

IN THE
Supreme Court of the United States

BUCKEYE CHECK CASHING, INC.,
Appellant,

v.

JOHN CARDEGNA AND DONNA REUTER ON BEHALF OF
THEMSELVES AND THOSE SIMILARLY SITUATED,
Respondents.

On Writ of Certiorari to the
Supreme Court of Florida

**BRIEF OF AMICI CURIAE FINANCIAL SERVICE
CENTERS OF AMERICA, INC., CALIFORNIA
FINANCIAL SERVICE PROVIDERS AND THE
ASSOCIATION OF OHIO CHECK CASHIERS, INC.,
D/B/A OHIO ASSOCIATION OF FINANCIAL
SERVICE CENTERS, IN SUPPORT OF APPELLANT**

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STATEMENT OF INTEREST

The instant *amici curiae* are the Financial Service Centers of America, Inc. ("FiSCA"), a non-profit New Jersey corporation, and two of its state affiliates, the California Financial Service Providers, a California non-profit corporation, and The Association of Ohio Check Cashiers, Inc., d/b/a the Ohio Association of Financial Service Centers, an Ohio non-profit corporation. All three participating *amici curiae* are referred to as "FiSCA."¹ FiSCA is intensely concerned with

¹ Written consent to the filing of this brief has been obtained in accordance with *Supreme Court Rule 37.3(a)*. This brief was prepared solely by counsel for FiSCA. No person or entity other than the *amici*

this matter because it will impact enormously on the ability of non-bank financial institutions to provide consumers with a wide variety of financial services at costs effectively established by fair market prices.

The broad scope and enforceability of arbitration clauses in supplying consumer financial services constitute two of the most vital pillars supporting rigorous competition to provide those services at the lowest possible prices. By containing the costs and business disruption attendant on consumer disputes, arbitration has fostered the development of a wide variety of differently configured non-bank financial institutions. They range from very small, single store "Mom and Pop" businesses to publicly traded companies with thousands of locations nationwide.² The dispute resolution mechanisms

curiae has made a monetary contribution to the preparation or submission of this brief, except for membership dues and affiliate levies collected in the normal course of the operations of the *amici curiae* three trade associations. Appellant Buckeye Check Cashing, Inc. is a member of both FiSCA and the Ohio Association of Financial Service Centers, to both of which *amici* appellant pays only dues generally imposed on all members in the normal course of conducting the associations' regular business activities.

² In 1997 Coopers & Lybrand conducted a study of America's non-bank financial institutions for the United States Treasury Department. The resulting report found the check cashing industry to be "the most fragmented" segment of the non-bank financial institution industry. Coopers & Lybrand, *Non-Bank Financial Institutions: A Study of Five Sectors*, at 40 (1997). There is much greater business concentration among the single product, or "monoline", companies providing the short term, small dollar loans denominated payday advances ("PDAs"), or payday loans. As of the close of 2003, the three largest monoline PDA lenders were Advance America, with approximately 2,250 locations and CNG Financial and Check into Cash, both with about 900 stores. In contrast, the "multiline" (offering a significant diversity of financial products) segment of the PDA industry was led by Ace Cash Express with 867 stores, Cash America with 552 locations and Dollar Financial Group with 320 facilities. Stephens Inc., *Industry Report: Payday Loan Industry*, at 9 (2004).

of the *Federal Arbitration Act*, 9 U.S.C. § 1 *et seq.* ("FAA"), have made possible vigorous price and non-price competition among these businesses, many of whom are FiSCA members.

FiSCA has over 6,000 member locations, approximately two-thirds of which provide short term, low dollar value loans to consumers. Those transactions are referred to colloquially as payday advances ("PDAs") or payday loans. *Amicus curiae* Ohio Association of Financial Service Centers has 47 member companies with well over 300 financial service center locations. The California Financial Service Providers has nearly 2,000 member locations. PDAs are provided at almost all member locations of the latter two *amici curiae*. Although those *amici curiae* are state affiliates of the national trade association (*i.e.*, FiSCA), not all members of those two state associations are also members of the national association.

Amicus Curiae FiSCA has existed since 1987. Various of its state affiliates predate substantially the formation of FiSCA.³ Established to represent the members of the growing non-bank financial services industry, FiSCA was originally known as the National Check Cashers Association. From its inception in the 1930s, largely as a response to the banking practices of the Depression era and changes in employer payment practices, the financial service center industry has evolved to become the pivotal link to the payments system for millions of Americans. These individuals opt for convenience or reasons of personal preference to use FiSCA members' facilities instead of the traditional banking system.

Just as many consumers prefer the convenience of specialty stores to large department stores, so, too, do many consumers in selecting the convenience of financial service centers over

³ The Financial Service Centers of New York was established in 1957. Another FiSCA affiliate, the Community Currency Exchange Association of Illinois, was founded in 1937.

banks. The importance of this convenience factor is supported by empirical research which shows that nearly 60 percent of FiSCA member customers maintain a savings or checking account at a bank or credit union. Eric Mower and Associates, *FiSCA Customer Satisfaction Research: Final Report*, at 6-10 (2000). They prefer doing business with FiSCA members because of the nearby neighborhood locations, longer hours of operation and the friendly service they receive.

The growth of the industry was stimulated, in part, by the passage of the *Depository Institutions Deregulation and Monetary Control Act of 1980*, Pub.L. 96-221 (Mar. 31, 1980), which removed deposit rate ceilings and led to explicit pricing for bank deposit services. Faced with a new banking environment, consumers demanded increased convenience and lower costs in fulfilling their financial services needs. As a result, community-based check cashing centers, which provide more convenient access to financial services, were utilized increasingly. Also, increases in fees charged by traditional banks have caused many Americans to seek less costly, fee-based options that do not require customers to maintain large average daily balances.

In 2000, FiSCA adopted its present name to reflect how traditional check cashers metamorphosed into enterprises that supplied many different products, including numerous financial services, among which are PDAs.⁴ Most of the FiSCA member locations making PDAs are known as "multiline" stores. This is in contrast to "monoline" locations at which the financial transactions are limited effectively to PDAs only.

⁴ Coopers & Lybrand, *Non-Bank Financial Institutions: A Study of Five Sectors*, *supra* at 39.

A "multiline" PDA lender supplies the public with both PDAs and other, more traditional consumer financial products, such as:

- Wiring funds to third parties;
- Disbursing cash to money remittees;
- Selling and cashing money orders;
- Supplying bill payment services;
- Cashing checks;
- Exchanging currency;
- Selling prepaid telephone cards, bus cards and subway tokens/card;
- Offering tax preparation services; and
- Providing accounting/bookkeeping assistance to individuals and small businesses.

Various ancillary goods may be available at a neighborhood financial service center. In some instances, financial service centers are affiliated by common ownership with other enterprises, such as small grocery stores or bodegas.

Most states regulate financial service centers in one way or another, frequently using the same regulatory agencies that oversee banks and credit unions. State regulators often set rates for fees that can be charged for certain services and the marketplace also functions to keep prices low for consumers. New players are entering the market. Some banks and credit unions have opened stand alone check cashing operations. Major national retailers, such as Wal-Mart and 7-Eleven, have launched financial service facilities that provide check cashing, money wiring and money order sales. All of this has created a more competitive marketplace and additional consumer options.

Financial service centers have survived for decades despite demographic shifts, massive social changes and technological innovations. These businesses successfully adapted themselves to new commercial conditions with new products to replace out-moded product lines. Most FiSCA members are family-owned and operated enterprises. They frequently pass from generation to generation within the same family. Yet it is still fairly common to find the daughters and sons of proprietors striking out on their own in new locations with a somewhat different mix of products.

This phenomenon is facilitated by the relatively low economic barriers confronting new entrants into the industry. Most state regulations mandate only modest levels of "net worth" and "liquidity." Physical locations are normally leased, so that the most costly items are store fit-up, operating cash and regulatory compliance. In most geographic areas, a financial service center can be established and operated for an initial investment of \$250,000 to \$500,000.

This ease of entry into the industry always has encouraged participation by members of new immigrant groups. Hence, the ethnic background of financial service center operators includes many Hispanics, Africans, Asians and Eastern Europeans.

Because arbitration clauses invoking the FAA are standard provisions in PDA agreements under which FiSCA members provide small dollar value, short term loans, this case implicates interests vital to FiSCA. As discussed below, the continued viability of small enterprises, as well as the financial health of larger lenders, is closely linked to the ready availability of arbitration proceedings under the FAA to afford consumers the swift, sure and inexpensive resolution of claims.

