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Ark. judge says law allowing payday loans constitutional

Arkansas
U.S.

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LITTLE ROCK (AP) -- A state judge on Tuesday set up an eventual challenge to an Arkansas law allowing "payday loan" fees that exceed the state's interest limits, ruling that the 1999 act does not violate the state's constitution.

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Pulaski County Circuit Judge Barry A. Sims did not hear any additional testimony or evidence in the lawsuit challenging the 1999 Arkansas Check Cashers Act. The Arkansas Supreme Court last year reversed and remanded the case to Sims for the second time after disagreeing with the judge's ruling that those suing had not exhausted their administrative appeals.

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Sims said he had previously ruled from the bench that the act was constitutional, but a written order did not include that ruling. Sims asked attorneys for the Arkansas State Board of Collection Agencies to prepare an order upholding the cashers act.

"Is there anything I need to do other than declare on the record that the act is constitutional?" Sims asked before announcing his ruling.

Todd Turner, an Arkadelphia lawyer representing those suing the Arkansas State Board of Collection Agencies and its members, said he planned to appeal Sims' ruling again to the state's highest court. Turner said that, unlike past appeals, this challenge will directly address the constitutionality of the law.

"The act has not been directly addressed, and that was our aim today," Turner told reporters after the hearing. "Even though we disagree with his ruling, we're glad that we have a ruling and now we can take that to the Supreme Court."

Turner has argued that the act violates the state constitution by allowing payday lenders to make consumer loans with interest rates of more than 17 percent annually.

Through a payday loan in Arkansas, a customer writing a check for \$400, for example, typically would receive \$350. The lender would keep the check for about two weeks without cashing it and thereby allow the customer time to buy back the check.

The \$50 charge on the \$350 loan for 14 days equates to 371 percent, well above Arkansas' usury limit of 17 percent.

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Sims originally dismissed the lawsuit in 2003 on a series of grounds, ranging from lack of standing to sue by those who brought the lawsuit, the agency's immunity from suits and a lack of facts that the court could cite to grant relief. The Supreme Court reversed Sims' decision in 2005 and sent the case back to him. Sims then ruled that the plaintiffs had not exhausted their administrative appeals, while also saying that the act was constitutional.

The plaintiffs in the case include several customers who have used check cashing businesses and several private individuals, including North Little Rock Mayor Patrick Hays.

Tom Thrash, the attorney representing the state board, said he was pleased with Sims' ruling.

"If they appeal it, we'll respond and we feel like (the Supreme Court) will uphold the act," Thrash said.

Opponents of the payday-lending industry were unsuccessful earlier this year with efforts to get legislators to approve a law banning the high interest rates charged by the firms. A Senate panel rejected a House bill that would have fined lenders \$300 each time a customer is charged an interest rate above 17 percent.

Likewise, the House rejected a Senate bill that would have allowed customers to rescind the checks within a day and said no check casher could threaten a criminal "hot check" charge against a client for extending a loan. The proposal allowed the state Board of Collection Agencies to go after check cashers breaking the state's laws, giving customers \$1,000 each or twice the value of their check, whichever was greater.

Payday-lending opponents said the Senate measure would have done little to regulate the industry.

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