Alternative Loans		Unsecured and PAL Loans	
	Count	Volume	Count	Volume	Count	Volume
2014	32,277	$47,169,669	371	$239,976	32,648	$47,409,645
2015	33,122	$50,625,718	287	$167,493	33,409	$50,793,211
2016	32,884	$51,790,578	387	$188,660	33,271	$51,979,238
2017	33,836	$55,980,636	483	$324,145	34,319	$56,304,781
2018	35,672	$56,824,924	622	$465,928	36,294	$57,290,852
2014–2018 Change	+3,395	+$9,655,255	+251	+$225,952	+3,646	+$9,881,207
	11%	20%	68%	94%	11%	21%

Source: CRL analysis of National Credit Union Administration (NCUA) Call Reports 2014–2018.

Two years following the rate cap, the total PAL and unsecured loan count combined rose by over 3,000 loans in South Dakota. Similar patterns are seen at the national level regarding PAL loans (Appendix A); thus South Dakota's experience is in line with national trends, even following the rate cap implementation.[24] Unsecured consumer loans are also a positive replacement for payday loans, as the loans do not need collateral for security. In South Dakota, unsecured consumer loans are widely available, with all reporting credit unions offering these products in some form.

Between 2014 to 2018, the number of active unsecured consumer loans has increased by over 2,000 loans, with total volume increasing by $5 million since the implementation of the rate cap. For both PAL and unsecured loan types, we see an overall increase in the number of active loans and the volume since 2016. As of 2018, there were 36,294 active loans across these two types of small dollar loans with a loan volume of over $57 million dollars (Figure 10).

Figure 10. Unsecured Loan and PAL Loans Remain Available after 2016 Rate Cap



Source: CRL analysis of NCUA Call Reports 2014–2018.

Community-Based Resources

South Dakota, like many states, has community-based organizations serving constituents in a wide variety of ways to facilitate financial security and wealth building. In South Dakota, for example, Native-led Black Hills Community Loan Fund and Four Bands Community Loan Fund, both of which are Native Community Development Financial Institutions (CDFIs), serve this function. CDFIs are designated as such by the U.S. Treasury for "specialized organizations that provide financial services in low-income communities and to people who lack access to financing."[25]

"Please don't go to a payday lender. Let's see what we can do about increasing your take-home pay or cutting down on some of your debt that you have to make it more comfortable for you to live month to month or week to week, whatever it takes."

–Cora Mae Haskill, Four Bands' Financial Coach

Black Hills Community Loan Fund, located in Rapid City, serves the Black Hills region with a range of products and services for small business, homeownership, home improvements, and credit building. Among its products is a credit builder loan which emerged as a way to help South Dakotans get out of the payday loan debt trap. Executive Director Onna LeBeau describes that they developed it to tackle the payday loan issue because *"[W]e had several individuals that would have three, four, five payday loans that they needed to take care of, so we would pay them all off. Then they would start to make their payments to us, and we've had some clients actually pay off their debt whereas if they were still paying the payday loan centers, they probably would still be paying the $25 monthly payment and not making a dent in the overall principle."* In addition to this range of affordable loan products, Black Hills Community Loan Fund also provides financial education and coaching to support residents in their journey to better financial health.

Four Bands, located on the Cheyenne River Sioux Reservation, works "to create economic opportunity by helping people build strong and sustainable small businesses and increase their financial capability to create assets and wealth."[26] Like Black Hills and other CDFIs, it engages in a range of asset building and economic development strategies, including financial coaching, small business loans, credit builder loans, and mortgages.

To date, Four Bands provided $12 million of loans and created or retained over 800 jobs. Among its product offerings is a credit builder small loan product, which carries an 11% interest rate for loans up to $5,000. Lakota Vogel, Four Bands Executive Director, says, *"A family can come in or an individual can come in, consolidate debt so that they lower all interest rates and we report to the credit bureaus in order for them to increase their credit score. Often times, that can be a mix of different credit that they've utilized, so it could look like a car loan or a payday lending loan, and we'll bring it all together, up to $5000 into one loan, single payment, for that household at an affordable interest rate for that household."*

Life After Reform: The Lingering Consequences of Payday Loan Debt

As mentioned, for many South Dakotans, the harmful consequences of payday lending continue long after the loan itself. In the case of South Dakota, consumers are, years later, facing the devastating consequences of loans made before the 2016 rate cap. One consequence is the threat of debt collection lawsuits that may arise even years following the loan origination or default. A review of case files from Dollar Loan Center in the Sioux Falls, South Dakota, small claims court shows that South Dakota borrowers may still be facing lawsuits even two years after the implementation of the rate cap. The five example cases below suggest that consumers were sued for 2.5 to 17 times as much as the original loan amount (Table 2). They also show that by the time they defaulted on their loans they had often paid thousands of dollars in interest in fees over the original loan amount.

Table 2: Sample of Payday Loans Now in Claims Court

	Original Loan Amount (Year)	Total Interest and Fees Paid[27]	Loans (#)	Total # of Payments	Small Claims Suit Amount (Year)
Borrower 1	$2,000 (2011)	$8,544	13	83	$5,045 (2017)
Borrower 2	$200 (2015)	$3,234	6	31	$3,416 (2017)
Borrower 3	$400 (2007)	$4,246	10	117	$3,488 (2017)
Borrower 4	$300 (2015)	$2,416	5	42	$2,360 (2017)
Borrower 5	$500 (2012)	$1,925	4	44	$3,361 (2017)

Source: South Dakota Small Claims Court Files. Accessed May 2018.

Life After Reform: What Happened to All the Payday Loan Stores?

In efforts to block meaningful reform of the payday lending debt trap, payday and car-title lenders often use the threat of closed businesses and empty stores to scare legislators out of taking action. A glimpse into communities previously saturated by high-cost lending stores two years after the rate cap provides an informative look into what happens with high-cost loan storefronts after the implementation of a rate cap. While many of these lenders chose to no longer make loans at the capped rate of 36% and decided to close their stores, South Dakota's experience shows how these storefront locations are then occupied by a wide range of businesses, nonprofit community organizations, other types of financial services such as credit unions, and even churches.

South Dakotans Expressed These Changes in Their Own Words:

"Today, we are at 3220 East 10th Street, where a few years ago used to be home for Dollar Loan Center and now we use, on a weekly basis, for our church to gather together."

–Jonathan Land, Pastor, Connection Church

"I'm so happy that the block across the street from my house is no longer a dollar loan center, but is instead Black Hills Federal Credit Union, so my neighborhood is better. That's been the experience at other places around town that were dollar loan centers that are now credit unions instead. . . . [I]t's nice to see that vacant commercial space was very quickly turned over to something else and to a better use."

–Senator Reynold Nesiba, 15th District Representative (D)

"[A]fter 2016 we saw a lot of those offices slowly shut down. They were vacated for a while, temporarily, and then other businesses generally moved into those locations, which has been nice, because we've got new businesses into the community that have created jobs for the community as well."

–Lakota Vogel, Executive Director, Four Bands Community Fund

"This building behind us is being turned into, it looks like a little restaurant, and that's going to be so much nicer to have on this corner instead of Auto Title Loan."

–Cathy Brechtelsbauer, Bread for the World Coordinator

Figure 11 below shows three storefronts before and after the passage of Initiated Measure 21. The "before" photographs show the storefront as a payday or car-title location, while the "after" photographs show how they have been repurposed to host businesses that contribute to the local economy.

Figure 11. Three Storefronts, Before and After the 2016 Rate Cap

A cafe named Jacky's Tropical Delights and Juices now occupies this building in Sioux Falls that was previously a car-title loan store. Initiated Measure 21 also lowered the permissible rate for car-title loans to 36%, resulting in an approximate savings of more than $47 million annually to South Dakotans.[28]

Following the closing of a Dollar Loan Center in Sioux Falls, the community made it into a church facility that includes programming for youth.

This former Dollar Loan Center became a branch for Black Hills Federal Credit Union in Sioux Falls, which provides a variety of loan products, including PAL and unsecured loans.

Life After Reform: Voters' Views

To understand South Dakotans' views towards the changes in the state since the enactment of the 36% rate cap, the Center for Responsible Lending commissioned a poll among Republican primary voters in South Dakota.[29] The poll was conducted in August of 2018, nearly two years following the enactment of the rate cap, and it revealed strong levels of support for keeping the rate cap in place and strong opposition to any legislative attempt to allow higher rates than those the voters' approved.

Importantly, when asked if South Dakota is headed in the right direction, 76% said yes.[30] Likewise, when asked about their own economic state of affairs, 77% of those surveyed said that they are confident and optimistic about the future of their family's financial situation (Figure 12).[31]

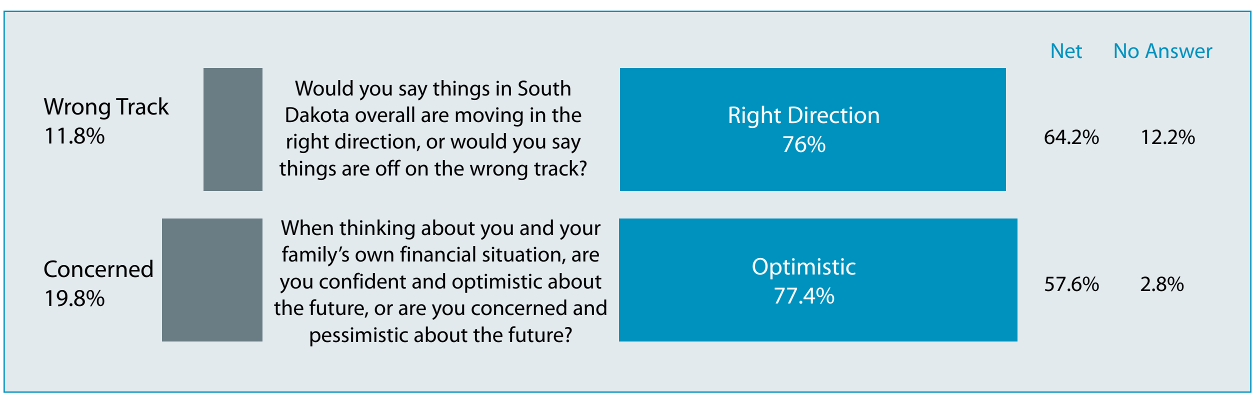
"We had people who cared enough to gather the signatures to put that initiative, that law, onto the ballot for people to vote on in 2016, and it shouldn't be changed."

–Maxine Broken Nose,
Pine Ridge resident

"What's going on in our country right now is we're so divided as a nation and this is the sort of measure that can pull our country back together again. It's Republicans, Democrats, Christians, people of all faith traditions, coming together and saying, 'It's just wrong to charge 300, 400, 500% interest to people who are desperate.'"

–Senator Reynold Nesiba, 15th District Representative (D)

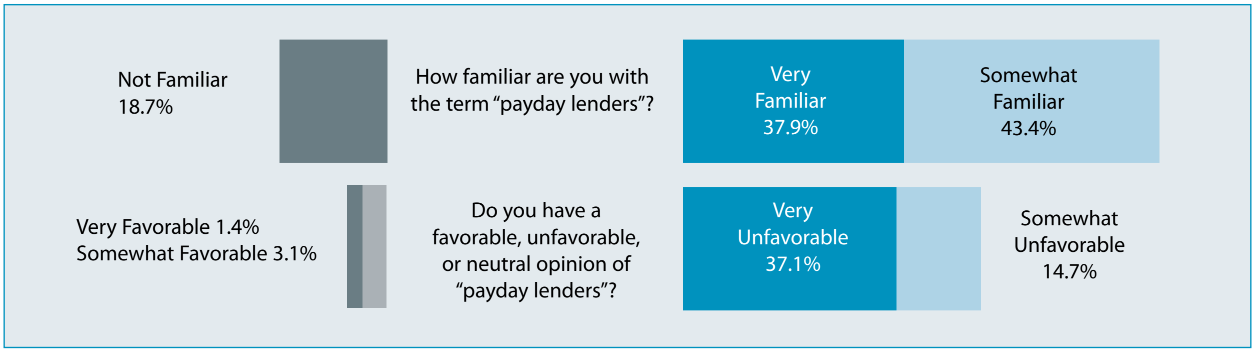
Figure 12. South Dakota Voters Believe the State Is Moving in the Right Direction and Are Confident in Their Financial Future



Source: Poll of 509 registered Republican voters in South Dakota conducted by Gonzales Research and Media Services, August 21 to 28, 2018.

Two years after the passage of the rate cap, voters remained very familiar with the term "payday lenders" and held strong negative views about payday lenders (Figure 13). Only 4% of those surveyed have a favorable view towards payday lenders.[32]

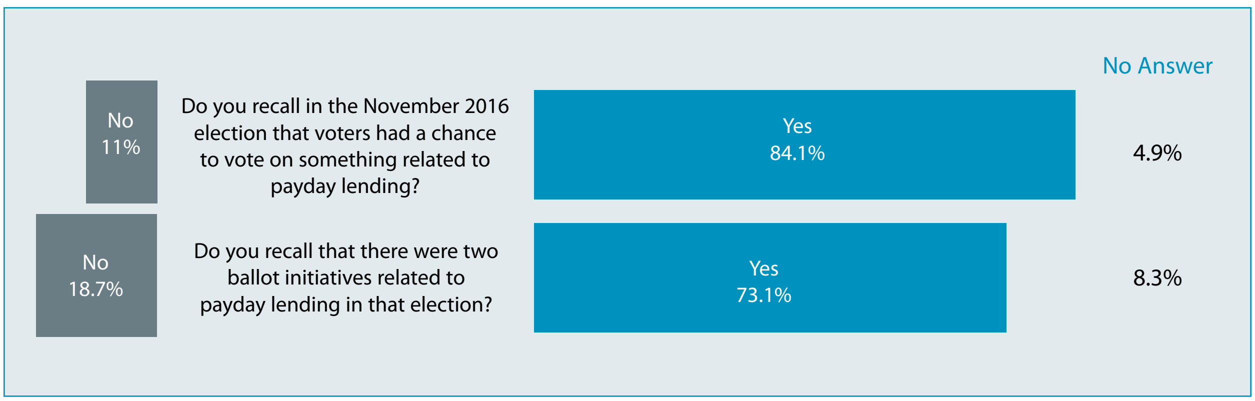
Figure 13. South Dakota Voters Remain Familiar with Payday Lending and Very Few Have Favorable Views of Payday Lenders



Source: Poll of 509 registered Republican voters in South Dakota conducted by Gonzales Research and Media Services, August 21 to 28, 2018.

Even two years after the vote, there is generally a high recollection of the fact there that South Dakota voters had the chance to vote on ballot initiatives related to payday lending in 2016. Eighty-four percent of Republican primary voters remember payday lending being on the ballot,[33] and 73% remember that there were two different initiatives. (Figure 14).[34]

Figure 14. South Dakota Voters Recall Voting to Cap Rates and Recall Failed Industry-Backed Ballot Effort



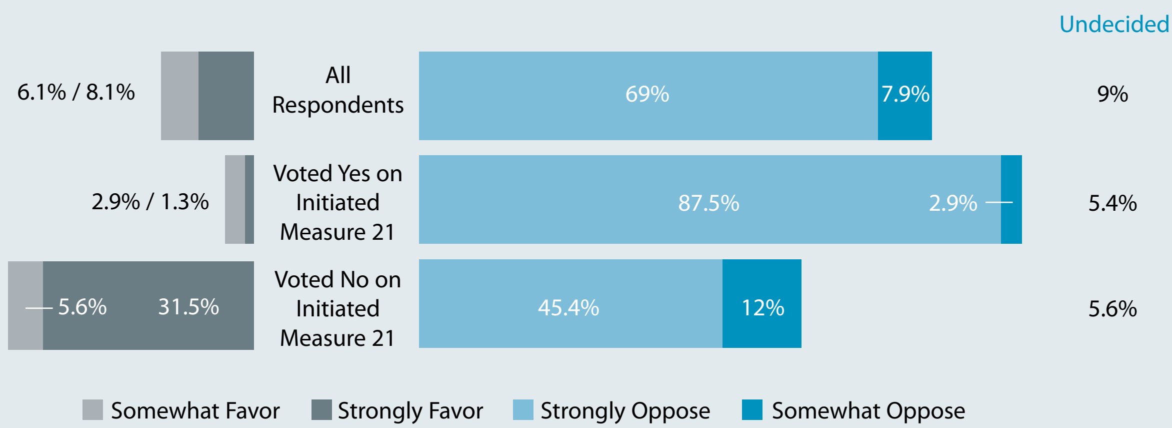
Source: Poll of 509 registered Republican voters in South Dakota conducted by Gonzales Research and Media Services, August 21 to 28, 2018.

In thinking about the ballot initiative specifically, if asked to vote on the same measure again today, a significant majority (82%) of those who voted yes in 2016 said in 2018 that they would vote yes again to cap the cost of payday loans in South Dakota at an annual interest rate of 36%.[35]

South Dakotans would not be pleased with a move by the legislature to undo the 2016 voter-affirmed rate cap. Statewide, 77% of those surveyed would oppose, with 69% strongly opposing, the State Legislature passing a law to reverse the results of the 2016 vote (Figure 15).[36] Even people surveyed who did not vote for the 36% rate cap would oppose any legislative attempt to overturn the rate cap. Fifty-seven percent of people who voted no in 2016 said they would strongly oppose (45%) or somewhat oppose (12%) a legislative attempt to repeal the rate cap (Figure 15).[37]

Figure 15. South Dakota Voters Would Strongly Oppose Any Legislative Effort to Undo Rate Cap

Q: In 2016, the Payday Lending Initiative capped payday loans at an annual interest rate of 36 percent. It was passed overwhelmingly by South Dakota voters. Would you favor or oppose the State Legislature passing a law to reverse the results of the 2016 vote, allowing payday lenders to charge a higher rate?

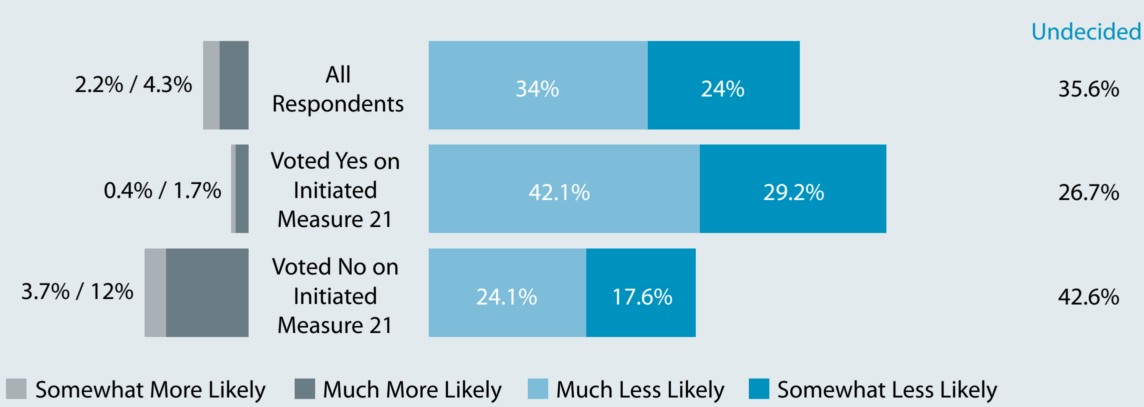


Source: Poll of 509 registered Republican voters in South Dakota conducted by Gonzales Research and Media Services, August 21 to 28, 2018.

Furthermore, 58% of people surveyed—all Republican primary voters—would be less likely to vote for a candidate who allowed payday lenders to charge a rate higher than 36%.[38] Among those who voted yes on the rate cap in 2016, 71% would be less likely to vote for a candidate who supported changing the law (Figure 16).

Figure 16. South Dakota Voters Would Be Less Likely to Support Candidates that Attempted to Undo Rate Cap

Q: This year, if a candidate in South Dakota supported changing the law, thereby allowing payday lenders to charge a higher rate to borrowers, would this make you more likely to vote for that candidate, less likely to vote for that candidate, or would it have no real effect on your vote?



Source: Poll of 509 registered Republican voters in South Dakota conducted by Gonzales Research and Media, Services August 21 to 28, 2018.

Conclusion: Looking to the Future

In 2016, South Dakota voters spoke loud and clear that they did not want triple-digit interest rates in their state. In 2018, two years following enactment of the rate cap, South Dakotans continue to show strong support for the rate cap. South Dakotans expressed concerns about legislative efforts to repeal the vote. Based on the findings in this report, these results should not be surprising: South Dakotans are faring better without these predatory products in the state. They continue to have access to credit through safer financial products, and where payday loan shops once dotted the landscape, churches, restaurants, and other wealth-creating and community-building institutions exist.

While payday loans are marketed as a quick financial fix, the payday lenders' business model relies on consumers taking out multiple loans in a year, ultimately being buried in mounting interest and fees and debt that cannot be repaid without reborrowing or defaulting on other bills. Data show that over 75% of payday lenders' fees come from borrowers taking out 10 or more loans in a year, and our case studies of South Dakotans illustrate the harms of the debt trap that can come from what starts as one small dollar loan, with borrowers still facing the consequences of these loans in legal proceedings years later.

Since South Dakota enacted its rate cap, a number of other significant developments have occurred in other states and at the federal level. In 2018, Colorado voters likewise affirmed lowering the costs of its payday loans from 200% APR to a 36% cap. The cap was approved by 76% of Colorado voters, after years of legislative efforts failed to rein in the harms of these loans. While more states, like South Dakota and Colorado, have been continuing to advance protections that rein in the debt trap of high-cost loans, since 2016 the federal government has taken the opposite approach by working to facilitate dangerous high-cost loans. For example, under the current leadership, the Consumer Financial Protection Bureau has proposed repealing rules that were finalized in 2017 which would simply require lenders who make short-term payday and car-title loans to ensure that loan is affordable in light of a borrower's income and expenses. The federal government is also failing to take action against high-cost lenders that partner with out-of-state banks, a practice known as "rent-a-bank," which allows payday lenders and others to attempt evasion of state usury caps by exporting banks' ability to charge higher rates that what is permitted under state law. These rent-a-bank schemes threaten to override the will of South Dakota voters, which clearly supports limiting the cost of these loans to 36%.

The Following Recommendations Stem from the Findings of This Report:

1. Other states can and should enact rate caps to shield consumers from the harms of the debt trap. Since South Dakota became the 15th state in addition to the District of Columbia to enact a rate cap, Colorado has followed, becoming the 16th state to cap the rates on these predatory loans, collectively saving consumers over $2 billion a year.

2. Federal lawmakers should not override state usury laws. There should be heightened effort at the state and federal level to stop "rent-a-bank" schemes from coming into states, like South Dakota, that have made clear that they do not want or need these predatory products in their states, no matter who is offering them.

3. The Consumer Financial Protection Bureau should allow common-sense standards to go into effect, stopping efforts to roll back the protections of the 2017 payday rule. Repealing standards such as the ability-to-repay provision that would simply ensure that a loan is affordable for a borrower will sanction lending practices that hurt consumers and result in long-term negative financial consequences.

4. South Dakotans should remain vigilant about enforcement and prevent legislative efforts to roll back protections against predatory loans in the state. South Dakota regulators should continue to bring enforcement measures to fight schemes to undermine the will of the people of South Dakota to keep their state free from harmful products that trap their citizens in a cycle of debt. Legislators should also be aware that South Dakotans do not want payday loans in the state and prevent any legislative measures that will threaten the voter-affirmed rate cap.

"I think that now that I don't have all those payday loans to pay off, I actually have money. I actually have money to set aside and with a partner, we set money aside and we have a savings account now. We have a savings account now, so without the stress of additional payments and with finding you and helping me rebuild my credit, I have a brand new car. And before then, I couldn't even get a brand new car, or I couldn't even get a credit card. Now I have both, and now we have a home of our own. So, it's all coming together. I'm finally at where I always wanted to be years ago."

–Wambli Bear Runner, Black Hills Community Loan Fund Client

Appendix A

Credit Union Unsecured and Payday Loan Alternative Lending, National Trends 2014 to 2018

Year	Unsecured Loans		Payday Alternative Loans		Unsecured and PAL Loans	
	Count	Volume	Count	Volume	Count	Volume
2014	12,113,004	$32,480,229,102	170,313	$115,489,547	12,283,317	$32,595,718,649
2015	12,617,167	$35,233,825,455	174,691	$123,327,774	12,791,858	$35,357,153,229
2016	13,303,752	$37,816,275,486	187,027	$134,702,710	13,490,779	$37,950,978,196
2017	13,634,371	$41,025,354,351	191,154	$132,707,425	13,825,525	$41,158,061,776
2018	14,036,931	$43,854,559,021	211,574	$145,239,521	14,248,505	$43,999,798,542
2014–2018 Change	1,923,927	$11,374,329,919	41,261	$29,749,974	1,965,188	$11,404,079,893
	16%	35%	24%	26%	16%	35%

Endnotes

1 Center for Responsible Lending, *Prohibiting Rent-a-Bank Arrangements: A long-standing banking principle,* September 2019. https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl-rentabank-sep2019.pdf.

2 Consumer Financial Protection Bureau, *Payday Loans and Advance Deposit Products: A White Paper of Initial Data Findings,* April 2013. https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.

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4 Campbell, Dennis F., et al. (2012). "Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures." *Journal of Banking & Finance* 36(4), 1224–1235; Skiba, Paige Marta and Jeremy Tobacman (2011). "Do Payday Loans Cause Bankruptcy?" *Vanderbilt Law and Economics Research Paper,* 11–13; Consumer Financial Protection Bureau, Online Payday Loan Payments, April 2016. https://files.consumerfinance.gov/f/201604_cfpb_online-payday-loan-payments.pdf.

5 Unless otherwise specified, all small claims files are presented as case studies and have been de-identified to maintain anonymity of the borrower. The remaining data are provided at an aggregate level to also maintain anonymity.

6 Montgomery, David (2014). "Payday Loans could cease in South Dakota." Argus Leader. https://www.argusleader.com/story/news/politics/2014/12/13/payday-loans-cease-south-dakota/20387531/.

7 South Dakota's first attempt at regulating payday loans took aim at the long-term cycle of debt, when in 2002, the first regulation related to deferred presentment service transactions was enacted, seeking to limit rollovers to no more than four and limiting loan amounts to $500. South Dakota SB 151, An Act to Regulate Deferred Presentment Service Transactions (2002), (see: http://sdlegislature.gov/sessions/2002/bills/SB151enr.htm). In 2004, the legislature came back to formally define payday loans in state law. SD HB 1049 (2004) (see: http://sdlegislature.gov/sessions/2004/bills/HB1049enr.htm).

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12 PBS, "Payday Loans: A battle in South Dakota," https://www.pbs.org/wnet/chasing-the-dream/stories/left-behind-by-banks-poor americans-pay-more-to-borrow/.

13 Lammers, Dirk (2018). "Who Funds Ballot Issues?" Marshall County Journal. https://www.marshallcountyjournal.com/news/who-funds-ballot-issues.

14 South Dakota Secretary of State (2016). "2016 Election History." Retrieved from https://sdsos.gov/elections-voting/election-resources/election-history/2016_Election_History.aspx.

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16 The lenders' proposed Constitutional Amendment stated in part, "No lender may charge interest for the loan or use of money in excess of eighteen percent per annum unless the borrower agrees to another rate in writing." The South Dakota Attorney General's explanation plainly stated, "Under this constitutional amendment, there is no limit on the amount of interest a lender may charge for a loan of money if the interest rate is agreed to in writing by the borrower." (See: https://sdsos.gov/elections-voting/assets/ConstitutionalAmendmentU.pdf.)

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19 KSFY-ABC (2016). "Advance America puts over $75K into fighting loan rate cap" https://www.ksfy.com/content/news/Advance-America-puts-over-75K-into-fighting-loan-rate-cap-399871751.html.

20 South Dakota Secretary of State (2016). "South Dakota Official Election Returns and Registration Figures: Primary Election June 7, 2016 and General Election November 8, 2016."

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23 National Credit Union Administration (2019). Payday Alternative Loans–Final Rule. https://www.ncua.gov/files/regulatory-alerts/RA2010-13.pdf.

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29 Gonzales Research and Media Services, "South Dakota Survey," August 2018. The poll was conducted by Gonzalez Research and Media Services from August 21 through August 28, 2018. A total of 509 registered Republican voters in South Dakota, who vote in the state's primary elections and indicated that they are likely to vote in the November 2018 general election, were queried by live telephone interviews, utilizing both land line and cell phone numbers. The margin of error is a range of plus or minus 4.4 percentage points.

30 "Would you say things in South Dakota overall are moving in the right direction, or would you say things are off on the wrong track?"

31 "When thinking about you and your family's own financial situation, are you confident and optimistic about the future, or are you concerned and pessimistic about the future? Is that Very or Somewhat confident and optimistic/concerned and pessimistic?"

32 "Do you have a favorable, unfavorable, or neutral opinion of "payday lenders?" (IF FAVORABLE/UNFAVORABLE) Is that Very or Somewhat favorable/unfavorable?"

33 "Do you recall in the November 2016 election that voters had a chance to vote on something related to payday lending? "

34 "Do you recall that there were two ballot initiatives related to payday lending in that election, one that would have lowered the rates on which payday lenders could charge and one that would not?"

35 If you were voting on the Payday Lending Initiative again today, would you vote: "Yes" in favor of keeping the cost of payday loans in South Dakota to a maximum annual interest rate of 36 percent or "No" in opposition to keeping the cost of payday loans in South Dakota to a maximum annual interest rate of 36 percent.

36 In 2016, the Payday Lending Initiative capped payday loans at an annual interest rate of 36 percent. It was passed overwhelmingly by South Dakota voters. Would you favor or oppose the State Legislature passing a law to reverse the results of the 2016 vote, allowing payday lenders to charge a higher rate? Is that strongly or somewhat favor/oppose?

37 In 2016, the Payday Lending Initiative capped payday loans at an annual interest rate of 36 percent. It was passed overwhelmingly by South Dakota voters. Would you favor or oppose the State Legislature passing a law to reverse the results of the 2016 vote, allowing payday lenders to charge a higher rate? Is that strongly or somewhat favor/oppose?

38 This year, if a candidate in South Dakota supported changing the law, thereby allowing payday lenders to charge a higher rate to borrowers, would this make you more likely to vote for that candidate, less likely to vote for that candidate, or would it have no real effect on your vote? (IF MORE LIKELY OR LESS LIKELY) Is that much or somewhat more/less?

Center for Responsible Lending

www.responsiblelending.org

The Center for Responsible Lending (CRL) is working to ensure a fair, inclusive financial marketplace that creates opportunities for all responsible borrowers, regardless of their income, because too many hard-working people are deceived by dishonest and harmful lending practices.

CRL is a nonprofit, non-partisan organization that works to protect homeownership and family wealth by fighting predatory lending practices. Our focus is on consumer lending: primarily mortgages, payday loans, credit cards, bank overdrafts and auto loans.

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