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Supreme Court Returns Payday Lending Case To Lower Court

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LITTLE ROCK -- The state Supreme Court passed on determining the constitutionality of Arkansas' check-cashers law Thursday and instead returned to a lower court a lawsuit challenging the statute that allows lenders to charge loan "fees" exceeding state interest limits.

The high court affirmed Pulaski County Circuit Judge Barry A. Sims' November 2005 decision dismissing an illegal exaction claim in the case but reversed Sims' finding that he lacked jurisdiction to decide the constitutionality of the 1999 Arkansas Check Cashers Act because plaintiffs had not exhausted their administrative remedies before going to court.

Todd Turner, an Arkadelphia lawyer representing the suing parties, said he would ask for a trial immediately.

Turner said he would prefer that that Legislature repeal the law during its upcoming regular session. If that does not happen, he said, he hopes Sims will decide the case "once and for all."

"I can't imagine any other procedural basis that the check cashers or the Board of Collection Agencies could throw up to keep him from ruling," Turner said.

Plaintiffs in the case are people who have used check-cashing businesses as well as some who have not, including North Little Rock Mayo Patrick Hays.

Turner sued the board in April 2003, contending the operations it regulated charged interest on payday loans as high as 500 percent or more and seeking to prohibit that panel from licensing check cashers.

Sims dismissed the case months later, ruling, among other things, that the plaintiffs had no standing to file suit.

The Supreme Court later reversed the ruling and sent the case back to Sims, who dismissed the illegal exaction claim a year ago and declared from the bench that the check-cashers law was constitutional said said he lacked jurisdiction to rule otherwise.

The Supreme Court disagreed in its ruling Thursday.

The central issue in the case, the court said, was the plaintiffs claim that they are being injured by the board because it licenses and regulates payday lenders that operate under the Check Cashers Act, which the suit says allow the businesses to charge "usurious interest rates."

Justice Donald Corbin wrote that the plaintiffs were not required to first take their claim of unconstitutionality before the board as a



prerequisite to legal action.

Turner said the defendants may have suspected the law would be voided and have been trying to avoid the inevitable.

"They haven't been arguing that this act is constitutional, they've just been arguing that nobody should rule on whether the act is constitutional or that I should have gone in front of the board itself" to ask the members to declare the act unconstitutional themselves, he said.

Peggy Matson, executive director of the Board of Collection Agencies, said she was pleased with the court's ruling and defended the act.

"I think it's very accurate to say that the act itself is constitutional," she said. "There's nothing unconstitutional about charging a fee to cash a check."

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