

Arkansas Business

Assistant AGs Discouraged From Opposing Check Cashers Act

By Jack Whitsett - 1/29/2001

Two members of Attorney General Mark Pryor's legal staff — including one who had warned that payday lending was unconstitutional — were discouraged from testifying before legislators in the 1999 legislative session in which the Check Cashers Act was adopted, confidential internal memos show.

The check-cashing industry — architect and sole beneficiary of the law — contributed \$14,150 to Pryor's campaign in the months before that legislative session, and he has received an additional \$1,000 since. Pryor's chief of staff, however, said the contributions had no impact on the attorney general's decision to take a neutral position on the Check Cashers Act.

Since the act was adopted in April 1999, several Arkansas judges have found "deferred presentment" unconstitutional and have canceled debtors' obligations to payday lenders. A bill to repeal the law is being considered in the current General Assembly.

"I can confirm that I was one of the people that asked to speak against the bill and that I was not allowed to do so," former Assistant Attorney General Shellie Wallace, now an attorney for Wilson & Associates in Little Rock, said last week.

Wallace served in the Public Protection Department under Pryor and his predecessor, Winston Bryant. She argued in a memo that the proposed legislation allowing check cashers to charge fees for holding customers' checks violated the state's constitutional prohibition against usury.

"The proposed legislation as it applies [to] payday loans, or 'deferred deposits,' is unconstitutional," Wallace wrote in a March 1, 1999, memo to her boss, Sheila McDonald, head of the Public Protection Department.

"While the Check Cashers Act attempts to declare that the fees charged 'shall not be deemed interest for any purpose of law,' such an attempt would necessarily fail pursuant to the Supreme Court's longstanding strict interpretation of the usury prohibition."

Wallace cited two Supreme Court decisions, *Winston v. Personal Finance Co. of Pine Bluff Inc.* (1952) and *Strickler v. State Auto Finance Co.* (1954), as the basis for her analysis.

Pryor was ill at home last week and could not be reached for comment.

Chief of Staff Darrin Williams denied that Wallace and another attorney had been prohibited from testifying on their own time.

“That is not correct,” he said. “We can’t do that.”

Williams said the two were told they could only testify on their own, not as representatives of the attorney general.

Wallace insisted, however, that she and the other attorney, who did not wish to be named, were willing to take annual leave to testify against the bill before the Senate Judiciary Committee but were discouraged from doing so.

Wallace offered as proof a copy of a March 11 e-mail that the unnamed attorney sent to McDonald and copied to Wallace.

“In its current form, i.e. the original draft, [the bill] will have a devastating effect on the Arkansas public, especially those who are least able to protect themselves, the poor,” the other attorney wrote. “I understand that our office is working diligently to secure amendments to the bill. However, if these amendments cannot be secured, I feel it necessary to request an opportunity to respond to my commitment as an attorney to speak against the bill ... I believe that I have special knowledge, perhaps not shared by other members of the bar, regarding the acute inadvisability of [the bill].

“Any testimony would be undertaken as a private citizen, and with the appropriately requested and granted annual leave. I understand that my primary duty is to this office, and if it should be decided that permission and leave cannot be granted for this activity, I will certainly understand.”

McDonald did not return a call for comment.

But in a message to Chief Deputy Attorney General Bob Russell, also copied to Wallace, McDonald asked for clarification of Pryor’s policy on the matter: “I have met with Shellie and [the other attorney] and received the following formal requests from them seeking approval to take annual leave and speak as private citizens against SB 781 (Check Cashers.) I fully support and recognize our individual need and right to act as private citizens on issues which we personally support or oppose. I have, however, cautioned both Shellie and [the other attorney] that regardless of how their statements are qualified as their own views and not necessarily that of the AG’s office, they will probably still be seen as representatives of this office. Please inform me as to this office’s policy with regard to such matters as soon as possible.”

Office Insisted on Amendments

Pryor’s office did insist that amendments, such as a prohibition on “rollovers” to extend a loan by payment of another fee, be added to the bill as a condition for not actively opposing it, Williams said.

“We were very much opposed to that legislation when it came out,” he said. “We said no rollovers.”

Opponents of the law charge that the rollover prohibition is easily evaded by the taking out of new loans.

Pryor's office has not taken a position on a bill introduced by Sen. Cliff Hoofman, D-North Little Rock, to repeal the Check Cashers Act, Williams said.

Bryant had aggressively prosecuted payday lenders as attorney general. Wallace warned in her memo that such prosecution would be hampered by the Check Cashers Act.

"Unfortunately, the mere passage of the Act by the legislature may diminish the authority of the Attorney General to protect consumers from usurious conduct, regardless of the constitutional prohibition," Wallace wrote. "Usury is a personal action, and the attorney general has no per se authority to enforce the [constitutional] provisions."

Pryor's office settled two of Bryant's remaining lawsuits in 1999 and another last year, with the defendants paying costs and agreeing to stop the offending conduct.

Williams was the only representative from Pryor's office to testify on the bill. House records show that he took no position when the bill went before the House Insurance and Commerce Committee, only providing "information."

The campaign contributions from the industry, all but \$1,000 of which were received before Pryor took office, had no effect on the matter, Williams said.

"I was not a part of Mark's campaign," Williams said, adding that he was unaware of the industry's financial support.

"At no time did Mark ever raise that with me as an issue to care about. There was no quid pro quo. That's just not the way Mark Pryor does business."

Wallace, like many Bryant staff members, also contributed to Pryor's campaign, giving \$200 in October 1998.

Bryant, reached at his Little Rock law office, declined comment.

"I couldn't comment on what happened after I left," he said last week. "I didn't follow the issue very closely. In my opinion, the fee charged by the check cashers was in violation of the Arkansas Constitution, [but] I wouldn't criticize my successor because I don't know what the facts were."

The Money Stores

Former State Rep. Mark Pryor succeeded longtime Arkansas Attorney General Winston Bryant with a victory over Republican Betty Dickey in November 1998.

Shortly after taking office in January 1999, Pryor settled several lawsuits brought by Bryant against payday lenders and adopted a neutral stance toward pending legislation pushed by the industry. The bill passed almost unanimously, becoming law as the Check Cashers Act of 1999.

The following is a list of contributions to Pryor during and, in one case, after his 1998 campaign.

•Phillip Kaplan, Little Rock

Attorney and registered agent for EZ Payday Check Cashers of Arkansas, LLC.

\$300 on April 21, 1998.

\$200 on Oct. 21, 1998.

•Kaplan Brewer & Maxey, Little Rock

Law firm of Phillip Kaplan.

\$150 on April 21, 1998.

•W. Cosby Hodges, Fort Smith

Check-cashing business owner.

\$1,000 on July 27, 1998.

\$1,000 on July 1, 2000.

•Patricia D. Hodges, Fort Smith

Family member of a check-cashing business owner.

\$1,000 on July 27, 1998.

•American Check Cashers, Pine Bluff

Check-cashing business.

\$1,000 on July 27, 1998.

•Kelly Breslau, Russellville

Check-cashing business owner.

\$1,000 on Aug. 27, 1998.

•Russellville Quick Cash, Russellville

Check-cashing business.

\$1,000 on Aug. 27, 1998

•Payday Money Store, Springdale

Check-cashing business.

\$1,000 on Sept. 14, 1998.

•Checks For Cash Inc., Osceola

Check-cashing business.

\$1,000 on Sept. 14, 1998.

•**Eddie D. Black, Osceola**

Check cashing business owner.

\$1,000 on Sept. 14, 1998.

•**Payroll Advance Inc., Mountain Home**

Check-cashing business. \$1,000 on Sept. 18, 1998.

•**Money Crunch Loan Co., North Little Rock**

Check-cashing business.

\$1,000 on Oct. 7, 1998.

•**AAA Check Cashing Inc., Batesville**

Check-cashing business.

\$1,000 on Oct. 13, 1998.

•**Robert A. Srygley, Monticello**

Check-cashing business owner (now president of Arkansas Check Cashers Association).

\$1,000 on Oct. 27, 1998.

•**Angel Srygley, Monticello**

Family member of a check-cashing business owner.

\$1,000 on Oct. 27, 1998.

•**B&B Check Cashers, Russellville**

Check-cashing business.

\$500 on Nov. 2, 1998.

Total since 1998: \$15,150.

Source: Arkansas Secretary of State records.