Industry-Led Ballot Initiatives are Defeated in Two Battleground States | BY ROMAN VACCARI, ESQ.

Despite significant marketing campaigns in Ohio and Arizona, the payday advance industry was dealt a major blow on Election Day when industry-led ballot initiatives in both states were soundly defeated. While the immediate effect of these failed initiatives is clear, it remains to be seen what type of long-term ramifications, including unintended consequences, they will have on the financial service center industry.

Here is a brief recap of what took place in Ohio and Arizona.

OHIO

In Ohio, where payday lending was legalized in 1995, more than 1,600 stores had opened across the state, employing approximately 6,000 people. Earlier this year, state lawmakers enacted legislation, H.B. 545, imposing a 28% interest rate cap on payday advances, thereby effectively prohibiting operators from generating any profit from extending this unsecured form of credit in the Buckeye State. The law also limited loans to $500 (from $800), eliminated any origination fees, and mandated a 30-day repayment period.

The Ohio law was to go into effect on September 1, but the industry was unwilling to back down without a fight. Knowing full well that the new law could drive many lenders out of business and eliminate up to 6,000 jobs, an industry-led coalition – Ohioans for Financial Freedom – successfully obtained the requisite number of signatures for the payday advance issue to be placed as a referendum on the November ballot. The referendum (Issue No. 5) presented Ohioans with two options: a “Yes” vote meant that you supported the law passed by the legislature; and a “No” vote meant that you supported repealing the section of the law that otherwise would eliminate payday advances as a viable credit option.

With the support of payday lenders, the coalition expended significant resources to spread the industry’s message to Ohio voters and to generate support. The referendum initiative was countered with fierce opposition from the onset. While the industry’s opponents did not have the same type of financial resources, they had the

benefit of having the right players in its corner: the Governor, the Attorney General, and the media. The position of the opposition was immediately adopted and supported by the vast majority of media outlets (online, TV and print), which then subsequently scrutinized and criticized all of the industry's efforts to explain the underlying issue to voters.

While pre-election polling showed the issue was closely contested, on Election Day nearly two-thirds of Ohio voters voted to uphold the law enacted by the state legislature earlier in the year. Consequently, H.B. 545 took effect shortly after the election in November 2008, when the Ohio Secretary of State certified the election results, thus bringing an end to the payday advances known and used by thousands at Financial Service Centers in Ohio.

ARIZONA

Similar to Ohio, Arizona's payday lenders pursued a ballot initiative – Proposition 200 – after failing to reach a compromise with key legislators and the Governor. Unlike Ohio, the Arizona initiative was not an effort to repeal a law, but instead was a proactive attempt by an industry-formed coalition – Arizonans for Financial Reform – to indefinitely extend the state's payday advance law, which is scheduled to expire on July 1, 2010. The ballot initiative also proposed numerous industry reforms, including a reduction in the rate cap.

Similar to Ohio, Arizonans for Financial Reform faced strong resistance from opposition groups. And like Ohio, it did not help the industry's cause that the Governor, the Attorney General and much of the media were publicly lobbying against the ballot initiative.

Proposition 200 presented Arizonans with two options: a "Yes" vote meant that you supported the proposed industry reforms and the indefinite extension of the state law; and a "No" vote meant that you did not favor reform and the indefinite extension of the law. On Election Day, three out of every five voters rejected Proposition 200, with only one out of 15 counties supporting the initiative, albeit narrowly.

While the defeat of Proposition 200 was a disappointing outcome for Arizona's payday lenders, the industry now has a little more than a year-and-a-half to push forward reform measures that are acceptable to the State Legislature. If reform legislation is not passed by the sunset date, lenders would have to adhere to the state's usury cap of 36%.

FUTURE OUTLOOK

So, what does the future hold for both states?

As mentioned above, payday lending as we know it in Ohio is gone. There have

continued on page 14

Industry-Led Ballot Initiatives, *continued from page 13*

been some store closures already. Shortly after the election, publicly traded Cash America International announced it would be moving forward with its plan to close 43 of its Ohio locations, representing about one-third of its stores in the state. The closing of these shops, which operate under the Cashland brand, are expected to result in the loss of approximately 150 jobs. “There is no way to sustain a viable storefront business by offering small, short-term unsecured consumer credit at this rate,” said Cash America President and Chief Executive Daniel R. Feehan. Cash America said their remaining Ohio locations will begin offering other state-authorized loan services in place of payday loans and will also look to purchase gold, while continuing to operate the company’s pawn lending business.

Like Cash America, other operators are considering their options in the aftermath of the defeat of Issue No. 5. Some operators have sought to diversify their product line by pursuing licenses for alternative credit products permissible under Ohio law, including small-loan and second mortgage lending licenses. According to the Ohio Department of Commerce, as of early October, operators of 1,149 payday-lending offices in the state had filed to operate 702 offices as small-loan operations and 558 offices as second-mortgage lenders. For example, Check Into Cash, a payday-lending company based in Cleveland, TN, with 94 stores in Ohio, has obtained 93 small-loan licenses.

Ace Cash Express, which has 65 licensed financial service center locations in Ohio, has secured 58 mortgage loan licenses.

And in Arizona? Fortunately, unlike in Ohio, the defeat of Proposition 200 does not mean the immediate closure of payday lending stores. However, the industry will have to re-mobilize quickly and collectively with reform measures that are palatable to the state legislature.

Beyond Ohio and Arizona, it is not clear what, if any, effect the failed ballot initiatives will have in other states or at the federal level. As can be expected, industry opponents, like the Center for Responsible Lending (CRL), will look to leverage the outcomes in these two states across the country. On the day after the election, CRL issued a press release, stating, “These two citizens [sic] ballots are really a mandate for cracking down on payday lending throughout the nation… . The failure of the payday advance industry to circumvent state lawmakers in Ohio and Arizona suggests not only that citizens are in the mood to crack down on irresponsible lending practices, but also that people are on to the deceptive practices of the industry.”

It will be incumbent upon the payday advance industry in 2009 to thoroughly examine what transpired in Ohio and Arizona and answer some fundamental questions. How did we get to this point? What lessons have we learned? What needs to be done to avoid similar outcomes in other states? Answers to these questions will likely be necessary if the industry is going to successfully counter adverse efforts by CRL and other similar-minded groups in 2009 and beyond. ■

Roman Vaccari is Staff Counsel for FiSCA and an Associate in the law firm of Winne, Banta, Hetherington, Basralian & Kahn, P.C.