

No. 16-0854

IN THE
SUPREME COURT OF TEXAS

**HIAWATHA HENRY, ADDIE HARRIS, MONTRAY NORRIS,
and ROOSEVELT COLEMAN, JR., on behalf of
themselves and for all other similarly situated**

Petitioners

v.

**CASH BIZ, LP, CASH ZONE, LLC
D/B/A CASH BIZ and REDWOOD FINANCIALS, LLC**

Appellees

On Petition for Review from the
Fourth Court of Appeals, San Antonio, Texas
Cause No. 04-15-00469-CV

**AMICUS CURIAE'S BRIEF OF TEXAS APPLESEED
IN SUPPORT OF PETITIONERS**

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AMICUS CURIAE REQUESTS ORAL ARGUMENT

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IDENTITY OF THE PARTIES AND COUNSEL

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF TEXAS:

Texas Appleseed supports Petitioners before this Court because this dispute illustrates how payday, auto title, and other small-dollar loan arrangers and lenders, like Respondents, exploit the public's legal system for private, commercial gains to the detriment and harm of all Texans. After using the public's criminal justice system to help collect private, civil debts from borrowers, these loan arrangers and lenders seek to deprive disadvantaged borrowers of the recourse afforded by public civil courts by compelling costly, individual arbitration, and by preventing these borrowers from banding together to litigate common complaints against them. Such practices enable commercial lenders and loan arrangers to recover private debts using the public resources supported by tax dollars, and then, when the legality of their collection practices is challenged, shield their wrongful conduct from public scrutiny and themselves from liability by demanding that the courts refer the disputes to private, cost-prohibitive arbitrations. As a non-profit public interest advocate for fairness in the financial services industry, Texas Appleseed requests that this Court grant review of this matter and, upon due consideration, reverse the ruling of the Fourth Court of Appeals and remand the dispute to the trial court for further proceedings.

STATEMENT OF THE CASE

Hiawatha Henry, Addie Harris, Montray Norris, and Roosevelt Coleman, Jr. (“Petitioners”), individually and on behalf of a putative class of Texans against whom criminal charges were pursued to collect or recover payday loans, filed their Original Class Action Petition against Cash Biz, LP, Cash Zone, LLC, D/B/A Cash Biz and Redwood Financials, LLC (“Cash Biz”) on January 30, 2015. Petitioner’s civil claims for malicious prosecution, fraud, violations of the Deceptive Trade Practices Act, and the Texas Finance Code stem from Cash Biz’s instigation of criminal charges against Petitioners based on false assertions. On July 9, 2015, Judge Laura Salinas of the 166th Civil District Court in Bexar County, Texas entered an order denying Cash Biz’s motion to enforce arbitration and waiver-of-class-action provisions in the underlying loan documents (not involved in the criminal case). From that ruling, Cash Biz took an interlocutory appeal to the Fourth Court of Appeals.

In the Fourth Court of Appeals, Justices Jason Pulliam and Karen Angelini reversed and rendered the trial court’s decision, and ordered the cases to arbitration. Justice Rebeca C. Martinez dissented because:

[T]he Borrowing Parties [Petitioners] met their burden to prove that Cash Biz waived its right to enforce arbitration by showing that Cash Biz filed criminal ‘bad check’ complaints against the Borrowing Parties in an effort to collect restitution on the debts created by the Loan Contracts, thereby substantially invoking the judicial

process to obtain a satisfactory result and causing the Borrowing Parties actual prejudice.¹

Thereafter, the Court of Appeals denied Petitioners' Motion for Reconsideration *En Banc*; however, Justices Rebeca C. Martinez and Luz Elena D. Chapa dissented to the denial of the motion for *en banc* reconsideration.

STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction over this appeal because the justices of the court of appeals disagree on a question of law material to the decision. TEX. GOV'T CODE §§ 22.001(a)(1) and 22.225(b)(3), (c); TEX. R. APP. P. 53.1 and 56.1(a)(1).

ISSUES

Whether Texas law and policy supports a credit services organizations' (CSOs) and credit access businesses' (CABs) wrongful use of the tax-payer funded criminal justice system to collect private debts from borrowers while disallowing borrowers from pursuing civil claims in the public courts against the CSOs and CABs for their malicious criminal prosecution of the borrowers by forcing the borrowers into cost prohibitive arbitration based on the underlying loan documents between the CSOs and CABs?

¹ *Cash Biz, LP v. Henry*, 04-15-00469-CV, 2016 WL 4013794, at *9 (Tex. App.—San Antonio July 27, 2016, no. pet. h.).

STATEMENT OF THE FACTS

Payday loan businesses, which operate in Texas as credit services organizations (CSOs) and credit access businesses (CABs),² generally provide short-term loans to disadvantaged borrowers who write post-dated personal checks or pre-authorize electronic debits from a bank account for the amount borrowed, plus the finance charge. CSOs and CABs work with one or more third-party lenders and charge high fees to arrange consumer loans for disadvantaged borrowers. The CSO or CAB arranges the loan, guarantees the loan, services the loan, and, when the loan goes into default, acquires the loan and engages in collections.³ At the end of the term, the loan may be satisfied by the borrower or extended and rolled over for another pay period by paying additional fees.⁴ Often these loans, in conjunction with their roll-over payments, result in total charges that amount to anywhere from 400% to almost 600% APR.⁵

² HB 2594 passed into law in the 82nd Texas Legislative Session. The new law requires payday and auto title loan businesses operating as CSOs to also become licensed as CABs under the Credit Services Organization Act. Tex. Fin. Code § 393.

³ See Sealy Hutchings & Matthew J. Nance, *Credit Access Businesses: The Regulation of Payday and Title Loans in Texas*, 66 Consumer Fin. L.Q. Rep. 76 (2012).

⁴ *Id.*

⁵ Based on the latest data posted on the website of the Texas Office of the Consumer Credit Commissioner (OCCC), who licenses credit access businesses, average charges for single payment and installment payday loans, including the fee and interest charge, have an annual percentage rate charge ranging from 463 to 567 percent in 2015.

Where the borrower does not make a new payment to pay off or refinance the loan and the financial institution rejects the check or debit authorization, some CSOs and CABs, like Cash Biz, wrongly and illegally threaten borrowers with criminal prosecution and jail time for writing “bad checks” and invoke the criminal justice system by filing complaints with district attorneys, county attorneys, or justice courts.⁶ Prosecutors and courts may exacerbate the issue by allowing criminal complaints to be filed against the borrower, by issuing demand letters threatening borrowers with criminal prosecution, and by punishing borrowers with fines, arrest, and incarceration. This scenario can take place even after the borrower has paid refinance fees in excess of the original loan amount borrowed. Not surprisingly, the threat of imprisonment is a powerful tool to intimidate a borrower and debt collection tactic for the lenders;⁷ however, the use of criminal “bad check” or “theft by check” charges by these institutions constitutes a violation of the letter and spirit of laws governing the filing of criminal charges, the operation of CABs and CSOs, and fair debt collection practices. Moreover, it is a harmful practice and a wrongful misuse and waste of Texas’ taxpayer-funded law enforcement resources for civil debt collection.

⁶ See Tex. Penal Code §§ 31.06(f), 31.04(g)(1), & 32.41.

⁷ Creola Johnson, *Payday Loans: Shrewd Business or Predatory Lending?*, 87 Minn. L. Rev. 1, 86-87 (2002).

Texas Appleseed is a nonprofit public interest justice center that pursues economic and social justice for all Texans through education, community empowerment, and innovative advocacy. Over much of the last decade, Texas Appleseed has become a leading voice regarding fair financial services issues in Texas by advocating for responsible and reasonable regulations governing the payday lending industry and supporting fair, equitable interest and fee charges for payday, auto title, and other small-dollar loans.

To further investigate and understand the pervasiveness of this practice, Texas Appleseed sent open records requests to state regulators and 21 district attorneys or county attorneys, and collected data from four justice courts based on individual complaints to state regulators and to Texas Appleseed.⁸ The data collected from January 1, 2012 through Spring 2014 revealed approximately 1,500 cases by 13 CSOs operating under a CAB license, including Cash Biz, where a consumer was criminally charged or a district attorney's office sent the consumer a notice to pay on behalf of a payday loan business, regarding collection of a private, civil debt, disguised as a "bad check" or "theft by check" claim.

⁸ Texas Appleseed pursued 21 open records requests to the county and district attorneys in the most populous areas of the state. Five counties refused to provide the data; ten indicated that they do not pursue theft by check or bad check charges for payday loans, citing a post-dated check exemption; six provided documentation of one or more complaints. Texas Appleseed uncovered evidence in two additional counties where criminal complaints were filed by payday loan businesses in at least one justice court and pursued by county attorneys.

On December 17, 2014, Texas Appleseed filed a complaint with various state and federal agencies regarding this practice.⁹ In its complaint, Texas Appleseed noted one Harris County justice court in which Cash Biz was the only complaining witness where arrest warrants were issued for borrowers in 42% of the cases and jail time or jail credit applied in 5.6% of the cases.¹⁰

Texas Appleseed also assisted a 71-year old widow and great grandmother find a *pro bono* attorney to defend against a wrongfully filed bad check case in Travis County. This widow had taken out a \$225 payday loan with Cash Plus, a California based payday lender operating in Texas. When she was unable to repay the original loan within a month's time, the payday lender required her to pay a \$50 fee to "rollover" the loan to the next month. When she did not have the funds to "rollover" the loan again, Cash Plus harassed her to attempt to get her to repay the entire amount purportedly owed, despite the widow requesting payment plan options and demonstrating a clear desire, but current inability, to pay. Cash Plus eventually filed a criminal theft by check complaint against the widow, but the widow was not informed of her court date because court documentation was sent to

⁹ Letter from Deborah Fowler & Ann Baddour of Texas Appleseed to Richard Cordray, Director of Consumer Financial Protection Bureau, *et al.*, Complaint Regarding Criminal Charges Filed by Payday Lenders (Dec. 17, 2014), *available at* <https://www.texasappleseed.org/sites/default/files/Complaint-CriminalCharges-PaydayBusinesses-Final2014.pdf>.

¹⁰ *See id.* Appendix A at p. 8.

an old address. It was not until nearly two years later, when the widow was attempting to get her driver's license renewed, that she discovered Cash Plus's complaint had resulted in a Travis County justice court ordering her to pay \$919 in court fees and restitution (over four times the original loan amount), and issuing a warrant for her arrest.¹¹ This practice, the unlawful use of Texas' criminal justice system as a state subsidized debt collector, flies in the face of the Texas Constitution's prohibition of imprisonment for debts¹² and the Texas Finance Code's protections against threatening criminal prosecution to coerce debt payments.¹³

In the case of Petitioners, Cash Biz filed sworn complaints along with documentation with the prosecutors and courts without which criminal prosecution would have never been initiated against Petitioners.¹⁴ Cash Biz invoked the weight

¹¹ See *supra* note 9. See also Forrest Wilder, "Report: Texas Payday Lenders and Prosecutors Team Up to Criminally Pursue Borrowers," *Texas Observer* (Dec. 17, 2014).

¹² "IMPRISONMENT FOR DEBT. No person shall ever be imprisoned for debt." Texas Constitution, Article 1, Section 18.

¹³ See Texas Finance Code, Section 393.201(c) ("[A] person may not threaten or pursue criminal charges against a consumer related to a check or other debit authorization provided by the consumer as security for a transaction in the absence of forgery, fraud, theft, or other criminal conduct.") and Section 392.301 "THREATS OR COERCION. (a) In debt collection, a debt collector may not use threats, coercion, or attempts to coerce that employ any of the following practices: . . . (2) accusing falsely or threatening to accuse falsely a person of fraud or any other crime."

¹⁴ *Cash Biz, LP v. Henry*, 04-15-00469-CV, 2016 WL 4013794 (Tex. App.—San Antonio July 27, 2016, no. pet. h.) (dissenting opinion).

of the State's criminal authority against Petitioners to collect civil debts and, in fact, extracted payments from Petitioners to collect the debts owed by Petitioners. While the wrongful inception of criminal proceedings is the basis of Petitioners' civil claims against Cash Biz, Cash Biz attempts to resurrect the underlying transactions to shield itself behind the class-action waiver and arbitration provisions contained therein. Even if Petitioners were pursuing claims based on the underlying loans documents (which they are not), Cash Biz's initiation of the criminal proceedings against Petitioners and similarly situated Texans constitutes a waiver of the private dispute resolution provisions. Texas should not allow private parties to exploit the publicly funded criminal justice system to resolve private civil debt disputes, and then deny the wrongfully prosecuted party the resources of the public court system in seeking redress when the instigators of the criminal proceedings invoke the very arbitration provisions they ignored in the first place and thereby waived. Judge Salinas saw through Cash Biz's misuse of the legal system when she denied Cash Biz's motion to compel arbitration as did Justice Martinez when she dissented to the decision of the Fourth Court of Appeal.

Texas Appleseed urges the Court to allow Petitioners the opportunity to pursue their malicious prosecution and relate claims against Cash Biz in the public's civil court system by denying Cash Biz's attempt to hide its wrongful in

private, costly arbitration proceedings after Cash Biz invoked the public's criminal justice system to pursue Petitioners to collect private, civil debts.

SUMMARY OF THE ARGUMENT

Petitioners should be allowed to pursue their claims for malicious prosecution, fraud, and various violations of the Texas Finance Code and Deceptive Trade Practices Act against Cash Biz in the public, civil court system. First, Petitioners' claims are based on the wrongful prosecution of Petitioners (not the original loan transactions), which removes Petitioners' claim from the scope of the arbitration provisions. Second, even assuming the underlying transactions are implicated, Petitioners should not be forced into costly private arbitration because Cash Biz waived any contractual right to arbitration when it invoked the public criminal justice system to pursue "theft by check" charges against Petitioners to collect the debt.

In their arrangements with disadvantaged borrowers, Cash Biz deceptively and unjustly attempts to create a structure by which it and other lenders, CSOs, and CABs can avail themselves of the public court system to collect their private debts while simultaneously foreclosing the borrower's recourse to courts by requiring costly, private, alternative dispute resolution processes where the lenders' misconduct may be concealed from public review. On the one hand, payday, auto title, and other small-dollar loan arrangers and lenders invoke the public, taxpayer-

funded, law enforcement resources and criminal justice system as a means to unlawfully collect private debts. On the other hand, they try to shield their misconduct in private arbitration when the borrowers seek civil redress against the lenders and arrangers for violations of Texas law. Cash Biz and these payday loan businesses are attempting to use the public court system as both sword and shield.

ARGUMENT

After actively engaging in the public criminal court process to recover a private, civil debt, Cash Biz and other payday loan businesses seek to force the Petitioners to litigate their claims in private arbitration away from public view. Texas Appleaseed's research reveals that payday loan businesses, including Cash Biz, use the public, criminal legal system as a taxpayer-funded sword to collect a civil debt, leaving disadvantaged borrowers like Petitioners with criminal records for their debts, and then shield themselves in arbitration where they can conceal their misconduct from public scrutiny and often deprive disadvantaged consumers of a remedy. Regardless of whether Petitioners' claims implicate the underlying loan transactions (which Petitioners dispute), Texas jurisprudence recognizes that once a party substantially invokes the judicial process to the prejudice of another, that party waives any objections to that process being used against it. *See Perry Homes v. Cull*, 258 S.W.3d 580, 584 (Tex. 2008). This principle applies to the dispute between Petitioners and Cash Biz.

Texas has a long history of not criminalizing debts.¹⁵ On the specific issue of Cash Biz's actions in pursuing criminal charges for civil debts, Texas law and the Texas Legislature are crystal clear. Texas Penal Code Chapters 31 and 32 establish that a returned check or payment, in the case of a transaction where a post-dated check is accepted, does not meet the legal standard to establish theft or fraud.

In 2011, the Texas Legislature clarified well-established Texas case law by adding Section 393.201(c)(3) to the Texas Finance Code prohibiting CABs from pursuing criminal charges related to a check or debit authorization absent affirmative evidence of the borrower's intent to defraud, forge, or commit theft. State and federal debt collection laws also include language prohibiting wrongful threats of criminal charges, including Texas Finance Code Section 392.301 and the Fair Debt Collections Practices Act, 15 USC §1692(e).

In response to the findings that payday loan businesses pursued criminal complaints in courts against payday borrowers, the Texas Office of Consumer Credit Commissions ("OCCC"), the state regulator of CABs, issued an advisory bulletin stating that "if a consumer postdates a check to pay for a payday loan, and that check later bounces, this is not sufficient evidence to show that the consumer

¹⁵ The Republic of Texas Constitution of 1836 in the Declaration of Rights clearly recites, "No person shall be imprisoned for debt in consequence of inability to pay." Rep. of Tex. Const. of 1836, Decl. of Rights 12. The Texas Constitution's Bill of Rights at Section 18 succinctly declares, "No person shall ever be imprisoned for debt." Tex. Const. art. I, §18.

committed criminal conduct . . . [w]hen a CAB accepts a postdated check or ACH transfer authorization, the CAB should understand that there might not be available funds at the time of the transaction.”¹⁶

Recognizing the harm that comes from the use of the criminal system to pursue the collection of civil debts, Texas courts have emphatically rejected efforts to circumvent these public policies through creative schemes designed to use the courts to recover private, civil debts.¹⁷

These actions are illegal, in part, because debtors’ prisons have long been found contrary to our American principles. Many of the people subject to these

¹⁶ OCCC, *Credit Access Business Advisory Bulletin: Filing Criminal Charges Against Consumers* (Oct. 14, 2013), available at: <http://occc.texas.gov/sites/default/files/uploads/disclosures/b13-9-cab-criminal-charges.pdf>.

¹⁷ See *Daugherty v. State*, 387 S.W.3d 654, 659-62 (Tex. Crim. App. 2013) (holding debtor's issuance of hot check to contractor *after* contractor finished renovation project was not theft of services by deception because contractor was not induced to perform by check; “. . . routine civil breach of contract case does not give rise to a criminal conviction for theft”); see also *Esquivel v. Watson*, 823 S.W.2d 589, 590-91 (Tex. 1992) (per curiam) (reversing trial court's dismissal of malicious prosecution under Texas Penal Code § 32.41 because probable cause to prosecute hot check requires more than writer's knowledge of insufficient fund at time check is written); *Cortez v. State*, 582 S.W.2d 119 (Tex. Crim. App. 1979) (“ . . . appellant’s conduct of issuing and passing the check could not have affected the judgment of the complaining witness in the delivery of the services allegedly stolen, because the check was not issued and passed until after performance of the services had been completed.”); *Arnwine v. State*, 320 S.W.2d 353, 355 (Tex. Crim. App. 1959) (quoting *Kuykendall v. State*, 160 S.W.2d 525, 527 (Tex. Crim. App. 1942) (“The intent to defraud is the gist of the offense and this intent must have existed at the time the check in question was given. Consequently, the State was required to prove facts from which such an intent is deducible beyond a reasonable doubt, in the absence of which a conviction would not be justified.”); *Hutson v. State*, 227 S.W.2d 813, 813-14 (Tex. Crim. App. 1950) (holding that evidence of closed account was not sufficient to establish hot check violation of prior version of law); and *Colin v. State*, 168 S.W.2d 500 (Tex. Crim. App. 1943) (holding that mere fact that bad check is given for pre-existing indebtedness is insufficient to establish intent to defraud, required under prior version of the Penal Code).

unlawful charges now have criminal convictions simply because they are poor, cannot obtain a traditional loan from a bank or credit union, borrowed money from a payday loan business, and could not yet afford to pay back the loan. These threats and charges of criminal conduct only help perpetuate a cycle of poverty because these convictions appear and adversely affect the borrower's reputation by employers performing background checks, by landlords evaluating housing applicants, and other legal matters such as custody disputes.

Cash Biz's scheme to file sworn complaints with the district attorneys' offices against Petitioners to initiate criminal charges and collect debts, and then retreat to the privacy of arbitration when persons like Petitioners call them out for their misconduct should also be rejected. To collect civil debts from Petitioners, Cash Biz ignored the private arbitration provisions and instead invoked the criminal justice system where taxpayers fund the collection process and the borrower's reputation is publicly tarnished. To avoid public scrutiny when Petitioners pursue civil claims against Cash Biz, Cash Biz moves to arbitrate each individual claim in private where the costs impose an ominous hurdle for the borrower who has already defaulted on modest loans and Cash Biz's wrongful conduct is shielded from view. When CSOs and CABs like Cash Biz resort to the courts and ask the State to collect their private accounts from borrowers like

Petitioners, they prejudice the borrowers and waive any right to privately arbitrate the claims that arise in response to their improper acts.

As noted above, lenders are largely prohibited by Texas law from pursuing or even threatening criminal charges against borrowers with only a few exceptions. Despite these prohibitions, the most common complaints from consumers about payday loan debt collection are threats of arrest or jail time, and claims that the borrower has committed a crime by not paying their loans.¹⁸ These two types of consumer complaints account for 20% of payday loan debt collection complaints lodged by Texans with the Consumer Financial Protection Bureau (CFPB) over nearly three and a half years.¹⁹ Moreover, during this same time period, the complaints from Texas accounted for 25% of all the payday loan debt collection complaints received by the CFPB from across the nation despite Texas representing only 8% of the nation's adult population 18 and older.²⁰

¹⁸ See Consumer Complaints, Consumer Financial Protection Bureau, <https://data.consumerfinance.gov/dataset/Consumer-Complaints/s6ew-h6mp> (retrieved on March 7, 2017) (filtering search first for "debt collection" under "Product," and then for "payday loan" under "Sub-Product"). Complaints analyzed were submitted to the CFPB from October 30, 2013 through March 7, 2017.

¹⁹ See *id.* Nationwide, complaints concerning threats of arrests or jail time and/or claims the consumer committed a crime made up 13% of all the payday loan debt collection complaints received. Chi-square test of independence with Yates' continuity correction, comparing Texas to the national as a whole, found that Texans are disproportionately impacted by such harmful payday loan debt collection practices. Chi-square test results: $\chi^2(1) = 11.98, p < .01, V = .05$.

These tactics are not new. A 1999 article published by Consumers Union in Texas documented the problem of payday loan businesses using criminal complaints filed in justice courts as a debt collection tool,²¹ and a 2000 article documented 13,000 criminal complaints filed by a payday lender in one Dallas precinct.²² In the early 2000s, when many payday loan businesses were operating through partnerships with out-of-state banks, the Federal Deposit Insurance Corporation added to their examination manual a requirement for examiners to focus on “the practice of threatening, and in some cases pursuing, criminal bad check charges, despite the payment of offsetting fees by the consumer and the lender’s knowledge at the time the check was accepted that there were insufficient funds to pay it.”²³ In 2010, then Texas Attorney Greg Abbott charged a payday lending firm with illegally misrepresenting itself as an official Dallas County

²⁰ See *id.* The Texas and U.S. adult population was calculated using the U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates for the population age 18 and above.

²¹ Ruth Cardella, Rob Schneider, and Kathy Mitchell, “Wolf in Sheep’s Clothing: Payday Loans Disguise Illegal Lending,” Consumers Union Southwest Regional Office (February 1999).

²² Lynn Drysdale ; Kathleen E. 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, 610 (2000) (payday lenders filing over 13,000 criminal charges with law enforcement officials against their customers in just one Dallas, Texas precinct in one year.).

²³ Federal Deposit Insurance Corporation, Payday Lending Programs Revised Examination Guidance, Financial Instruction Letter 14-2005, Fed. Banking L. Rep (CCH) ¶ 64-103 C (March 1, 2005). Available at: <https://www.fdic.gov/news/news/financial/2005/fil1405a.html>.

government agency in sending deceptive collection letters to Texans with outstanding debts that included the Dallas County Clerk's forged signature and forged official seal and threatened criminal prosecution, with fake case numbers and fictitious criminal penalties of up to five years in prison and significant fines.²⁴

Indeed, from what occurred in the case at the center of this amicus, as well as other evidence gathered by Texas Appleseed and new research by Southern Methodist University (SMU) Consumer Law Clinic, debt collectors of payday loans sometimes go a step further in Texas, not just threatening criminal charges against Texas borrowers, but also initiating criminal charges against payday borrowers in contravention of state law. Lenders in seven of the 15 counties where the SMU Clinic requested data pursued over \$100,000 in post-dated checks through the criminal justice system.²⁵

Arbitration of the Petitioners' complaints against Cash Biz disadvantages all Texans. Because arbitrations are confidential and not publicly reported, the decisions and justifications for those decisions are not known.^{26, 27} Without

²⁴ Press Release from Attorney General of Texas Greg Abbott, *Attorney General Abbott Charges Debt Collector With Illegally Posing as Dallas County Clerk*, Nov. 5, 2010.

²⁵ This research was conducted in 2015 and 2016. Some of the counties did not have records responsive to the request, while at least one county did not respond at all.

²⁶ National Consumer Law Center, *Forced Arbitration: Consumers Need Permanent Relief*, (2010), p. 6. <https://www.nclc.org/images/pdf/arbitration/report-forced-arbitration.pdf>

precedent to guide decisions and no reported precedent being set in arbitration, the relief and remedies afforded, if any, cannot be measured for consistency or fairness, and a cornerstone of justice, where similar facts produce similar outcomes, is absent. The lack of even the most basic information keeps arbitration shrouded from any public scrutiny or accountability. Unlike the court cases where Cash Biz pursued Petitioners and created public records that will haunt Petitioners for years to come, arbitration decisions are entirely out of the public eye, which enables scurrilous conduct to continue, if not thrive. Exposure of these company's practices to public scrutiny would have a deterrent effect on the companies, promote fair financial services, and raise public awareness of these unethical practices and scams.

Similarly, an inability to pursue grievances in the courts collectively as a class action deters persons from pursuing legal remedies against lenders like Cash Biz, which further encourages CSOs and CABs to continue unlawful practices. Cash Biz pursued hundreds of cases against financially distressed persons like Petitioners, who may be prevented from holding Cash Biz accountable for its unconscionable practices unless the costs can be spread amongst many plaintiffs.

²⁷ Jessica Silver-Greenberg & Michael Corkery, *In Arbitration, a 'Privatization of the Justice System'*, N.Y. TIMES, Nov. 1, 2015, available at http://www.nytimes.com/2015/11/02/business/dealbook/in-arbitration-a-privatization-of-the-justice-system.html?_r=0.

Petitioners and Texans will continue to suffer harm at the hands of Cash Biz and similar businesses who exploit the State's public legal system to collect their private debts, and then hide themselves from public scrutiny and accountability when their wrongful conduct is addressed in individual, confidential arbitrations. Taxpayers should not be forced to bankroll a private enterprise's wrongful collection practices, and courts should not be burdened with these improper suits. Payday loan businesses should not be allowed to initiate public criminal charges in order to attempt to collect on private debt and then shield themselves in arbitration when a consumer or borrower attempts to point out their far-reaching illegal conduct. Without the ability to bring a class claims, set precedent, and publicize the outcome, these practices will persist and fairness in financial transactions and services will remain elusive for many Texans.

PRAYER

For the reasons set forth above, Texas Appleaseed as amicus curiae respectfully requests that the Court grant this Petition for Review and reverse the majority opinion.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this document was produced on a computer using *Microsoft Word 2010* and contains 4,719 words, as determined by the computer software's word-count function, excluding sections of the document listed in Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ Ricardo G. Cedillo
Ricardo G. Cedillo

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2017 a true and correct copy of the foregoing Petition for Review was served on Respondent, through the following counsel of record, by electronic service in accordance with Texas Rule of Appellate Procedure 9.5(b)(1):

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