IN THE SUPREME COURT OF THE STATE OF FLORIDA

JOHN CARDEGNA, and DONNA REUTER
on behalf of themselves and those similarly situated,

Appellants,

v.

BUCKEYE CHECK CASHING, INC., et al.,

Appellees.

Supreme Court Case No.: SC02-2161
Fourth DCA Case No.: 4D01-3549

BRIEF *AMICI CURIAE* OF AARP, CONSUMER FEDERATION OF AMERICA AND NATIONAL CONSUMER LAW CENTER IN SUPPORT OF APPELLANTS
(MOTION FOR LEAVE PENDING)

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 3

ARGUMENT 5

I. THE AFS EXPLOITS VULNERABLE CONSUMERS WHO MUST RELY ON APPROPRIATE STATE REGULATION 5

A. The Nature of the Marketplace 5

B. The Evolution of Payday Loans Demonstrates Both Their Abusive Nature and Lenders' Ruses to Evade Interest Limits 8

1. Historical Background 8

2. Contemporary Payday Lending 9

3. AFS Lenders Mischaracterize Products to Evade Interest Caps 11

C. Florida Borrowers Need Protection From AFS Exploitation 13

D. Courts Look at Substance When Analyzing Usury Subterfuge 18

CONCLUSION 20

CERTIFICATE OF SERVICE

CERTIFICATE OF COMPLIANCE

TABLE OF AUTHORITIES

CASES

Am. Acceptance Corp. v. Schoenthaler, 391 F.2d 64 (5th Cir. 1968) 19

Beacham v. Carr, 166 So. 456 (Fla. 1936) 5, 19

Cashback Catalog Sales, Inc. v. Price, 102 F. Supp. 2d 1375
(S.D. Ga. 2000) 13

Chandler v. Kendrick, 146 So. 551 (Fla. 1933) 5, 17

Growth Leasing, Ltd. v. Gulfview Advertiser, Inc.,
448 So. 2d 1224 (Fla. 2d DCA 1984) 19

Hamilton v. York, 987 F. Supp. 953 (E.D. Ky. 1997) 11

Henry v. Cash Today, Inc., 199 F.R.D. 566 (S.D. Tex. 2000) 13

Jersey Palm-Gross, Inc. v. Paper, 658 So. 2d 531 (Fla. 1995) 17

Kay v. Amendola, 129 So. 2d 170 (Fla. 2d DCA 1961) 19

May v. U.S. Leasing Corp., 239 So. 2d 73 (Fla. 4th DCA 1970) 19

Quick Cash, Inc. v. State Dep't of Agric. & Cons. Servs.,
605 So. 2d 898 (Fla. 2d DCA 1992) 11

The Richter Jewelry Co. v. Schweinert, 169 So. 750 (Fla. 1936) 18

Stubblefield v. Dunlap, 4 So. 2d 519 (Fla. 1941) 17

Turner v. E-Z Check Cashing, 35 F. Supp. 2d 1042 (M.D. Tenn. 1999) 9, 11

White v. Check Holders, Inc., 996 S.W.2d 496 (Ky. 1999) 11

Willis v. Buchman, 199 So. 886 (Ala. Ct. App.), *rev'd for mootness*,
199 So. 892 (Ala. 1940) 12

STATUTES

Deferred Presentment Act
§ 560.401, Fla. Stat. (2002) 17
§ 560.404(18), Fla. Stat. (2002) 10
§ 560.408, Fla. Stat. (2002) 17

REGULATORY MATERIAL

Comptroller of the Currency, *Regulation Z Truth in Lending: Final Rule Revision to Official Staff Commentary*, 2000 OCC CB LEXIS 22 (2000); 65 Fed. Reg. 17,129 (Apr. 20, 2000) 12

Comptroller Gerald Lewis Money Transmitter Task Force Final Report (Nov. 1994) 14, 15

Comptroller Gerald Lewis Money Transmitter Task Force Meeting, Sept. 2, 1993 15

Comptroller Gerald Lewis Money Transmitter Task Force Meeting, Oct. 5, 1993 . . . . 16, 17

MISCELLANEOUS

John R. Burton, et al., *The Alternative Financial Sector: Policy Implications for Poor Households*, 42 Consumer Interests Annual 279 (1996) 6

John P. Caskey, *Fringe Banking: Check Cashing Outlets, Pawn Shops, and the Poor* (1994) 9

Lynn Drysdale & Kathleen Keest, *The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and its Challenge to Current Thinking About the Role of Usury Laws in Today's Society*, 51 S.C. L. Rev. 589 (2000) . . . . *passim*

Creola Johnson, *Payday Loans: Shrewd Business or Predatory Lending?*, 87 Minn. L. Rev. 1 (2002) 13

Lisa B. Moss, *Modern Day Loan Sharking: Deferred Presentment Transactions & The Need For Regulation*, 51 Ala. L. Rev. 1725 (2000) 11, 12

Nat'l Consumer Law Center, *The Cost of Credit: Regulation and Legal Challenges* (2d ed. 2000 & Supp. 2002) 9

Rolf Nugent, *The Loan-Shark Problem*, 8 Law & Contemp. Probs. 3 (1941) 8

Scott A. Schaaf, *From Checks to Cash: The Regulation of the Payday Lending Industry*, 5 N.C. Banking Inst. 339 (2001) 10, 11

Roger Swagler, et al., *The Alternative Financial Sector: An Overview*, 7 Advancing the Consumer Interest 7 (Fall 1995) 6

U.S. Pub. Interest Research Group & Consumer Fed'n of Am., *Show Me the Money! A Survey of Payday Lenders and Review of Payday Lender Lobbying in State Legislatures* (2000), *available at* http://www.pirg.org/reports/consumer/payday/showmethemoneyfinal.pdf 10

Woodstock Inst., *Unregulated Payday Lending Pulls Vulnerable Consumers Into Spiraling Debt*, Reinvestment Alert (Mar. 2000) 9

INTEREST OF *AMICI CURIAE*

AARP, Consumer Federation of America, and the National Consumer Law Center ("*amici*") advocate for the enactment and enforcement of strong laws and regulations that protect consumers from exploitation in the credit marketplace. *Amici* recognize that low-income consumers, those whom mainstream lenders consider "high risk" borrowers, and consumers on fixed incomes often have difficulty finding credit on reasonable terms. They typically are relegated to high-cost lenders and non-traditional sources of credit, collectively referred to as the "fringe banking" industry or "alternative financial sector" (AFS) where they often are subject to deceptive and unfair lending practices. Because the products that comprise these markets, including payday loans, are particularly exploitative, *amici* have assisted in state legislative efforts to enact protections for AFS borrowers. Moreover, AFS lenders historically have maintained that they do not make loans, in order to avoid compliance with interest limits and other statutes, and *amici* have filed briefs in numerous cases like this, urging courts not to countenance these efforts and instead to enforce these laws.

AARP is a non-partisan, non-profit organization with more than 35 million members, approximately 2.5 million of whom live in Florida. As the largest membership organization dedicated to addressing the needs and interests of people

50 and older, AARP is greatly concerned about unfair and deceptive financial products and services targeted at vulnerable consumers, including those involving a range of credit transactions. Because older Americans are disproportionately victimized by many of these practices, AARP supports laws and public policies to protect their rights in the marketplace. Due to its concerns about AFS abuses, AARP has published several reports on the issues involved and a model payday loan law. *See, e.g.*, Sharon Hermanson & George Gaberlavage, AARP, *The Alternative Financial Services Industry* (2001), and Elizabeth Renuart, AARP, *Payday Loans: A Model State Law* (2000).

Consumer Federation of America (CFA) is a non-profit association organized in 1967 to advance the interests of consumers through advocacy and education. CFA's membership is comprised of almost 300 national, state, and local consumer groups which, in turn, represent more than 50 million consumers. Recognizing the phenomenal growth and high cost of short-term consumer credit, CFA has made protecting the interests of consumers in this market a priority, publishing a series of reports on developments in the AFS and advocating on consumer protections and application of payment method protections to prevent fraud and provide redress. CFA is particularly concerned that effective consumer protections and disclosure rules serve consumers who obtain credit in the AFS.

The National Consumer Law Center, Inc. (NCLC) is a non-profit corporation established in 1969 to carry out research, education, and litigation regarding significant consumer matters. A major focus of NCLC's work has been to increase public awareness of, and to advocate protections against, high-cost loans and other forms of abusive credit extended to low-income consumers. NCLC publishes *The Cost of Credit: Regulation and Legal Challenges* (2d ed. 2000 & Supp. 2002), and *Truth in Lending* (4th ed. 1999 & Supp. 2002), among its many treatises, and has assisted attorneys in scores of cases brought under federal and state credit protection statutes.

Amici believe the court of appeal erred in finding that an arbitrator, not a court, should decide on the validity of the underlying contract that contains an arbitration provision, and expect Appellants will thoroughly brief that issue. Accordingly, *amici* submit this brief to assist the Court in the disposition of the case by discussing key AFS products and the harm to Florida's vulnerable borrowers if these lenders can avoid compliance with state usury and similar laws by mischaracterizing their products and, at the same time, precluding borrowers from challenging their unlawful practices in court.

SUMMARY OF ARGUMENT

Low-income consumers and those whom mainstream lenders consider "high

risk" often cannot find credit in the traditional market and rely on high-cost lenders and non-traditional sources of credit, collectively referred to as the "fringe banking" industry or "alternative financial sector" (AFS). Payday loans, refund anticipation loans (RALs), and automobile title pawns are the most common products offered in this market, typically at triple digit and higher annual percentage rates (APRs). The AFS targets low-income and working poor consumers, minorities, and those with blemished credit histories -- consumers most vulnerable to exploitation and least able to protect their interests. This has resulted in a two-tiered economy, often referred to as a system of "financial apartheid" or a "second-class" market, in which middle-income and affluent consumers are served by federally-insured and regulated banks and other lenders, and the poor and near-poor are relegated to expensive and, in many cases, poorly regulated alternatives. *See* Lynn Drysdale & Kathleen Keest, *The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and its Challenge to Current Thinking About the Role of Usury Laws in Today's Society*, 51 S.C. L. Rev. 589, 591 (2000) [hereinafter Drysdale & Keest].

These consumers often have little choice but to turn to these lenders due to their limited bargaining power and financial desperation, and are among those with the greatest need for a market that operates with integrity and the enforcement of

usury and other laws enacted for their especial benefit. Yet, AFS lenders historically have characterized their products in various guises to avoid compliance with these laws. Florida courts have a long history of recognizing the role of usury laws to protect borrowers, as well as looking at the substance of a transaction to determine if it is designed to evade usury laws. *See, e.g.*, *Chandler v. Kendrick*, 146 So. 551, 552 (Fla. 1933) (purpose of usury laws is to "bind the power of creditors over necessitous debtors and prevent them from extorting harsh and undue terms in the making of loans."); *Beacham v. Carr*, 166 So. 456, 459 (Fla. 1936) (to frustrate such evasions "'courts have been compelled to look beyond the form of a transaction to its substance, and they have laid it down as an inflexible rule that mere form is immaterial, but that it is the substance which must be considered.'") (citation omitted). The Court should continue this tradition, reject Appellees' efforts to mischaracterize the nature of their loans, and declare the loan contracts, including the arbitration provision, void.

ARGUMENT

I. THE AFS EXPLOITS VULNERABLE CONSUMERS WHO MUST RELY ON APPROPRIATE STATE REGULATION

A. The Nature of the Marketplace

In order for the Court to fully appreciate the implications of its decision, it is

important to understand the nature of the market in which payday loans are made. These loans are part of an industry popularly referred to as "fringe banking" or the "alternative financial sector" (AFS). *See* Roger Swagler, et al., *The Alternative Financial Sector: An Overview*, 7 Advancing the Consumer Interest 7, 7 (Fall 1995); John R. Burton, et al., *The Alternative Financial Sector: Policy Implications for Poor Households*, 42 Consumer Interests Annual 279, 279 (1996). The AFS targets low-income, working poor, and minority consumers, and those with blemished credit histories, who cannot access traditional sources of money, credit, or certain consumer goods. While many consumers have other ways to obtain short-term, unsecured loans, such as credit cards and checking accounts with overdraft lines of credit, the poor and near-poor cannot access these sources. Coupled with the decline in the availability of small, unsecured loans from banks and finance companies, many consumers with modest incomes or impaired credit find the AFS is their only source of this type of credit. Well aware that they are one of the few sources of cash for these consumers, AFS lenders maintain they merely are filling the gap created by traditional lenders. Even if this were a legitimate argument, and *amici* do not concede that it is, the provision of a necessary service neither justifies the practices that harm the very consumers these lenders claim to help nor supports reducing their legal protections.

A primary segment of the AFS features products that allow consumers to obtain a relatively small amount of cash, with repayment deferred for a relatively short period. The three main forms of these cash advances – payday loans, refund anticipation loans (RALs), and auto title pawns – are extremely expensive, with triple digit annual percentage rates (APRs). Payday lenders such as Appellees advance small amounts of money either by taking a post-dated check from which they withhold a fee and lend the balance or by having borrowers authorize funds to be electronically credited to their account today and debited on the due date along with the fee. The lender agrees to hold the check or not debit the account for a certain period, usually two weeks. When the term expires, the lender can deposit the check or debit the account, or the borrower can pay the lender the full face amount of the check in cash or money order. So, for example, a borrower writes a check for $115 and receives $100 in cash. At the end of two weeks, the borrower pays the lender $115 to redeem the check or authorizes the lender to deposit it. If the borrower cannot repay the loan, he or she can roll it over or extend the term by paying the finance charge in cash and renewing the original amount for another two weeks. Triple digit APRs for a typical two-week loan far exceed state usury and small loan limits; fees paid to roll over loans result in finance charges that exceed the original amount borrowed, while the borrower still owes the face amount of the

check.

B. The Evolution of Payday Loans Demonstrates Both Their Abusive Nature and Lenders' Ruses to Evade Interest Limits

1. Historical Background

Payday loans have direct precursors in loans made against a borrower's wages. As salaries increased to the point they covered necessities and provided a surplus to pay principal and interest on debts, "prospective salaries and wages became assets, however inchoate, against which loans could be made." Rolf Nugent, *The Loan-Shark Problem*, 8 Law & Contemp. Probs. 3, 4 (1941). The "five-for-six-boys" lent $5 at the beginning of the week, to be repaid with $6 on the borrower's next payday, one or two weeks later. *See* Drysdale & Keest, *supra*, at 618. In some instances, "salary buyers" would "buy" the borrower's next wage packet at a discount, for example, advancing $22.50 in exchange for the "sale" of a $25 paycheck two weeks later (with an APR of 311%). *Id.* at 618-19.

Despite the high cost, people in financial distress renewed these small loans, entering a downward spiral mirrored by today's payday borrowers. *Id.* at 620. The dire situation in which these borrowers found themselves led to legislative efforts to regulate the lenders, producing a legal framework that permitted a high enough return to attract legitimate businesses, with sufficient safeguards to prevent

the abuses that prevailed among "loan sharks." *Id.* at 621. While lenders argued that these transactions involved property purchases that were not governed by usury laws, the Uniform Small Loan Laws adopted by many states between 1916 and 1935 defined them as cash lending, subjecting them to small loan regulation. *See* John P. Caskey, *Fringe Banking: Check Cashing Outlets, Pawn Shops, and the Poor* 31-32 (1994).

2. Contemporary Payday Lending

Payday loans are marketed as a quick, easy way to obtain cash. Borrowers need only maintain a personal checking account, be employed for a specified period with their current employer, and show a pay stub and bank statement. Lenders do not routinely conduct credit checks or make other inquiries into the borrowers' ability to repay. Annualized interest rates average around 500%. *See generally* Nat'l Consumer Law Center, *The Cost of Credit: Regulation and Legal Challenges* (2d ed. 2000 & Supp. 2002) at §§ 7.5.5 & n.357, 7.5.5.3. Frequent rollovers result in significantly higher costs that borrowers can ill afford, and create an even greater gap between the costs of these loans and alternative sources of credit. *See* Woodstock Inst., *Unregulated Payday Lending Pulls Vulnerable Consumers Into Spiraling Debt*, Reinvestment Alert 4 (Mar. 2000). This problem was illustrated in *Turner v. E-Z Check Cashing*, 35 F. Supp. 2d 1042 (M.D. Tenn.

1999), in which a payday lender advanced $300 in return for the borrower's $405 check. The borrower could not afford to repay the $405 at the end of one month, and ended up paying monthly service charges of $105 for the next eight months ($840) because she could not repay the original $405 debt. The Florida legislature recognized this problem and, in enacting the Deferred Presentment Act, provided that "[n]o deferred presentment provider or its affiliate may engage in the rollover of any deferred presentment agreement." § 560.404(18), Fla. Stat. (2002).

There has been an explosive growth in payday lending since the industry emerged in the early 1990s. *See* Scott A. Schaaf, *From Checks to Cash: The Regulation of the Payday Lending Industry*, 5 N.C. Banking Inst. 339, 339 (2001) [hereinafter Schaaf]. Stephens, Inc., a Little Rock, Arkansas investment firm, predicted that 25,000 stores would generate $6.75 billion annually in *fees alone* by last year. *See* U.S. Pub. Interest Research Group & Consumer Fed'n of Am., *Show Me the Money! A Survey of Payday Lenders and Review of Payday Lender Lobbying in State Legislatures* 8 (2000), *available at* http://www.pirg.org/reports/consumer/payday/showmethemoneyfinal.pdf. Stephens, Inc. also forecasted that "the annual volume of business will total 180 million transactions with $45 billion volume of loans to produce that $6.75 billion in fee volume." *Id.*

This growth has been tied to the deregulation of the banking industry, the

lack of traditional lenders in the small loan, short-term credit market, and the elimination of interest rate caps. *See* Lisa B. Moss, *Modern Day Loan Sharking: Deferred Presentment Transactions & The Need For Regulation*, 51 Ala. L. Rev. 1725, 1732 (2000) [hereinafter Moss, *Modern Day Loan Sharking*]. Deregulation in the 1980s led banks to eliminate less profitable services, such as free checking and small balance accounts, leaving millions of low-income households with little access to free financial services. *Id.* As mainstream institutions moved out of this market due to higher returns on larger loans, payday lenders filled the void. *Id.* *See also* Schaaf, *supra*, at 340-41.

3. AFS Lenders Mischaracterize Products to Evade Interest Caps

Payday lenders have devised a number of contrivances to assert that usury laws do not apply because they are not making loans. Initially, lenders argued that they did not make loans or charge interest at all, but simply charged "fees" under a "delayed presentment" check cashing arrangement. Courts uniformly rejected the pretense that payday lenders were not making loans when they delayed depositing a consumer's check in exchange for a fee. *See, e.g.*, *Turner v. E-Z Check Cashing*, 35 F. Supp. 2d 1042 (M.D. Tenn. 1999); *Hamilton v. York*, 987 F. Supp. 953 (E.D. Ky. 1997); *Quick Cash, Inc. v. State Dep't of Agric. & Cons. Servs.*, 605 So. 2d 898 (Fla. 2d DCA 1992); *White v. Check Holders, Inc.*, 996 S.W.2d 496

(Ky. 1999). The U.S. Federal Reserve Board likewise rejected assertions that the delayed presentment transactions involved "fees" rather than "interest" on loans, and mandated that payday lenders make interest rate and other disclosures required by the Truth in Lending Act. *See* Comptroller of the Currency, *Regulation Z Truth in Lending: Final Rule Revision to Official Staff Commentary*, 2000 OCC CB LEXIS 22 (2000); 65 Fed. Reg. 17,129 (Apr. 20, 2000).

New schemes emerged. In the modern equivalent of a scam used in the 1930's and 1940's by lenders trying to charge usurious interest rates, *see Willis v. Buchman*, 199 So. 886 (Ala. Ct. App.), *rev'd for mootness*, 199 So. 892 (Ala. 1940), some payday lenders labeled their loans "catalog sales" or "gift certificates." In a typical scenario, the borrower gave the lender a post-dated check for $130. The lender agreed to hold the check for two weeks and gave the borrower $100 in cash and $30 worth of gift certificates or merchandise coupons. To redeem the coupons or certificates borrowers had to return to the lender to place the order, at which time the lender charged additional fees, such as shipping and handling. Not only would the lender not have received any of the add-ons if the consumer made the same purchase directly from the catalog wholesaler, but the added charges often made the merchandise unaffordable so that the consumer never redeemed the coupons or certificates. The lender kept their full value as profit. *See* Moss,

Modern Day Loan Sharking, supra, at 1729-30. On the two-week $100 loan, the $30 certificate translated to an APR of 780%. *See, e.g., Cashback Catalog Sales, Inc. v. Price*, 102 F. Supp. 2d 1375, 1379 (S.D. Ga. 2000).

Another scheme, the "cashback ad," involves the pretense that the interest paid is purchasing an ad in a publication distributed by the lender. *See* Creola Johnson, *Payday Loans: Shrewd Business or Predatory Lending?*, 87 Minn. L. Rev. 1, 20 (2002). Lenders maintain they are charging a fee for the sale of a service and insist the consumer pay for an ad in order to receive cash. The lender holds the consumer's check as a "security deposit" and "rebates" it when the consumer repays the loan two weeks later. If the consumer cannot repay the loan, he or she must renew it, paying an additional fee to purchase another ad. In one case, after six ad purchases -- with an APR of 860% -- the lender said no further purchases would be necessary. *See* Drysdale & Keest, *supra*, at 604 (discussing Memorandum in Support of Plaintiffs' Motion for Class Certification in *Henry v. Cash Today, Inc.*, 199 F.R.D. 566 (S.D. Tex. 2000)).

C. Florida Borrowers Need Protection From AFS Exploitation

Florida consumers benefit from strong marketplace protections that enhance their economic security. The growth of the AFS, specifically targeting consumers most vulnerable to predatory practices and least able to protect themselves from

abuse, warrants strong regulation. AFS borrowers frequently are at a distinct disadvantage because of limited education, bargaining power, and financial desperation. Their vulnerability to overreaching underlays various consumer protection statutes.

The Florida legislature has acted when it has learned of the need to curb abuses in the financial services market. In 1993, the Florida Comptroller created a "Money Transmitter Task Force" to determine "whether the money transmitter industry should be subjected to enhanced government regulation in Florida." Letter from Douglas E. Ebert, Chairman, to The Honorable Gerald Lewis, Comptroller of Florida (Nov. 1994) (accompanying *Comptroller Gerald Lewis Money Transmitter Task Force Final Report*). After holding seven meetings and hearing testimony between August 1993 and January 1994, the Task Force "determined that regulation was necessary and provided the Comptroller with specific statutory and administrative guidelines upon which the industry should be regulated. These recommendations came in the form of proposed legislation which . . . became law on May 25, 1994 and May 28, 1994 . . . ." *Comptroller Gerald Lewis Money Transmitter Task Force Final Report* 3 (Nov. 1994). The law gave the state Division of Banking and Department of Banking and Finance regulatory authority over the money transmitter industry, defined broadly to include check cashers. *Id.*

at 1. The Task Force found a significant increase in the number of check cashers in Florida, noting the "yellow pages listings for check cashers grew by 110 percent . . . between late 1988 and early 1992, at a time when the industry grew by 11 percent in the state of Illinois and 22 percent in the state of New York." *Id.* at 6.

The Task Force Final Report demonstrates a particular concern with money laundering by the then-unregulated check cashing industry. That the Report itself is silent about payday lending through deferred presentment transactions is not surprising, given representations made by industry representatives during Task Force meetings. For example, a Task Force member who was President of the Florida Check Cashers Association stated payday loans were not a "real problem."

> We as an association have taken a strong stance against it. Don't do it. This is usurous [sic]. . . . You're providing a loan and it's just a bad situation. So we have told people not to do it. If it is a member that is doing it, we boot them out. If we have information we will notify the State Attorney in that area that they are doing that.

Task Force Meeting, Sept. 2, 1993, at 168 (statement of Joseph M. Doyle).

A leading expert on check cashing and payday lending cautioned the Task Force against allowing check cashers to make payday loans:

> If you allow check cashing outlets to make payday loans where they're essentially in the small loan business, that is an area where there has historically been a great deal of abuse, consumer abuse. . . . [T]here is a strong need for

> consumer protection laws and also in collection policies. So I think the state should reasonably take the choice by saying that's something we want the check cashers to stay out of, leave that to the loan industry which is regulated in a different way.

Task Force Meeting, Oct. 5, 1993, at 225 (statement of Professor John P. Caskey). Mr. Doyle responded that his association wholeheartedly agreed with everything the Professor said. "The payday loans, we've talked about in previous meetings. We're totally against that in Florida. Anything we can do to make it an illegal activity we're totally supportive of. . . . Well, if they're going to make loans they should get a license to do loans, period." *Id.* at 225-26 (statement of Mr. Doyle).

Perhaps demonstrating great prescience about Appellees' practices, Professor Caskey observed that many states did not regulate check cashing but that if check cashers made loans they would

> automatically fall under the small loan category. They say, 'I'm not making loans. I'm just cashing this check. The fact that I agree to hold it a week doesn't matter.' It clearly does matter. That's a loan transaction at that point. I think most state associations could easily live with regulations that require the posting of rates and the issuing of receipts and I think that would eliminate the small percentage of the people, the businesses that might take advantage of an unsophisticated customer.

Id. at 226-27 (testimony of Prof. Caskey). Mr. Doyle responded, "We've always supported that." *Id.* at 227.

Based on these representations, it was not surprising that neither the Task Force nor the legislature addressed payday lending in 1994. Appellees and other check cashers promptly began to engage in payday lending, almost mimicking Professor Caskey's testimony that they simply were "cashing checks" in accordance with the Money Transmitters' Code. The Florida legislature subsequently passed the Deferred Presentment Act, §§ 560.401 to 408, Fla. Stat. (2002), to, among other things, "prevent fraud, abuse, and other unlawful activity associated with deferred presentment transactions." *Id.* at § 560.408.

While the Deferred Presentment Act is a recent enactment, Florida has long recognized the role usury laws play to protect borrowers from unfair lending practices. Seventy years ago this Court noted: "The very purpose of statutes prohibiting usury is to bind the power of creditors over necessitous debtors and prevent them from extorting harsh and undue terms in the making of loans." *Chandler v. Kendrick*, 146 So. 551, 552 (Fla. 1933). *See also Jersey Palm-Gross, Inc. v. Paper*, 658 So. 2d 531, 534 (Fla. 1995) ("The Florida Legislature enacted Chapter 687, Florida Statutes (1993), to protect borrowers from paying unfair and excessive interest to overreaching creditors."); *Stubblefield v. Dunlap*, 4 So. 2d 519, 521 (Fla. 1941) ("it is entirely proper for us to bear in mind not only the letter but the spirit of the usury law and its prime purpose to protect needy borrowers by

penalizing unconscionable money lenders.”).

Inequalities between lenders and borrowers are more pronounced in the AFS than in the mainstream consumer credit marketplace, and consumers who resort to these products are among those with the greatest need for a marketplace that operates with integrity and the enforcement of laws state legislatures intended for their protection. AFS lenders should not be allowed to evade interest rate limits enacted to protect necessitous consumers from exploitative practices.

D. Courts Look at Substance When Analyzing Usury Subterfuge

The evasion of usury laws is a centuries-old problem in this country, and Florida courts have a long history of recognizing that the substance, not the form, of a transaction is key when analyzing whether it is devised to evade usury. For example, in *The Richter Jewelry Co. v. Schweinert*, 169 So. 750, 752 (Fla. 1936), this Court stated, “In determining usury courts will disregard the form of the transaction and look to its substance.” The Court was more explicit in another decision the same year:

> “The cupidity of lenders, and the willingness of borrowers to concede whatever may be demanded or to promise whatever may be exacted in order to obtain temporary relief from financial embarrassment, as would naturally be expected, have resulted in a great variety of devices to evade the usury laws; and to frustrate such evasions the courts have been compelled to look beyond

> the form of transaction to its substance, and they have laid it down as an inflexible rule that mere form is immaterial, but that it is the substance which must be considered."

Beacham v. Carr, 166 So. 456, 459 (Fla. 1936) (quoting 27 R.C.L. 211 Sec. 12). *See also Am. Acceptance Corp. v. Schoenthaler*, 391 F.2d 64, 69 (5th Cir. 1968) ("Time and again the Florida courts have looked to the substance of a transaction to determine if it was a loan rather than a purported sale."); *Growth Leasing, Ltd. v. Gulfview Advertiser, Inc.*, 448 So. 2d 1224, 1225 (Fla. 2d DCA 1984) ("it is the general rule, that the substance of a transaction rather than the form will be examined to determine whether a transaction not cast in the form of a loan nevertheless constitutes a usurious loan transaction."); *May v. U.S. Leasing Corp.*, 239 So. 2d 73, 75 (Fla. 4th DCA 1970) ("The cases are legion in Florida and in all jurisdictions that a court in determining whether or not a contract is usurious will disregard its form and look to the substance of the transaction: 'A charge of usury may be interposed as a defense, even though it contradicts the written agreement, since parol evidence is admissible to show that an agreement in writing as drawn is a mere subterfuge . . . .' 33 Fla. Jur., Usury, § 59."); *Kay v. Amendola*, 129 So. 2d 170, 173 (Fla. 2d DCA 1961) ("Our usury statutes show a clear legislative intent to prevent accomplishment of a usurious scheme by indirection, and the concealment

of the needle of usury in a haystack of subterfuge will not avail to prevent its pricking the body of law into action."). Appellees' practices are exactly those that Florida's legislature has sought to restrict and they should not be allowed to elevate form over substance to evade these consumer protections.

CONCLUSION

Amici curiae respectfully urge the Court to reject Appellees' efforts to completely avoid application of Florida laws enacted to protect vulnerable borrowers and to use an arbitration clause in an unenforceable contract to prevent them from accessing the courts to seek redress. The Court should declare the loan contracts void in their entirety, including the arbitration provision, and allow Appellants to proceed in court.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief *Amici Curiae* of AARP, Consumer Federation of America and National Consumer Law Center In Support of Appellants was prepared in Times New Roman, 14-point font in compliance with Fla. R. App. P. 9.210.

Dated this ____ day of June 2003.

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Deborah M. Zuckerman

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief *Amici Curiae* of AARP, Consumer Federation of America and National Consumer Law Center In Support of Appellants has been furnished to John R. Hart, Esquire, CARLTON, FIELDS, WARD, EMMANUEL, SMITH & CUTLER, P.A., 222 Lakeview, West Palm Beach, FL 33402-0150, James P. Murphy, Esquire, SQUIRE, SANDERS & DEMPSEY, LLP, 1201 Pennsylvania Avenue, NW, Washington, D.C. 20044-0407, Counsel for Appellees; Christopher C. Casper, JAMES, HOYER, NEWCOMER & SMILJANICH, P.A., 4830 West Kennedy Blvd., Suite 550, Tampa, Florida 33609, E. Clayton Yates, LAW OFFICE OF E. CLAYTON YATES, 205 South Second Street, Fort Pierce, Forida 34950, Counsel for Appellants, by Federal Express overnight delivery on June ___, 2003.

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