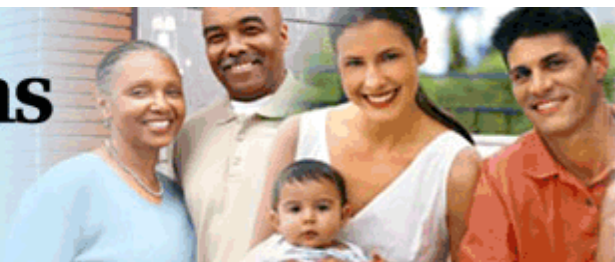


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THE ARKANSAS LEADER

FRIDAY, FEBRUARY 22, 2008

EDITORIAL >> Usurers lose another round

The cat that is the payday lending industry perished Thursday for the eighth time by our calculation. It should be getting its affairs into order, for its ninth life ought to be short, maybe until summer.

For the second time in five weeks, the Arkansas Supreme Court said the practices of payday check cashers are illegal because they charge people more than 17 percent interest on loans, which is all that is allowed by the state Constitution. The court did not flatly declare the law under which the lenders operate unconstitutional because the law was not directly challenged in the case.

The issue was whether Emma Staton of Jacksonville, who

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got entangled with a payday lender, could collect on the lender's surety bond. The justices said she could. It ruled almost identically in a Russellville case in January.

Now it only remains for the Supreme Court to say unequivocally that the law under which the check cashers operate violates the Constitution, which the court surely will in a third case that the court likely will decide before it recesses this summer.

It is hard to imagine the court reaching any other conclusion because in both the surety bond cases the justices held that companies that insured the payday lenders could not hide behind the Arkansas Check Cashers Act of 1999 to avoid paying borrowers who had been harmed by the lenders. The bond companies argued that since the check cashers were merely following an act passed by the legislature and signed by then-Gov. Mike Huckabee, their actions and the companies' bonds were protected from the injured borrowers.

They ought to have known better. An act passed by the Arkansas legislature, even when the infallible Rev. Michael Dale Huckabee endorses it, does not trump the Constitution.

Attorney General Dustin McDaniel saw the light. Although his office had defended the insurance companies because it represents the state agency that screwed up and aided the insurers and the lenders, McDaniel immediately praised the court's decision as a

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victory for consumers. He said he was going to take immediate action.

Noting that the court said plainly that payday lenders were making illegal loans that took advantage of people, McDaniel said he was going to protect the people of Arkansas “with all legal tools at our disposal.” He is forthwith going to write a letter to payday lenders notifying them of the decision.

He should save the postage. The headquarters of all the loan sharks know about the decision and what it means and they know that they will have to shut down their operations before fall when the court’s final judgment comes down. You can be sure that no company is writing surety bonds for them any longer.

What is mournful is that it has taken nine long years for justice to be done. Any first-year law student could have told the lawmakers and Huckabee that the law contravened the Constitution, which says that any interest rate above 17 percent on consumer loans is usury and illegal. The check cashers charge upwards of 300 percent on short-term loans, although they do not call the fees interest. Borrowers frequently get trapped in the loan cycle, borrowing again each payday to keep up with the payments.

More than 50 years ago, the Supreme Court ruled that banks and merchants that used installment credit could not add costs to loans by calling them something other

than interest. The fees and carrying charges were still interest, wrote Justice George Rose Smith. The court redeemed that doctrine over and over again.

But in 1999, the industry and lawmakers apparently believed that since the constitutional usury law had been liberalized a little since the days when it imposed a strict 10 percent limit, a new set of justices who were not imbued with the strict-construction notions of Mr. Justice Smith might look the other way when someone challenged the mammoth interest rates.

Clearly they won't, although all of these cases have bounced up and down through the courts for more than five years, when the final judgment was clear at dawn on the day after Huckabee's imprimatur on the bill opened the gates to the lenders.

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