arkansas business news story

Loan Sharks Get Pass, Again (Gwen Moritz's Editor's Note)

By Gwen Moritz

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The Arkansas Supreme Court's decision to, once again, punt the question of whether payday loans are violations of the constitutional limit on usury put me in mind of an old Stamps-Baxter gospel song: "Farther along we'll understand why … there are others living about us, never molested though in the wrong."

Someday I hope to understand why seven justices presented with numerous opportunities to protect their fellow Arkansans from blatant loan sharking have repeatedly declined to do so.

I read the decision written by Associate Justice Donald Corbin, so I know that the excuse the court used to sidestep the question was the fact that Pulaski County Circuit Court Judge Barry Sims had never actually written down his bench ruling that the Check Cashers Act of 1999 was constitutional. The payday lender victims who brought a class-action suit against the Arkansas State Board of Collection Agencies, which supposedly regulates check cashers, had asked the Supreme Court to address the issue based on Sims' oral ruling, and it's clear from Corbin's language that the justices had the authority to do so had they wanted to. "We decline to do so," he wrote.

Why they declined, however, is still a complete mystery.

Farther along, I also hope to understand why Sims did such a poor job of creating a written record for the appellate court to consider. Was it deliberate, to give the justices an excuse to delay a ruling that seems inevitable? Or does he just not know any better? The latter seems more likely. Despite his campaign jingle inviting voters to "keep Barry Sims on the bench," Sims was actually a traffic judge with virtually no experience with real trial work when he was elected a circuit court judge in 2002. Lawyers who expected little in the first place tell me that they have not been pleasantly surprised by his performance on the bench.

Todd Turner, the Arkadelphia lawyer who has made a cottage industry of suing payday lenders on behalf of their bled-white customers, suggested that perhaps the General Assembly convening in January would rush in where the Supreme Court fears to tread. Law-makers have had three other opportunities to repent of the Check Cashers Act and haven't done so, but hope springs eternal. As the song says, "Cheer up, my brother; live in the sunshine. We'll understand it all by and by."

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A legislator once told me that the General Assembly was being pressured to leave the Check Cashers Act alone because bankers were afraid that a strict interpretation of the usury limit would kill the cash cow of overdraft fees. But Ken Hammonds, executive director of the Arkansas Bankers Association, seemed genuinely bewildered when I asked him about it in the grocery store one evening.

Apologists for the loan sharks love to compare the fees on payday loans with overdraft fees; either they are too dumb to see the obvious difference or they think the rest of us are. A bank customer can use a checking account indefinitely without incurring any overdraft fees at all. Only by misusing the checking account does he incur a fee that, if calculated as interest, could be considered usurious. It is just as reasonable to consider these fees to be a punishment for not following the rules. But customers of payday lenders always incur usurious fees, even if they follow the rules and pay off the loan on their very next payday. The payday loan fees cannot reasonably be considered anything except sky-high interest.

I am not defending the ridiculously high overdraft fees that banks have taken to charging. Many banks have subtly and not-so-subtly encouraged checking account customers to avail themselves of costly “overdraft protection.” As a result, the federal Truth in Savings Act was changed earlier this year to require banks either to stop advertising the service or to inform customers of just how expensive it is.

It wouldn’t bother me at all if a correction of the truly evil Check Cashers Act resulted in a reduction in overdraft fees, but my point is this: There’s no reason the two utterly different products should be linked at all.

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