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State Supreme Court Declines To Rule On Constitutionality Of Payday Lending

By Gwen Moritz

11/16/2006 2:29:43 PM

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The Arkansas Supreme Court on Thursday affirmed a Pulaski County Circuit Court ruling that the use of public funds to regulate payday lenders does not constitute illegal extraction.

But in the same opinion, delivered in the case of Sharon McGhee et al vs. the Arkansas State Board of Collection Agencies and its members, the court passed on an opportunity to rule definitively whether payday lending is a violation of the state constitutional usury limit. Instead, it remanded that question back to Pulaski County Circuit Judge Barry A. Sims, [who ruled orally that the law was constitutional](#) but never put the decision in writing.

“McGhee argues, however, that this court should go ahead and address the issue based on the trial court’s announcement from the bench that the Act was constitutional. We decline to do so,” Associate Justice Donald L. Corbin wrote in the opinion.

Todd Turner, the Arkadelphia lawyer who represented Sharon McGhee and a class of other defendants, responded to the ruling in an e-mail:

“Maybe the General Assembly will repeal the Act and make my lawsuit unnecessary. Meanwhile, we will plow ahead.”

The court’s 13-page ruling is available [here](#).

Payday lending in Arkansas has been the subject of constant litigation since the General Assembly adopted the Check Cashers Act of 1999. The Supreme Court [voided part of that law in 2001](#) in a case styled Luebbers v. Money Store Inc. but has not directly ruled on the question of whether the fees charged by payday lenders are tantamount to interest in excess of the constitutional limit,

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as argued by opponents of the short-term lending practice. If the fees are calculated as interest, the rates routinely exceed 300 percent.

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