

No. 04-1264

IN THE
Supreme Court of the United States

BUCKEYE CHECK CASHING, INC.,

Petitioner,

v.

JOHN A. CARDEGNA and DONNA REUTER,

Respondents.

**On Writ of Certiorari
to the Supreme Court of Florida**

**BRIEF OF AMICUS CURIAE
COMMUNITY FINANCIAL SERVICES
ASSOCIATION OF AMERICA
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*

Amicus curiae Community Financial Services Association of America ("CFSA") is the national trade association for the payday advance industry, representing the owners of more than one-half of the estimated 22,000 payday advance retail outlets in the United States. *Amicus curiae* has authored this brief in whole, and has no stake in any of the parties to this litigation.¹ *Amicus curiae* has no interest in the outcome of this case, other than in seeking, on behalf of its members, the correct and consistent application of federal law to claims such as those asserted in this action.

Amicus curiae has established – and enforces among its members – responsible industry practices and appropriate consumer rights and protections ("Best Practices"). The Best Practices of *amicus curiae* (attached as Exhibit A) require its members to comply with all applicable laws and regulations; to disclose fully the terms and cost of each transaction; to limit renewals of payday advances; to encourage consumers to use the service responsibly by informing consumers of the intended use of the product and by notifying them of credit counseling alternatives; to provide consumers with a next-day right of rescission; and to refrain from the threat or pursuit of criminal action for collection purposes.

Many payday advance providers, including Petitioner Buckeye Check Cashing, Inc. and other *amicus curiae* members, include arbitration clauses in their transaction agreements. Throughout the payday advance industry, arbitration clauses are important provisions to help speedily

¹ Petitioner, Buckeye Check Cashing, Inc., is a member of *amicus curiae*. This brief represents the perspective of *amicus curiae* and not of any party. Petitioner has not borne any portion of the cost of preparation of this brief, other than through its payments of ordinary membership dues to *amicus curiae*. The parties have consented to the filing of this brief, and letters evidencing such consent have been filed with the Clerk of this Court, pursuant to S. Ct. R. 37.2.

resolve disputes in an inexpensive way. *Amicus curiae* believes that the interests of the payday advance industry and of the consuming public are best protected by the holdings of six federal courts of appeals, which have stated that the Federal Arbitration Act does not allow a party to avoid arbitration by claiming that the underlying contract containing an arbitration clause (but not the arbitration clause itself) is void for illegality. The outcome of this matter will have a long-lasting and economically powerful impact on members of *amicus curiae* as well as far-reaching implications for financial institutions, which consistently use arbitration provisions in their credit-related agreements.

Accordingly, *amicus curiae* desires to share its perspective on these issues to assist the Court in its disposition of this case.

STATEMENT OF THE CASE

Amicus curiae concurs in Petitioner's Statement of the Case.

SUMMARY OF THE ARGUMENT

The payday advance industry has become a major financial resource for millions of consumers. It is estimated that there are over 22,000 individual payday advance outlets in the United States, and that the industry provided over \$40 billion in payday advances in 2003. This industry serves a void created by the withdrawal of traditional lenders from the small loan market, and its growth is a direct result of consumer demand. Payday advances compare favorably with, and are often less expensive than, other alternatives, for example, overdraft protection products and late fees. The payday advance industry is and has been heavily regulated, both at the state and federal levels. Payday advance providers are subject to state loan and/or check cashing laws, the disclosures mandated by the federal Truth-in-Lending Act, and the prohibitions on unfair

and deceptive trade practices contained in the Federal Trade Commission Act. Arbitration is important and useful in the payday advance industry, and such clauses have long been features of payday advance agreements. These clauses allow payday advance firms to resolve disputes in a low cost, quick and efficient manner. If unable to rely upon arbitration clauses in payday advance agreements, providers would be denied these beneficial procedures.

ARGUMENT

I. THE PAYDAY ADVANCE INDUSTRY SERVES A SIGNIFICANT MARKET FOR SHORT-TERM CREDIT

Respondents in this case have argued that the Court should affirm the Florida Supreme Court's judgment essentially as a way to penalize the payday advance industry. Respondents state that if the Court rules in Petitioner's favor regarding arbitration clauses in payday advance agreements, the Court "would be required to find that legally cognizable contracts existed (if they contained arbitration clauses) even if they provided for murder-for-hire, the sale of child pornography or the sale of illegal drugs[,]"² suggesting that, at least in the context of the legal issue involved here, payday advance agreements are indistinguishable from those types of contracts. That argument, needless to say, is both legally and factually misplaced.

The payday advance industry serves a void created by the withdrawal of traditional lenders from the small loan market and has grown rapidly to become a large part of the financial services industry. It is estimated that the number of payday advance firms rose from 10,000 in 2000 to 22,000 in 2004, and it is predicted that such rapid expansion of the industry will

² Opp. To Cert. Pet. 3.

continue for at least three to five more years. In 2003, the industry provided over \$40 billion in payday advances.

The typical payday advance involves a small, unsecured, short-term cash advance until the next payday for an employed worker who maintains a checking account. It is a very simple transaction with the finance charge expressed clearly as both a dollar amount and as an annual percentage rate ("APR"). To obtain such an advance, the consumer applies with very basic credit information and enters into an agreement that fully complies with applicable federal and state disclosure requirements, including disclosure of the APR. The consumer writes a personal check for the advance amount plus a finance charge and immediately receives the transaction proceeds by cash, electronic funds transfer or check. The payday advance provider holds the personal check until the borrower's payday, usually in about two weeks. Payday advances are short-term transactions and most generally are used to navigate unanticipated cash-flow problems, such as repair of an automobile needed to get to and from work; medical expenses; or an unexpected home-repair bill.

In addition to traditional lenders abandoning the small, short-term loan market, the consolidation of the banking industry has further deprived consumers of access to traditional sources of small loans. The closing of redundant bank branches has resulted in the absence of brick-and-mortar financial services storefronts in many areas of the country. Because payday advance borrowers generally have limited small-denomination sources of credit available to them, a payday advance satisfies their credit needs.

The Credit Research Center at Georgetown University's McDonough School of Business authored the first comprehensive analysis of consumer demand for, and use of,

