

ACORN
Arkansas ACORN
Center for Responsible Lending
Consumer Action
Consumer Federation of America
NAACP
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
Public Citizen Congress Watch
U.S. Public Interest Research Group

May 18, 2009

Senator
United States Senate
Washington, D.C. 20510

Re: Arkansas Usury Amendment to Credit CARD Act, S. 627 (Oppose)
(Second order amendment no. 1126 to amendment no. 1107)

Dear Senator:

The undersigned consumer and civil rights groups are writing to urge you to oppose Amendment No. 1126 (Lincoln) to Amendment No. 1107 to the Credit CARD Act, S. 627, expected to be voted on Tuesday, May 19.

We have for several years opposed similar efforts to preempt Arkansas' constitutional interest rate caps. The voters of Arkansas will be voting in 2010 whether to increase their usury cap. *We would not oppose an amendment limited to the interest rates on bonds (though we do not believe it is necessary), but the amendment goes much further and could wipe out years of efforts to attack payday lending and other predatory lending in the state.*

The Constitution of the State of Arkansas contains a usury limit that floats with the Federal Discount Rate. Other states also have usury limits, typically in statute. The Arkansas Constitution can be amended by vote of the citizens of the state, but in recent years the citizens have repeatedly rejected efforts to raise the usury cap. *In the 1990 referendum, over 65% of the electorate voted against raising the interest rate ceiling to 17%.*

The proposed amendment would overturn the will of the Arkansas voters and by congressional fiat impose an interest rate hike that they have rejected. The state legislature, unlike any other state legislature in the country, would have no ability to change that rate. *The state voters and legislature might not even have any ability to amend, interpret, and possibly even to enforce the provision if it proves to have loopholes that permit higher lending.*

The people of Arkansas have worked very hard in recent years to rid the state of the scourge of payday lending. Because of decisions by the state supreme court attacking payday lender evasions, payday lending is finally out of the state. But by preempting state provisions that have proven effective, the amendment could likely open up new loopholes that payday lenders would exploit.

Usury law in Arkansas, which is now a matter of state law, would become a matter of federal law, on which there is no common law or statutory background. The proposal does

not have an enforcement mechanism and it is unclear how a borrower who is the victim of a predatory loan in violation of the new cap would enforce it. To the extent it is enforceable, every dispute would be a matter of federal law and would likely end up in the federal courts, which are less accessible and have less familiarity with the issues.

We oppose any provision that would target the State of Arkansas' chosen mechanism for setting interest rates in the state. The amendment would strip Arkansas citizens of their direct voice on the interest rates to which they are exposed. Federal laws have always applied uniformly to all states and, in areas without federal preemption, have not interfered in a state's processes for regulating other lenders. Other states have initiative processes that could be used to impose, raise or lower interest rates by direct vote of their citizens, in their Constitutions if they chose. This provision would strip only Arkansas citizens of this right and replace it with a usury rate set by federal law.

The amendment under discussion also goes much farther than simply regulating interest rates. The amendment could be read to void any state constitutional provision that limits interest, fees or charges. As Congress becomes more and more aware of the variety of abuses in which lenders engage to pad their disclosed interest rates, it is disturbing that it would interfere in state law and limit a state's ability to restrict those tricks and traps.

Congress has never before intervened to raise the usury limits applicable to non-bank lenders of a single state or to remove the power of the people of that state to exercise their voice on lending abuses. We oppose any effort to begin now with the State of Arkansas.

If you have any questions, please contact Margot Saunders (x 104) or Lauren Saunders (x 105) at the National Consumer Law Center, (202) 452-6252.

Sincerely,

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