

# REMARKS BY ILLINOIS ATTORNEY GENERAL LISA MADIGAN\*

## I. THE ROLE OF THE STATE ATTORNEY GENERAL

The Office of the Attorney General of Illinois is one of broad jurisdiction that allows for the pursuit of many different causes. Increasingly, my office is focused on promoting human rights. As I'll discuss, the tools available to attorneys general can be valuable in the fight to protect human rights throughout the United States. Yet this is not a role that many individuals, including attorneys, attribute to state attorneys general. As a result, state attorneys general can be a secret—and powerful—weapon in this cause.

My discussion will highlight three issues that illustrate the role attorneys general can play in the promotion of human rights: first, one of the highest profile issues that we are contending with nationally: immigration; second, a criminal justice issue: police reform; lastly, an economic justice issue: the student debt crisis. Using these issues, I am going to provide some specific suggestions on effectively promoting human rights at any level of government. While I want you to hear *what* I'm talking about, I hope you will pay particular attention to the *how*. I think that understanding what motivates states to take on these issues and understanding the mechanisms to work with states will be helpful because they can be applied to any issue, including other human rights issues.

The role and function of state attorneys general are often misunderstood, even by good lawyers, like those of you in this room. This may be because, for the most part, state attorneys general do not follow the national model. Forty-three state attorneys general are independently elected. Unlike the U.S. Attorney General, who is appointed by the President, we are not appointed by the governors of our states. The remaining seven state attorneys general are appointed in various ways—by governors, the state supreme court or

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\* On May 19, 2017, Illinois Attorney General Lisa Madigan offered the introductory keynote remarks at the Bringing Human Rights Home Lawyers' Network Annual Human Rights in the U.S. Symposium, entitled Localizing Human Rights in the New Era: Strategies for State and Local Implementation of Human Rights in the United States. The following is adapted from her remarks.

the state legislature. For states like Illinois, where the attorney general is independently elected, the attorney general has a responsibility not just to serve as the lawyer for the state government, but to represent the people of the state and work on behalf of the public interest. This is critical to the attorney general's role as a human rights attorney.

Over 380 lawyers, and about 750 people total, work in my office statewide. Working with a budget of approximately \$80 million, I bring in nearly \$1 billion a year to the state through litigation. My office handles a full range of legal matters, including civil, criminal and appellate work. The vast majority of our work is civil litigation, which is probably the case for most attorneys general in large states. In big states, such as New York and California, there is often a division of labor in which the office of the attorney general focuses primarily on civil litigation, while local state attorneys or district attorneys are the frontline criminal prosecutors. That describes the situation in Illinois.

A majority of our civil litigation involves defending the state in a wide range of cases. At this moment, my office has approximately 31,000 cases in which we are defending the state. Although this defense work requires a large portion of our resources, if you ask people in Illinois what the attorney general does, they will likely talk about some of the affirmative consumer fraud work that I've done, particularly in the area of mortgage fraud. My office receives approximately 25,000 consumer fraud complaints each year, and approximately 200,000 people reach out to us with consumer questions or concerns. That is an enormous amount of affirmative work, just in one division of my office. But like many other state attorneys general, my affirmative work is not limited to consumer protection. My office has an environmental protection division. I also have bureaus that enforce civil rights, disability rights, workplace rights and antitrust laws. I have a bureau that represents ratepayers in public utilities matters, and I have a crime victim services division. All of the work that those divisions and bureaus do is affirmative.

In my view, I run the state's largest public interest law firm. This is not the perspective of every state attorney general, but it should be. When you consider that the role of the state attorney general—really of any elected official—should be to help people, I think that's the right way to look at this office's responsibilities.

## II. HUMAN RIGHTS INITIATIVES: IMMIGRATION, CRIMINAL JUSTICE REFORM, CONSUMER PROTECTION

The issues that I want to focus on today have taken on much greater significance since the beginning of the new presidential administration: immigration, criminal justice reform, and consumer protection.

### A. Immigration and the Travel Ban

Within the first few days of the new administration, the President issued three executive orders affecting immigration to our country and increasing immigration enforcement efforts against people living in the United States. One of those orders is the now-infamous travel ban that prohibited entry into the United States by anyone from seven predominantly Muslim countries for ninety days and prohibited refugee admissions for 120 days.<sup>1</sup> The protests that erupted at airports across the country brought the impact of this order into the national spotlight.<sup>2</sup> Many people were rightly horrified by this executive order and saw it for what it really is: a policy that is antithetical to our country's founding principles. Perhaps even more significant, the executive order creates a policy that is antithetical to anti-discrimination laws in the United States.

Leading advocacy organizations spearheaded the response across the country by setting up shop in airports alongside lawyers who were willing to offer pro bono assistance.<sup>3</sup> There were also responses from members of organizations that have worked for years to bring people from war-torn countries to restart their lives in the United States.<sup>4</sup> Within days, a number of Democratic Party state attorneys general filed and joined individual lawsuits against the travel ban. Washington State's attorney general was the first to file

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1. Protecting the Nation from Foreign Terrorist Entry into the States, Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

2. *Trump Travel Ban Sparks Protests at Airports Nationwide*, CBS NEWS (Jan. 29, 2017, 8:03 AM), <https://www.cbsnews.com/news/donald-trump-travel-ban-sparks-protests-at-airports-nationwide-seattle-tacoma/>.

3. Jonah Engel Bromwich, *Lawyers Mobilize at Nation's Airports After Trump's Order*, N.Y. TIMES (Jan. 29, 2017), <https://www.nytimes.com/2017/01/29/us/lawyers-trump-muslim-ban-immigration.html?mcubz=0&r=0>.

4. Manya Brachear Pashman & Angie Leventis Lourgos, *Chicago Advocates Condemn Trump's Order on Refugees, Migrants*, CHI. TRIB. (Jan. 28, 2017), <http://www.chicagotribune.com/news/local/breaking/ct-chicago-reaction-trump-immigration-suspension-met-20170127-story.html>.

suit, and a number of states intervened in that lawsuit.<sup>5</sup> The Hawaii Attorney General also sued and has been among the most successful in its challenge.<sup>6</sup>

Rather than intervene in those suits, my office took a leading role in drafting amicus briefs in the lawsuits filed by Washington, Hawaii, and others.<sup>7</sup> We ultimately drafted and filed more than a dozen amicus briefs on behalf of Illinois and sixteen other states, as well as the District of Columbia.<sup>8</sup> In February, the federal District Court in Washington entered a nationwide temporary restraining order (TRO), prohibiting the enforcement of the travel ban.<sup>9</sup> In March, when the Trump administration issued a revised travel ban,<sup>10</sup> it was again challenged by a number of states, and a preliminary injunction was put in place.<sup>11</sup> The Ninth Circuit and Fourth Circuit have each heard appeals, and the litigation continues.<sup>12</sup>

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5. *Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017), *appeal dismissed*, No. 17-35105, 2017 WL 3774041 (9th Cir. Mar. 8, 2017).

6. *Hawaii v. Trump*, 241 F. Supp. 3d 1119 (D. Haw. 2017).

7. Motion for Leave to File 20-Page Memorandum of Law by Amici Curiae States in Support of Plaintiffs-Appellees, *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017) (No. 17-35105); Brief Amicus Curiae of Illinois and Other States, *Hawaii v. Trump*, 241 F. Supp. 3d 1119 (D. Haw. 2017), [http://www.illinoisattorneygeneral.gov/pressroom/2017\\_03/Hawaii\\_v\\_Trump\\_States\\_amicusbrief.pdf](http://www.illinoisattorneygeneral.gov/pressroom/2017_03/Hawaii_v_Trump_States_amicusbrief.pdf).

8. *See, e.g.*, Brief Amicus Curiae of the State of New York et al., *Hawaii v. Trump*, 241 F. Supp. 3d 1119 (D. Haw. 2017); Brief of Massachusetts et al. as Amici Curiae in Support of Plaintiffs' Request for Continuing Preliminary Relief, *Darweesh v. Trump*, No. 1:17-cv-00480, 2017 WL 388504 (E.D.N.Y. Jan. 28, 2017); Motion by Amici States for Leave to File a Memorandum of Law in Support of Petitioners, *Aziz v. Trump*, 234 F. Supp. 3d 724 (E.D. Va. Feb. 13, 2017); Memorandum of Law of the State of New York et al. as Amici Curiae States in Support of Plaintiffs-Appellees, *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017) (No. 17-35105).

9. *Washington v. Trump*, No. C17-0141JLR, 2017 WL 462040, at \*1 (W.D. Wash. Feb. 3, 2017), *appeal dismissed*, No. 17-35105, 2017 WL 3774041 (9th Cir. Mar. 8, 2017).

10. Protecting the Nation from Foreign Terrorist Entry into the United States, Exec. Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 6, 2017).

11. *Hawaii v. Trump*, 245 F. Supp. 3d 1227 (D. Haw. 2017) (granting motion to convert temporary restraining order into a preliminary injunction).

12. Amy Howe, *Ninth Circuit Hears Oral Argument on Trump Travel Ban*, SCOTUSBLOG (May 16, 2017, 11:55 AM), <http://www.scotusblog.com/2017/05/ninth-circuit-hears-oral-argument-trump-travel-ban/>. On June 26, 2017, the U.S. Supreme Court temporarily lifted injunctions against the bans insofar as they applied to individuals who lack a "bona fide relationship with a person or entity in the United States." *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct.

The states' efforts challenging the travel ban provide an excellent example of quick legal action by state attorneys general to address a timely and urgent issue that we are facing and of the effective work that can result from coordination by state attorneys general.

We have also used other strategies to address immigration issues and protect immigrants in Illinois. In February, in response to concerns raised throughout Illinois as a result of the President's actions, I held an immigration and hate crimes summit. We brought together advocates from dozens of organizations to hear their perspectives on what was taking place and work together on solutions. Through this dialogue, my office learned about the difficulties arising from the administration's actions and steps we could take to protect immigrants.

For example, we discussed the concerns surrounding Executive Order No. 13768, "Enhancing Public Safety in the Interior of the United States."<sup>13</sup> This order had two major provisions. First, it sought agreements with state and local law enforcement agencies under section 287(g) of the Immigration and Nationality Act, 8 U.S.C. § 1357(g), that would essentially deputize state and local officers to engage in enforcement of federal immigration law.<sup>14</sup> Second, it sought

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2080, 2087 (2017). On July 10, 2017, sixteen states filed an amicus brief in support of Hawaii's position in *Hawaii v. Trump*, regarding the District Court of Hawaii's order interpreting the Supreme Court decision to enjoin enforcement of certain provisions of the executive order to individuals with a "bona fide relationship with a person or entity in the United States." Brief Amicus Curiae of the State of New York et. al., *Trump v. Hawaii*, 241 F. Supp. 3d 1119 (D. Haw. 2017). On September 7, 2017, the Ninth Circuit upheld that order and extended the injunction to family members such as grandparents and certain other classes of refugees pending legal consideration of the ban. *Hawaii v. Trump*, No. 17-16426, slip op. at 9, 13 (9th Cir. Sept. 7, 2017) (per curiam). On September 24, 2017, President Trump issued a third revised travel ban upon the expiration of the second revised travel ban that instituted a new, indefinite ban on travel. Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 24, 2017). As a result of the issuance of this revised ban, the Supreme Court canceled oral arguments scheduled for October 10, 2017 on the second revised travel ban and ordered the parties to file briefs concerning whether the September 24th action rendered the case moot. *Trump v. Hawaii*, No. 16-1540, 2017 WL 2734554 (U.S. Sept. 25, 2017); *Trump v. Int'l Refugee Assistance Project*, No. 16-1436, 2017 WL 2405595 (U.S. Sept. 25, 2017).

13. Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017).

14. *Id.* § 8.

to punish so-called “sanctuary cities” by denying federal funding for criminal justice initiatives in those cities.<sup>15</sup>

The 287(g) agreements are controversial for a number of reasons. The agreements divert badly needed resources away from traditional local law enforcement work and toward enforcement of federal immigration laws. Even worse, these agreements damage the already precarious relationship that local law enforcement has with its community. By having local law enforcement engage in federal immigration enforcement, the agreements further diminish the willingness of already marginalized individuals to come forward if they are a victim of or a witness to a crime. When someone is fearful that they or their family may be deported, they are less likely to engage with government, let alone law enforcement. In fact, we are already seeing crime reported at lower levels within Latino communities.<sup>16</sup>

To address these concerns, I sent a letter to Illinois’ governor urging him not to enter into 287(g) agreements with the federal government that would use Illinois law enforcement authorities as federal immigration officers.<sup>17</sup> So far, that has been a successful strategy.<sup>18</sup> In addition, while a number of local governments in Illinois are considering passing “welcoming” or so-called “sanctuary city” ordinances, I strongly supported state legislation to establish a TRUST Act, putting similar provisions in place at the state level.<sup>19</sup>

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15. *Id.* § 9. Although not defined in the executive order, sanctuary cities are generally described as jurisdictions that have declined to assist federal authorities with enforcement of federal civil immigration law. Brian Bennett, *Trump Takes Aim at ‘Sanctuary Cities’ with a Proposal to Cut More Than \$200 Million in Local Funds*, L.A. TIMES (Mar. 16, 2017, 3:30 PM), <http://www.latimes.com/politics/la-na-pol-trump-sanctuary-cities-20170316-story.html>.

16. James Queally, *Latinos Are Reporting Fewer Sexual Assaults Amid a Climate of Fear in Immigrant Communities, LAPD Says*, L.A. TIMES (Mar. 21, 2017, 8:25 PM), <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>; Brook A. Lewis, *HPD Chief Announces Decrease in Hispanics Reporting Rape and Violent Crimes Compared to Last Year*, HOUS. CHRON. (Apr. 6, 2017, 10:01 AM), <http://www.chron.com/news/houston-texas/houston/article/HPD-chief-announces-decrease-in-Hispanics-11053829.php>

17. Press Release, Lisa Madigan, Att’y Gen., Ill., Attorney General Madigan Urges Governor Rauner to Protect Illinois Immigrants from Executive Orders (Feb. 6, 2017), [http://www.illinoisattorneygeneral.gov/pressroom/2017\\_02/20170206b.html](http://www.illinoisattorneygeneral.gov/pressroom/2017_02/20170206b.html).

18. No 287(g) agreements have been entered into in Illinois to date.

19. The TRUST Act was signed by Illinois Governor Bruce Rauner and enacted into law on August 28, 2017. Illinois TRUST Act, Ill. Pub. Act 100-0463 (2017). On September 13, 2017, the Illinois Attorney General’s Office issued

My office also started a “Know Your Rights” public awareness initiative. Most people do not realize that individuals in the United States have constitutionally protected rights even if they are not U.S. citizens and even if they are not in the country legally. We want to make sure that people know that they have these rights and help them to protect themselves and their families if they encounter law enforcement. Other organizations around the country, such as National Immigrant Justice Center and the American Civil Liberties Union, are doing similar work and have had success educating individuals.<sup>20</sup> Having this message come from a statewide elected official and from the lawyer for the state, however, can be very powerful and extremely useful. My office initiated this project by convening the consuls general from consulates in Chicago and distributing “Know Your Rights” cards designed to fit in your pocket.

Finally, as a direct result of our dialogue with advocacy organizations about the impacts of the administration’s actions, I introduced legislation to strengthen and update Illinois’ hate crimes statute. The legislation ensures that victims can pursue a civil remedy, not just a criminal one. Because harassment now frequently occurs online, the bill also updates the hate crime statute to provide that electronic harassment can serve as the basis for a hate crime.<sup>21</sup>

## B. Criminal Justice Reform and the Chicago Police Department

Another human rights issue that many of us are working on is ensuring that our criminal laws and the enforcement of those laws is fair and just. Chicago has a particularly long and poor history of police interaction with communities of color. Included in this history is the fact that for nearly twenty years, between 1972 and 1991, Chicago police commander Jon Burge, along with detectives under his

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guidance to help law enforcement in Illinois understand their obligations and limitations with respect to immigration law. OFFICE OF ILL. ATT’Y GEN. LISA MADIGAN, GUIDANCE TO LAW ENFORCEMENT: AUTHORITY UNDER ILLINOIS AND FEDERAL LAW TO ENGAGE IN IMMIGRATION ENFORCEMENT (2017), <http://www.illinoisattorneygeneral.gov/rights/ImmigrationLawGuidancetoLawEnforcement.pdf>.

20. *Know Your Rights*, NAT’L IMMIGRATION LAW CTR., <https://www.nilc.org/get-involved/community-education-resources/know-your-rights/> (last visited Oct. 7, 2017); *Know Your Rights: What to Do if You’re Stopped by Police, Immigration Agents or the FBI*, ACLU, <https://www.aclu.org/know-your-rights/what-do-if-youre-stopped-police-immigration-agents-or-fbi> (last visited Oct. 7, 2017).

21. House Bill 3711 was signed into law by Governor Rauner on August 18, 2017. H.B. 3711, 100th Leg., Reg. Sess. (Ill. 2017).

command, used torture to extract false confessions from African American and Latino arrestees.<sup>22</sup>

In 2002, the Chief Judge of the Criminal Division of the Circuit Court of Cook County appointed a special prosecutor to investigate the allegations of torture.<sup>23</sup> The special prosecutor underwent an extensive investigation and released a report in 2006 confirming the use of torture.<sup>24</sup> Unfortunately, the special prosecutor also concluded that Burge and the other officers who worked with him could not be held responsible because the statute of limitations had run.<sup>25</sup> The only justice that Burge ever faced was in 2010, when the U.S. Department of Justice's Civil Rights Division successfully prosecuted him for perjury and obstruction of justice, resulting in a sentence of four-and-a-half years in prison.<sup>26</sup>

As attorney general, I sued to prevent Burge from receiving his police pension benefits because of the crimes he committed using his law enforcement authority.<sup>27</sup> Ultimately, the case was dismissed by the Illinois Supreme Court,<sup>28</sup> and it is, to this day, one of the most depressing and aggravating losses I have suffered as attorney general.

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22. Andrea J. Ritchie & Joey L. Mogul, *In the Shadows of the War on Terror: Persistent Police Brutality and Abuse of People of Color in the United States*, 1 DEPAUL J. SOC. JUST. 175, 184–89 (2008) (detailing the Burge tortures, their racial motivation, and the city's knowledge of and failure to take action); *Burge Reparations*, CITY OF CHI., [https://www.cityofchicago.org/city/en/depts/dol/supp\\_info/burge-reparations-information/burge-reparations--ordinance.html](https://www.cityofchicago.org/city/en/depts/dol/supp_info/burge-reparations-information/burge-reparations--ordinance.html) (last visited Oct. 2, 2017); Noah Berlasky, *When Chicago Tortured*, ATLANTIC (Dec. 17, 2014), <https://www.theatlantic.com/national/archive/2014/12/chicago-police-torture-jon-burge/383839/>; Mark Guarino, *Disgraced Chicago Police Commander Accused of Torture Freed from Prison*, GUARDIAN (Oct. 2, 2014), <https://www.theguardian.com/world/2014/oct/02/chicago-police-commander-jon-burge-torture-released>.

23. *In re Appointment of Special Prosecutor*, No. 2001 Misc. 4, 2002 WL 34491483 (Ill. Cir. Ct. Apr. 24, 2002); Steve Mills & Janan Hanna, *Counsel to Probe Torture by Police*, CHI. TRIB. (Apr. 25, 2002), [http://articles.chicagotribune.com/2002-04-25/news/0204250299\\_1\\_jon-burge-torture-allegations-prosecutor](http://articles.chicagotribune.com/2002-04-25/news/0204250299_1_jon-burge-torture-allegations-prosecutor).

24. EDWARD J. EGAN & ROBERT D. BOYLE, REPORT OF THE SPECIAL STATE'S ATTORNEY (2006).

25. *Id.* at 16, 29–36.

26. Press Release, U.S. Dep't of Justice, Former Chicago Police Commander Convicted of Perjury, Obstruction of Justice Related to Torture of Suspects (Jun. 28, 2010), <https://www.justice.gov/opa/pr/former-chicago-police-commander-convicted-perjury-obstruction-justice-related-torture>.

27. *People ex rel. Madigan v. Burge*, 2014 IL 115635.

28. *Id.*



As you can imagine, there were numerous other lawsuits filed against Burge and the officers that worked with him.<sup>29</sup> The legal fees and settlement amounts have reached over \$100 million.<sup>30</sup> Finally, in 2015, in recognition of the torture that took place, the city of Chicago created a small reparations fund of \$5.5 million and provided other benefits for the victims and family members of those torture victims.<sup>31</sup>

Despite the enormous costs to the city from this history, allegations of unconstitutional, discriminatory policing and inadequacies in the Chicago Police Department's (CPD) process for investigating complaints against officers have continued to plague the police department. Reports about the use of deadly force were confirmed most dramatically, for Chicago and the world, in the video of the police shooting of Laquan McDonald.<sup>32</sup> That terrible incident was the impetus for me to formally request an investigation into CPD by the U.S. Department of Justice (DOJ) in December 2015.<sup>33</sup>

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29. See Press Release, Roderick MacArthur Justice Ctr., Class Action Suit Calls for New Hearings for Still-Incarcerated Burge Torture Victims (Oct. 16, 2012), [http://www.law.northwestern.edu/legalclinic/macarthur/projects/police/documents/PressRelease\\_BurgeClassActionFiling.pdf](http://www.law.northwestern.edu/legalclinic/macarthur/projects/police/documents/PressRelease_BurgeClassActionFiling.pdf) (providing an example of attorneys filing a class action suit calling for new hearings for all men whose convictions were tainted by former Chicago Police Commander Jon Burge and his subordinates).

30. Merrit Kennedy, *Decades Later, Victims of Chicago Police Torture Paid Reparations*, NPR (Jan. 5, 2016, 3:47 PM), <http://www.npr.org/sections/thetwo-way/2016/01/05/462040444/decades-later-victims-of-chicago-police-torture-paid-reparations>; *Summary of Documented City and County Expenditures in Burge Torture Scandal (Through December 31, 2013)*, PEOPLE'S LAW OFFICE, <http://www.peopleslawoffice.com/wp-content/uploads/2014/01/1.6.14.Latest-SUMMARY-OF-DOCUMENTED-CITY-COUNTY-AND-STATE-EXPENDITURES-IN-BURGE-TORTURE-SCANDAL.pdf> (last visited Sept. 28, 2017).

31. *Burge Reparations Information*, CITY OF CHI., [http://www.cityofchicago.org/city/en/depts/dol/supp\\_info/burge-reparations-information.html](http://www.cityofchicago.org/city/en/depts/dol/supp_info/burge-reparations-information.html) (last visited Sept. 28, 2017); Hal Dardick, John Byrne & Steve Mills, *Mayor Backs \$5.5 Million Reparations Deal for Burge Police Torture Victims*, CHI. TRIB. (Apr. 14, 2015, 7:54 PM), <http://www.chicagotribune.com/news/ct-burge-reparations-emanuel-met-20150414-story.html>.

32. Monica Davey & Mitch Smith, *3 Chicago Officers Charged with Conspiracy in Laquan McDonald Case*, N.Y. TIMES (June 27, 2017), <https://www.nytimes.com/2017/06/27/us/chicago-officers-indicted-laquan-mcdonald-shooting.html?mcubz=0>.

33. Press Release, Lisa Madigan, Att'y Gen., Ill., Madigan Asks United States Department of Justice Civil Rights Division to Investigate Chicago Police Department Practices (Dec. 1, 2015), [http://www.illinoisattorneygeneral.gov/pressroom/2015\\_12/20151201.html](http://www.illinoisattorneygeneral.gov/pressroom/2015_12/20151201.html).

My concern, shared by most advocates who work in this area, is that the police department's practices violated the Constitution. I believed it was very clear that the CPD needed an outside independent review of its practices by experts who would not be influenced by local politics. In my view, DOJ's experience in doing this work in other jurisdictions would be critical in understanding the challenges in Chicago.

In January 2017, after a lengthy investigation, DOJ released a report finding reasonable cause to believe CPD had engaged in a pattern or practice of using force, including deadly force, in violation of the Fourth Amendment.<sup>34</sup> Unfortunately, while Chicago and DOJ signed an agreement at that time to work on a consent decree, the new presidential administration and U.S. Attorney General do not seem to believe in the value of such decrees, or even that there is a problem worth addressing. I believe it is critical that the DOJ's work not simply end up as another failed effort at reforming CPD. For this reason, I expect that my office will continue to be part of the effort to advocate for police reform in Chicago.<sup>35</sup> And with the absence of leadership on this issue from DOJ, I anticipate that police reform advocates across the country will need to look for other avenues, including working with state attorneys general, to ensure constitutional policing.

In the context of this discussion of police reform, it is important to mention a tool that has been—and should continue to be—utilized to address incidents of misconduct not only by police, but also by other government officials: requests for information pursuant to the Freedom of Information Act (FOIA). The video of the shooting of Laquan McDonald came to light through lawsuits filed by a number of media organizations requesting that the video be released pursuant to FOIA.<sup>36</sup> My office issued a letter to one of the media organizations through our Public Access Bureau, and the city concluded that the video should be made available under our state

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34. U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV. & U.S. ATT'YS OFFICE, INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT (2017), <https://www.justice.gov/opa/file/925846/download>.

35. On August 29, 2017, the Illinois Attorney General's Office filed a lawsuit against the City of Chicago seeking to enjoin the Chicago Police Department from engaging in a repeated pattern of using excessive force and other misconduct disproportionately harming Chicago's African American and Latino residents. Complaint, *Illinois v. City of Chicago*, No. 17-cv-6260 (N.D. Ill. Aug. 29, 2017).

36. See *Illinois v. City of Chicago*, No. 17-cv-6260 (N.D. Ill. filed Aug. 29, 2017).

FOIA.<sup>37</sup> Ultimately, a state court also reached that conclusion and ordered the release of the video.<sup>38</sup> FOIA is a valuable tool for increasing transparency and encouraging reforms, and you should use it.

### C. Consumer Protection and the Student Loan Debt Crisis

The third issue I want to discuss is consumer protection and, specifically, student loan debt. In my view, consumer protection is really a civil rights and human rights issue that affects people's ability to improve their lives. It plays a significant and critical role in the financial stability of millions of people, as well as our nation's economy.

As I mentioned to you earlier, my office receives thousands of consumer fraud complaints every year. While we mediate most of those complaints, we also analyze them to determine what big and recurring issues are impacting our constituents.<sup>39</sup> When a problem starts to emerge as evidenced by an increase in consumer complaints, I can use my authority under the Illinois Consumer Fraud Act to investigate the scope of the problem and whether there are deceptive, unfair or abusive practices taking place.<sup>40</sup> This is how I, along with the fabulous lawyers and staff in my office, was able to identify a growing problem with mortgage lending and undertake investigations of mortgage lenders and other market participants that contributed to the mortgage foreclosure crisis at the heart of the 2008 economic meltdown.

Not long after many of the mortgage foreclosure investigations, lawsuits, and settlements started to wind down, we

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37. *AG: Chicago Cops Should Release Shooting Video of Black Teen*, CBS (Nov. 18, 2015, 9:06 PM), <https://www.cbsnews.com/news/attorney-general-chicago-cops-should-release-shooting-video-of-black-teen/>.

38. *Smith v. Chicago Police Department*, No. 2015 CH 11780 (Ill. Cir. Ct. Nov. 19, 2015).

39. See Press Release, Lisa Madigan, Att'y Gen., Ill., Madigan Announces Top 10 Consumer Complaints (Mar. 6, 2017), [http://www.illinoisattorneygeneral.gov/pressroom/2017\\_03/20170306.html](http://www.illinoisattorneygeneral.gov/pressroom/2017_03/20170306.html) (identifying the top ten consumer complaint categories and noting those that have consistently appeared high on the list).

40. Consumer Fraud and Deceptive Business Practices Act, 815 ILL. COMP. STAT. ANN. 505/3 (LexisNexis 2017); see also Press Release, Lisa Madigan, Att'y Gen., Ill., Attorney General Madigan Alleges Ameren Promoted All-Electric Discount as it Prepared for Program's End (May 30, 2007) (providing an example of the Illinois Attorney General investigating, and then prosecuting a company for unfair business practices).

saw a significant rise in the number of complaints about loan servicing practices in the student lending arena. These complaints came from students who were struggling to repay both their federal and private loans. You are probably aware of the scope of this issue, and some of you probably continue to hold a significant amount of student loan debt. Right now, the amount of outstanding student loan debt is estimated to be more than \$1.4 trillion held by more than 44 million Americans.<sup>41</sup>

Based on my experience in drafting loan servicing standards as part of the \$25 billion national mortgage foreclosure settlement, I immediately recognized the eerily similar problems in the student lending industry. When students struggled to repay their loans and reached out to their servicer, the servicer would put them into forbearance rather than shifting them into a payment plan that was best for them, such as an income-driven repayment plan. When the student borrower is put in forbearance, the interest that the student owes on the loan continues to pile up, increasing the amount that he or she will ultimately owe. For servicers like Navient, this situation was a win-win: Navient's operators get off the phone quickly (because they do not need to spend time finding a payment plan that works for the borrower) and the company ultimately makes more money. But this is a lose-lose situation for the borrower, because even though he or she could not pay back what was initially owed, the borrower will now have to pay back more.

Ultimately, the results of our investigation led me to sue Sallie Mae and Navient in January 2017.<sup>42</sup> In response, Navient rather shockingly declared in a court filing that "there was no expectation that it would act in the best interests of borrowers."<sup>43</sup> Unfortunately, the student loan industry's unfair and abusive

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41. See *Consumer Credit*, BOARD GOVERNORS FED. RES. SYS., <https://www.federalreserve.gov/releases/g19/current/default.htm> (last updated Oct. 6, 2017); Abigail Hess, *Here's How Much the Average American in Their 20s Has in Student Debt*, CNBC (June 14, 2017, 2:00 PM), <https://www.cnbc.com/2017/06/14/heres-how-much-the-average-american-in-their-20s-has-in-student-debt.html>.

42. *People v. Navient Corp.*, No. 17 CH00761 (Ill. Cir. Ct. Jan. 18, 2017); see also Press Release, Lisa Madigan, Att'y Gen., Ill., Attorney General Madigan Sues Navient and Sallie Mae for Rampant Student Loan Abuses (Jan. 18, 2017), [http://www.illinoisattorneygeneral.gov/pressroom/2017\\_01/NavientFileComplaint\\_11817.pdf](http://www.illinoisattorneygeneral.gov/pressroom/2017_01/NavientFileComplaint_11817.pdf) (announcing the complaint alleging abuse in student lending, student loan servicing, and student loan debt collection).

43. Motion to Dismiss, *People v. Navient Corp.*, No. 17 CH00761 (Ill. Cir. Ct. Jan. 18, 2017).

practices have paralyzed almost a generation of borrowers who cannot fully participate in our economy because of the burden of their student loan debt.

This is a cycle we want to stop. Based on what my office found through our investigation, we worked with the U.S. Department of Education to put significant reforms in place.<sup>44</sup> Again, however, the change in the presidential administration has caused an abdication of those reforms. We are now working at the state level to pass legislation that would establish fair standards for repayment and debt collection on student loans.<sup>45</sup> In essence, this legislation is a student loan bill of rights. This is another example of how states now need to step up to ensure fairness in the marketplace as part of a larger effort to ensure the viability of our economy.

These are just three examples of what I believe are human rights issues that state attorneys general work on, or can work on, every single day. As I have outlined, attorneys general have an arsenal of legal weapons to use in affirmative work to promote the public interest. While everyone associates our offices with litigation, attorneys general can draft and advocate for legislation and can use the bully pulpit of our offices to educate and advocate for positive change at the state and national level.

### III. PURSUING AND PROMOTING HUMAN RIGHTS ISSUES

As highlighted in the issues above, there are numerous mechanisms available to attorneys general to proactively tackle pressing issues. Investigations, lawsuits, amicus briefs, legislation, and legal opinions are all some of the tools that we can use. Additionally, we occasionally have financial resources that we can use

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44. John B. King, Jr., Dep't of Educ., Consideration of Past Performance in Student Loan Servicing Reconnect (June 30, 2016), <https://sites.ed.gov/ous/files/2016/06/John-King-servicer-past-performance-memo.pdf>; Ted Mitchell, Dep't of Educ., Policy Direction on Federal Student Loan Servicing (July 20, 2016), <https://www2.ed.gov/documents/press-releases/loan-servicing-policy-memo.pdf>; Ted Mitchell, Dep't of Educ., Addendum to July 20, 2016 Memorandum on Policy Direction on Federal Student Loan Servicing 51 (Oct. 17, 2016), <https://www2.ed.gov/documents/press-releases/loan-servicing-policy-memo.pdf>.

45. S.B. 1351, 100th Leg., Reg. Sess. (Ill. 2017); Press Release, Lisa Madigan, Att'y Gen., Ill., Governor Fails to Protect Student Loan Borrowers from Deceptive Student Loan Companies (Aug. 25, 2017), [http://www.illinoisattorneygeneral.gov/pressroom/2017\\_08/20170825c.html](http://www.illinoisattorneygeneral.gov/pressroom/2017_08/20170825c.html); Letter from Lisa Madigan, Att'y Gen., Ill., to Arne Duncan, Sec'y, U.S. Dep't of Educ. (June 1, 2015).

to provide grants to enable advocates to undertake important public interest work. We also can provide training on issues and engage in education initiatives, like the “Know Your Rights” initiative I mentioned. These efforts can be a powerful way to help people in our states. Finally, through press conferences and testimony in front of a state legislature or Congress, state attorneys general can advocate for a variety of worthy causes.

Whether a state attorney general decides to work on an affirmative issue depends on a number of factors: Do we have a law that gives us authority to take enforcement action? Do we have the resources, including attorneys and staff with knowledge of an issue and the needed financial resources? Is there any public or political pressure for us to act? And what are our relationships with people and organizations working on the issue? As advocates, you can help inform state attorneys general as they consider initiatives and investigations.

Human rights are at the root of many of the most pressing policy issues that our country is dealing with today. It has always been that way. But what is new is that we are now fighting—really refighting—battles that we won five years ago, fifty years ago, and in some cases 150 years ago. I did not have time today to discuss all of the other issues that I know we care about and many of you are working on, such as healthcare, reproductive rights, women’s rights, human trafficking, environmental justice, LGBTQ rights, and voter protections. There are many other critical criminal justice issues, civil rights issues, and consumer fraud issues.

I want you to hear this if nothing else: state attorneys general absolutely have authority in these areas. We do not just defend the state. We also have statutory mandates to enforce laws that protect the people of our states and work for the public interest. As a result, we really can be a secret weapon. So, do not just sue us. Instead, think about how you can work with us. With that in mind, let me provide a few suggestions to you.

First, it is all about relationships. This is the third time I have been to the Human Rights Institute. This is because I met the Institute’s leaders and found we had common interests and goals. It is always better to develop those relationships before you need them. Some elected officials are going to embrace you; others will not. I can tell you that I am always happy to work with organizations that are working to improve the lives of Illinois residents.

Second, partnerships are not just critical for you, but also for government. We are not well resourced. As advocates, you have specific legal knowledge and on-the-ground knowledge of what is happening in our communities. You have access to people with information if we want to bring a lawsuit. Many of the best ideas come to me from advocates working in the public interest. For example, years ago, Human Rights Watch (HRW) came to me about a terrible problem with the evidence from sexual assaults never being sent by law enforcement to crime labs for testing. Working together, we completely revamped how law enforcement in Illinois is required to deal with this evidence. Because of our work with HRW, Illinois became the first state to pass a law requiring that all rape kits get tested.<sup>46</sup>

The last thing I want to say is this: I know that you have been and can continue to be effective without government support. But I think there is much more you can do, and you can often do it faster, when you have the support of an elected official. As lawyers who are deeply committed to and concerned about human rights, it is absolutely imperative that we work together and use whatever power we have to fight against the daily destruction of our democracy. We cannot afford to stand by as hundreds of years of progress on human and civil rights are in jeopardy of being eliminated. Fighting together, we are more powerful, and we can protect our progress, our people and our democracy. Thank you so much for being a part of these very important battles.

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46. Sexual Assault Evidence Submission Act, 725 ILL. COMP. STAT. ANN. 202/15 (West 2010); Megan Twohey, *Illinois to Test Every Rape Kit*, CHI. TRIB. (July 6, 2010), <http://www.chicagotribune.com/news/ct-met-rape-kit-law-20100706-story.html>.