

IN THE SUPREME COURT OF OHIO

REYNOLD WILLIAMS, JR., :  
Appellee, : Case No. 08-1337  
-vs- :  
SPITZER AUTOWORLD CANTON : On appeal from the Stark  
LLC : County Court of Appeals,  
Fifth Appellate District  
Appellant. :  
Court of Appeals  
Case No. 07CA00187

---

BRIEF OF AMICI CURIAE

OHIO STATE LEGAL SERVICES ASSOCIATION, SOUTHEASTERN OHIO LEGAL SERVICES, LEGAL AID OF WESTERN OHIO, INC., ADVOCATES FOR BASIC LEGAL EQUALITY, LEGAL AID SOCIETY OF COLUMBUS, LEGAL AID SOCIETY OF CLEVELAND, HOUSING ADVOCATES, INC., AND THE EQUAL JUSTICE FOUNDATION IN SUPPORT OF APPELLEE REYNOLD WILLIAMS

---

Anthony B. Giardini (0006922)  
*Counsel of Record*  
Giardini, Cook, & Nicol, LLC  
520 Broadway, Second Floor  
Lorain, Ohio 44052  
Telephone: (440) 246-2665  
Facsimile: (440) 246-2670

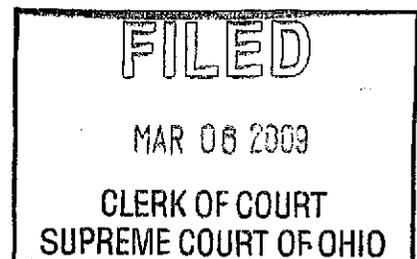
*Counsel for Appellant*  
*Spitzer Autoworld Canton LLC*

David A. Brown (0060101)  
*Counsel of Record*  
Deanna L. Stockamp (0066503)  
Stockamp & Brown, LLC  
5100 Parkcenter Avenue, Suite 100  
Dublin, Ohio 43017  
Telephone: (614) 761-0400  
Facsimile: (614) 761-0303

*Counsel for Amicus Curiae Ohio  
Automobile Dealers Association*

Rachel K. Robinson (0067518)  
*Counsel of Record*  
Equal Justice Foundation  
88 East Broad Street, Suite 1590  
Columbus, Ohio 43215  
Telephone: (614) 221-9800  
Facsimile: (614) 221-9810  
Email: rkr@equaljusticefoundation.com

*Counsel for Amici Curiae Ohio State  
Legal Services Association, Southeastern  
Ohio Legal Services, Legal Aid of  
Western Ohio, Inc., Advocates for  
Basic Legal Equality, Legal Aid  
Society of Columbus, Legal Aid  
Society of Cleveland, Housing Advocates  
and the Equal Justice Foundation*



Kurtis A. Tunnell (0038569)

*Counsel of Record*

Anne Marie Sferra (0030855)

Eric S. Bravo (0048564)

Bricker & Eckler, LLP

100 South Third Street

Columbus, Ohio 43215

Telephone: (614) 227-2300

Facsimile: (614) 227-2390

*Counsel for Amici Curiae National  
Federation of Independent Business/Ohio  
and American Tort Reform Association*

G. Ian Crawford (0019243)

*Counsel of Record*

Crawford, Lowry & Associates

116 Cleveland Avenue NW, Suite 800

Canton, Ohio 44702-1732

Telephone: (330) 452-6773

Facsimile: (330) 452-2014

Email: [icrawford@crawford-lowry.com](mailto:icrawford@crawford-lowry.com)

*Counsel for Appellee Reynold Williams,  
Jr.*

Richard J. Cordray (0038034)

Attorney General of Ohio

Benjamin C. Mizer (0083089)

Solicitor General

*Counsel of Record*

Elisabeth A. Long (0084128)

Deputy Solicitor

Melissa G. Wright (0077843)

Assistant Attorney General

30 East Broad Street, 17<sup>th</sup> Floor

Columbus, Ohio 43215

Telephone: (614) 466-8980

Facsimile: (614) 466-5087

Email:

[benjamin.mizer@ohioattorneygeneral.gov](mailto:benjamin.mizer@ohioattorneygeneral.gov)

*Counsel for Amici Curiae  
State of Ohio*

**TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES .....	ii
STATEMENT OF INTEREST OF AMICI CURIAE.....	1
STATEMENT OF FACTS AND STATEMENT OF THE CASE .....	4
ARGUMENT	
<u>Appellant’s Proposition of Law</u> : Parol evidence cannot be offered by a party in a claim brought under the consumer sales practices act to alter a term of a written contract where that term is clear and unambiguous.	
<b>Appellant’s Proposition of Law would eviscerate the purpose and effect of Ohio’s Consumer Sales Practice Act and implementing regulations .....</b>	<b>5</b>
<b>Appellant’s proposition of law is against public policy and undermines the intent of consumer protection laws .....</b>	<b>7</b>
<b>Legal Services’ clientele would suffer considerable harm if forbidden to prove deceptive and fraudulent consumer contracts through extrinsic evidence and the CSPA .....</b>	<b>10</b>
CONCLUSION .....	13
CERTIFICATE OF SERVICE .....	14

## TABLE OF AUTHORITIES

<u>Reported and Unreported Cases</u>	<u>Page</u>
<i>Brown v. Bredenbeck</i> (1975), 2 Ohio Op. 3d 286.....	5, 6
<i>Celebrezze v. Hughes</i> (1985), 18 Ohio St.3d 71, 74.....	10
<i>Estate of Cattano v. High Touch Homes, Inc.</i> , Erie App No. E-01-022, 2002 5 Ohio 2631.....	5
<i>Federal Trade Commission v. Raladam Co.</i> , 283 U.S. 643 (1931).....	7
<i>Galmish v. Cicchini</i> (2000), 90 Ohio St.3d 22, 734 N.E.2d 782 .....	5
<i>Harrel v. Talley</i> , Athens App. No. 06CA41, 2007-Ohio-3784.....	12, 13
<i>Thomas v. Sun Furniture &amp; Appliance Co.</i> (1978), 61 Ohio App. 2d 78, 82 .....	8
<i>Thompson v. Jim Dixon Lincoln Mercury, Inc.</i> , Butler App. No. 82-11-0109, 1983 Ohio App. LEXIS 11955 .....	5
 <u>Public Inspection File Cases</u>	
<i>Damask v. Modern Communications</i> (Sept. 10, 2000), C.P. Lucas No. 1993859, PIF No. 10001940.....	12
<i>Hezo v. Jim Marsh Ford</i> (Nov. 26, 1986), App. 8 <sup>th</sup> Dist. No. 084135, PIF No. 10000825.....	12
<i>Schottenheimer v. William Stuart Inc.</i> (Sept. 18, 2003), C.P. Summit No. 2002127496, PIF No. 10002184.....	12
<i>State of Ohio v. New Century Financial Corp.</i> (Nov. 25, 2008), C.P. Cuyahoga No. CV07618660, PIF No. 10002733 .....	12
<i>Wrobel v. Carperys by Otto</i> (Feb. 19, 1998), Toledo Municipal No. 9800910, PIF No. 10001691.....	12
 <u>Federal Trade Commission Actions</u>	
<i>AMREP Corp.</i> , 102 F.T.C. 1362, 1662 (1983).....	7
<i>Peacock Buick, Inc.</i> , 86 F.T.C. 1532, 1562-63 (1975) .....	7
<i>Raymond Lee Org., Inc.</i> , 92 F.T.C. 489, 618-19 (1978).....	7

**Statutes**

R.C. § 1322.062(A).....10

R.C. § 1322.07(H).....10

R.C. § 1345.02 .....12

R.C. § 1345.03 .....12

R.C. § 1345.031 .....12

R.C. § 1345.031(B)(5) .....10

R.C. § 1345.031(B)(6) .....10

R.C. § 1345.05(A)(3) .....12

12 U.S.C. § 45(a)(1); Act of Sept. 26, 1914, c. 311, § 38 Stat. 719 .....7

**Studies, Reports and Other Authority**

7A U.L.A. Commissioners’ Prefatory Note, Uniform Consumer Sales Practices Act (West Pub. Co. 1985).....8

ABA Commission, *Report of the ABA Commission to Study the Federal Trade Commission* (1969).....10

Cox, Fellmuth, and Schulz, *The Nadar Report on the Federal Trade Commission* (1969).....10

Departments of Housing and Urban Development and Treasury, *Report: Recommendations to Curb Predatory Mortgage Lending*, (2000), ([www.hud.gov/library/bookshelf12/treasrpt.pdf](http://www.hud.gov/library/bookshelf12/treasrpt.pdf)) .....9

Federal Trade Commission, *Statement of Basis and Purpose for the Used Car Rule*, 49 FR 45711, 48710 (1984) .....7

Federal Trade Commission Trade Regulation Rule; *Sale of Used Motor Vehicles*, 50 FR 21269. n 89 (1985) .....7

Hilzenrath, David A., *Fannie’s Perilous Pursuit of Subprime Loans: As It Tried To Increase Its Business, Company Gave Risks Short Shrift, Documents Show*, Washington Post (August 8, 2008) .....7

Ohio Legislative Service Commission, <i>Fraud, Deception and Other Abuses in Consumer Sales and Services</i> , Report No. 102 (1971) .....	8
ProSeniors and AARP Ohio State Office, <i>Legal Needs of Older Ohioans: A 2008 Survey</i> .....	12
Stanton, Thomas A., Report to the U.S. House of Representatives, Committee on Oversight and Government Reform, <i>Fannie Mac and Freddie Mac: What Happened and Where Do We Go From Here</i> (December 2008) .....	6, 7
U.S. Census 2005 Data .....	11
U.S. Census 2006 Data, <a href="http://www.census.gov/compendia/statab/ranks/rank34.html">http://www.census.gov/compendia/statab/ranks/rank34.html</a> .....	11
U.S. Census 2006 Data, <a href="http://www.census.gov/compendia/statab/ranks/rank04.html">http://www.census.gov/compendia/statab/ranks/rank04.html</a> .....	11
U.S. Census Bureau, Community Survey Board, 2005, <a href="http://www.pascenter.org/state_based_stats/state_statistics_2005.php?state=ohio">http://www.pascenter.org/state_based_stats/state_statistics_2005.php?state=ohio</a> .....	11
U.S. Government Accounting Office, Report to the Senate Special Committee on Aging, <i>Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending</i> , GAO 04-280 (2004), <a href="http://www.gao.gov/new.items/d04280.pdf">http://www.gao.gov/new.items/d04280.pdf</a> .....	9
Voinovich School for Leadership and Public Affairs, Ohio University, <i>2000 Census Data Compilation, Analysis, Survey, and Health Group at Ohio</i> , <a href="http://www.ournonprofitalliance.org/researchanddata_appohio_factsheet.aspx">http://www.ournonprofitalliance.org/researchanddata_appohio_factsheet.aspx</a> .....	11
Voinovich School of Leadership and Public Affairs, Ohio University, <i>Legal Problems Survey Report</i> , January, 2007 .....	11

**STATEMENT OF INTEREST OF AMICI CURIAE**  
**IN SUPPORT OF APPELLEE**

The Equal Justice Foundation (EJF) is a statewide nonprofit organization located in Columbus. It was established in 1996 to represent the poor and others who otherwise would not have access to the legal system. EJF has filed lawsuits, including class action litigation, on behalf of victims of predatory lending and consumer scams. It has brought or defended multiple actions involving mortgage foreclosures, many of which involve predatory lending practices.

The Ohio State Legal Services Association (OSLSA) is a nonprofit corporation formed in 1966 for the purpose of bringing free civil legal services to low income Ohioans. OSLSA receives most of its funds from the federal Legal Services Corporation and the Ohio Legal Assistance Foundation. OSLSA provides direct service to 30 southeastern Ohio counties through its Southeastern Ohio Legal Services program (SEOLS), which has offices in nine southeastern Ohio communities. OSLSA also provides services to all of Ohio's legal aid societies through its State Support Center in Columbus. These support services include policy advocacy, trainings, publications, task force coordination, and substantive specialty assistance. Issues that affect families' abilities to acquire and retain important assets, such as a home or a car are of central importance to OSLSA as the primary provider of legal services to low income Ohioans in Appalachia, and as the support entity for the entire state. SEOLS provides representation to many low income consumers who have relatively little bargaining power in the limited markets available to them and are increasingly preyed on by unscrupulous car dealers, home improvement scam artists and mortgage brokers marketing subprime mortgage loans. OSLSA's clients depend on strong consumer protection laws with effective and meaningful remedies to provide relief from unfair, deceptive and unconscionable business practices.

Legal Aid of Western Ohio, Inc. (LAWO) and Advocates for Basic Legal Equality (ABLE) are non-profit civil legal service providers with the mission of providing free, high quality legal assistance to low income persons in 32 counties in northwest and west central Ohio. LAWO and ABLE represent low income persons and groups in a variety of areas including consumer and housing law. An increasing number of LAWO and ABLE clients need help with car sale, mortgage foreclosure and debt collection cases that frequently involve overpriced defective products, predatory loans, and other illegal lending practices. Common abusive practices among unscrupulous brokers and suppliers include falsifying borrower's income on loan applications, having consumers sign contracts with blanks, hurrying buyers through loan closings without the opportunity to review documents, and failing to incorporate promises made in the solicitation into the written contracts. It is important to LAWO and ABLE clients to maintain the important consumer protections of the Consumer Sales Practices Act for all consumer transactions.

The Legal Aid Society of Columbus (LASC) is committed to assisting low income persons and seniors with legal problems in a variety of areas, including housing, consumer law, public benefits, domestic, as well as cases involving basic necessities, in a six-county area of Central Ohio. Often our clients face a number of economic challenges and are particularly vulnerable to unscrupulous dealers, suppliers and brokers. The CSPA provides important protections for low income consumers who have fewer market choices and little bargaining power. LASC urges the Court not to weaken these vital protections.

The Legal Aid Society of Cleveland, founded in 1905, is the law firm for low income families in Northeast Ohio. Legal Aid's mission is to secure justice and resolve fundamental problems for those who are low income and vulnerable by providing high quality legal services and working for systematic solutions for those we serve. Assisting clients in consumer cases is a significant part of Legal Aid's practice, particularly entailing the liberal judiciary interpretation and application of the CSPA. As such, the issue before this Court affects the scope of the CSPA, as one of the most effective remedial tools for consumers victimized by unfair, deceptive and unconscionable acts of dealers, suppliers and brokers. Accordingly, the Legal Aid Society of Cleveland, which has extensively litigated CSPA issues and authored a practice manual chapter on the subject (*Ohio Consumer Law*, Chapter 2), joins this amicus curiae brief to urge the Court not to weaken the CSPA's well established statutory and regulatory protections for consumers.

The Housing Advocates, Inc. (HAI) was organized in June 1975 with the goal of achieving housing justice for minorities, the disabled and the poor. In the ensuing 33 years the organization has emerged as a full-service, non-profit, tax exempt, public interest law firm. HAI provides legal assistance to victims of housing discrimination, victims of predatory lending, homeowners facing foreclosure and homeowners with other housing-related concerns such as bad home improvement contractors. HAI also conducts research and educational outreach programs on related topics to a variety of audiences. HAI has found that its clients often deal with unscrupulous salespersons, contractors and brokers who use deception as their primary sales tool. As a result, HAI uses the Consumer Sales Practices Act, the Home Solicitation Sales Act, the Mortgage Brokers

Act and similar laws to achieve just results for our clients. The Housing Advocates, Inc. joins its colleagues and asks that this court not weaken the Consumer Sales Practices Act.

All of Ohio's regional legal services programs and the Equal Justice Foundation are partners in Ohio's comprehensive Save the Dream initiative, providing legal advice, referrals and representation to low income consumers in foreclosure. Since April 1, 2008, the legal services providers and their volunteer attorney partners have assisted nearly 3,000 homeowners with foreclosure problems, many of whom have been the victims of either abusive lending or loan servicing practices, or foreclosure rescue schemes. The CSPA, and particular the amendments enacted by Senate Bill 185, are important tools in the legal services advocates' arsenal of legal weapons have to hold brokers and suppliers accountable for unfair, deceptive and unconscionable business practices. Appellant advocates an interpretation of the CSPA that has implications far beyond the scope of the business transaction at issue in this case. Adopting the Appellant's Proposition of Law would destroy important protections for low income consumers in Ohio.

#### **STATEMENT OF FACTS AND STATEMENT OF THE CASE**

Amici Curiae hereby adopts the Statement of Facts and Statement of the Case set forth in Appellee's Brief.

## ARGUMENT

### Appellant's Proposition Of Law

Parol evidence cannot be offered by a party in a claim brought under the consumer sales practices act to alter a term of a written contract where that term is clear and unambiguous.

A. **Appellant's Proposition of Law would eviscerate the purpose and effect of Ohio's Consumer Sales Practice Act and implementing regulations.**

Appellant's Proposition of Law is based upon a false premise. The Ohio General Assembly enacted the Consumer Sales Practices Act (CSPA) in 1972 to protect consumers and to deter businesses from engaging in unfair, deceptive and/or unconscionable acts or practices in consumer transactions. The essence of a CSPA claim is for fraud. *See Estate of Cattano v. High Touch Homes, Inc.*, Erie App No. E-01-022, 2002-Ohio-2631, P44. The General Assembly specifically drafted the CSPA to remove the evidentiary burden of proving intent or knowledge that is required to state a claim for fraud. *Id.* at P42. As the Parol Evidence Rule allows the use of parol and other extrinsic evidence to prove fraudulent inducement<sup>1</sup>, it logically follows that such evidence is allowed to establish a claim under CSPA.

Contract law and the Parol Evidence Rule are anathema to the concept of deception. Appellee Reynold Williams, Jr. brought this action under the CSPA because the contract Appellant presented to him did not reflect or integrate the parties' oral negotiations. "[A]n act is deceptive if it 'has the likelihood of inducing a state of mind in the consumer that is not in accord with the facts.'" *Thompson v. Jim Dixon Lincoln Mercury*, Butler App. No. 82-11-0109, 1983 Ohio App. LEXIS 11955, 3-4, citing *Brown v. Bredenbeck* (1975), 2 Ohio Op. 3d 286. Before obtaining Appellee's signature on the

---

<sup>1</sup> *See Galmish v. Cicchini* (2000), 90 Ohio St. 3d 22, 28.

contract, Appellant had the opportunity to orally disclose that a material term of the parties' negotiation had been changed. Appellee had a reasonable good faith expectation that the contract would reflect the final terms of the parties' oral agreement. It did not. "The place to look to determine the presence of deception is the state of mind of the consumer and not the intent of the supplier." *Id.*

Appellant asks this Court to fundamentally alter the tacit understanding underlying all transactions between people -- that words and promises have meaning. Consumers must be able to have some level of trust that the contract terms agreed to orally, with a proverbial handshake, will be reflected in the final writing. Applying the Parol Evidence Rule to CSPA claims would reward suppliers who successfully engage in bait and switch tactics because consumers would be barred from describing how the final contract differed from the contract they were promised.

Adopting Appellant's Proposition of Law would benefit unscrupulous suppliers to the detriment of honest businesses. Instead of deterring suppliers from deceiving consumers into signing contracts, unscrupulous businesses will be encouraged to make false promises and misrepresent material contract terms to induce consumers into signing contracts that do not reflect the consumer's expectations or goals. The result would be a substantially more dangerous and frightening marketplace, where honest businesspersons would be at a competitive disadvantage to unscrupulous suppliers.<sup>2</sup>

---

<sup>2</sup> The current economic crisis demonstrates that instead of raising the standards of business conduct, market pressures could reduce practices to the lowest common denominator. Although neither Fannie Mae nor Freddie Mac caused the housing bubble, and subsequent crisis, "the chief executives at both Fannie Mae and Freddie Mac disregarded warnings from their risk officers and sought to catch up with the market by greatly increasing their purchase of risky loans." Stanton, Thomas A., Report to the U.S. House of Representatives, Committee on Oversight and Government Reform, *Fannie*

**B. Appellant's proposition of law is against public policy and undermines the intent of consumer protection laws**

All consumer protection laws evolved from the Federal Trade Commission Act, which was adopted in 1914 as a reaction to powerful business monopolies to curb “unfair methods of competition” and “anticompetitive practices between businessmen.” 12 U.S.C. § 45(a)(1); Act of Sept. 26, 1914, c. 311, § 38 Stat. 719. The FTC’s mandate to protect honest business persons was extended to protect consumers in the 1938 Wheeler-Lea Amendment that prohibited unfair or deceptive acts or practices in commerce.<sup>3</sup> The FTC intended to prohibit oral misrepresentations and has specifically disavowed application of the Parol Evidence Rule. Federal Trade Commission, *Statement of Basis and Purpose for the Used Car Rule*, 49 FR 45711, 48710 (Nov. 19, 1984).<sup>4</sup>

Ohio’s Consumer Sales Practice Act was enacted in 1972 through, in part, the efforts of the National Conference of Commissioners on Uniform State Laws to harmonize state consumer protection laws for the benefit of consumers and businesspersons. “Consumers are entitled to protection from deceptive and

---

*Mac and Freddie Mac: What Happened and Where Do We Go From Here* (December 2008), p. 3, citing Hilzenrath, David A., *Fannie’s Perilous Pursuit of Subprime Loans: As It Tried To Increase Its Business, Company Gave Risks Short Shrift, Documents Show*, Washington Post (August 8, 2008).

<sup>3</sup> The FTC Act was amended in response to *Federal Trade Commission v. Raladam Co.*, 283 U.S. 643, 649 (1931), in which the Supreme Court held that the FTC lacked authority to stop misleading advertising of a cure for obesity, absent injury to competitors.

<sup>4</sup> See also Federal Trade Commission Trade Regulation Rule; *Sale of Used Motor Vehicles*, 50 FR 21269, (1985); *AMREP Corp.*, 102 F.T.C. 1362, 1662 (1983) (misleading statements purporting not to bind purchaser to real estate contract obligations on signing), appeal filed, No. 84-1434 (10<sup>th</sup> Cir. 1984); *Raymond Lee Org., Inc.*, 92 F.T.C. 489, 618-19 (1978) (written contractual disclaimers insufficient to remedy prior oral and written misrepresentations), aff’d, 679 F.2d 905 (D.C. Cir. 1980); *Peacock Buick, Inc.*, 86 F.T.C. 1532, 1562-63 (1975) (sales agreement disclosure that service charges must be paid did not cure prior misrepresentations about car price), review denied mem., 553 F.2d 97 (4<sup>th</sup> Cir. 1977).

unconscionable sales practices no matter where they live, and businessmen are entitled to predictable standards of conduct no matter where they sell.” 7A U.L.A. Commissioners’ Prefatory Note, Uniform Consumer Sales Practices Act (West Pub. Co. 1985), p. 231. The Ohio Legislative Service Commission’s staff report identified the need to expand common law remedies to address deceptive tactics.

Deception is the classic consumer problem. From an early time the law has provided remedies for the buyer who has been deceived. As marketing and consumer services have become more complex, the private remedies of the common law, and traditional criminal actions, have become relatively ineffective as a means by which the consumer may protect himself, and government has intervened.

Ohio Legislative Service Commission, Report No. 102, *Fraud, Deception and Other Abuses in Consumer Sales and Services* (1971).

In *Thomas v. Sun Furniture & Appliance Co.* (1978), 61 Ohio App. 2d 78, the defendant-supplier argued that, like fraud, a CSPA claim required proof of the intent to deceive. The Court rejected this position.

The word 'fraud' connotes the common law concept in which one must prove that the seller intended to deceive the buyer. 'Deception' is a much broader term in which the issue of the seller's intent is avoided. . . . In other words, the very reason for the enactment of the Consumer Sales Practices Act was to give the consumer protection from a supplier's deceptions which he lacked under the common law requirement of proof of an intent to deceive in order to establish fraud. To require proof of intent would effectively emasculate the act and contradict its fundamental purpose.

*Id.* at 82. The *Thomas* defendant urged that court to apply the common law fraud element of “intent” to the CSPA. Similarly, Appellant asks this Court to inject a substantive rule of contract law, the Parol Evidence Rule, into the CSPA. This Court should decline to do so.

Imposing the Parol Evidence Rule upon the CSPA would severely restrict its application and effectiveness, thereby undercutting legislative action intended to expand and strengthen the CSPA's protections. As the tactics of unscrupulous businesses have evolved, the General Assembly has extended the coverage and scope of the CSPA; most recently, with the enactment of Ohio's Predatory Lending Bill – Senate Bill 185. Enacted in June 2006, Senate Bill expanded the scope of the CSPA to address abuses in the residential mortgage lending industry.

Predatory lending reports and studies concluded that while all consumers are vulnerable to deceptive and fraudulent conduct in lending, abusive lenders and mortgage broker may have specifically targeted elderly, disabled, minority and low income consumers. HUD-Treasury Report, *Recommendations to Curb Predatory Mortgage Lending*, p.71 ([www.hud.gov/library/bookshelf12/treasrpt.pdf](http://www.hud.gov/library/bookshelf12/treasrpt.pdf)). The U.S. Government Accounting Office's comprehensive study on predatory lending practices found that elderly and disabled consumers may be targeted by predatory lenders because of their comparative inability to understand the terms of the agreement. GAO Report to the Senate Special Committee on Aging, *Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending*, GAO 04-280, at 14 (<http://www.gao.gov/new.items/d04280.pdf>); see also GAO Report, Appendix 1, *FTC Enforcement Actions Related to Predatory Lending*.

Senate Bill 185 enacted specific provisions to address well-documented deceptive and unfair tactics that have been specifically targeted for Ohio's most vulnerable communities. Absent parol evidence, a number of these important prescriptions would be rendered meaningless. Parol evidence is required to enforce following provisions:

- Failing to provide pre-loan disclosures - R.C. § 1322.062(A);
- Verbally promising the consumer to refinance a loan in the future on more favorable terms - R.C. § 1322.07(H);
- Instructing the consumer to ignore the stated interest rate and terms - R.C. § 1345.031(B)(5); and
- Recommending or encouraging a consumer to default on an existing mortgage or revolving credit loan agreement - R.C. § 1345.031(B)(6).

These statutory provisions demonstrate that the General Assembly clearly expected and intended that consumers would be able to testify about promises and representations that were not reflected in the final contract documents. *See Celebrezze v. Hughes* (1985), 18 Ohio St.3d 71, 74 (holding that language in a statute is inserted to accomplish a definite purpose.)

Appellant asks this Court to adopt a Proposition of Law that is antithetical to the CSPA's statutory and regulatory provisions, its legislative purposes and public policy.

**C. Legal Services' clientele would suffer considerable harm if forbidden to prove deceptive and fraudulent consumer contracts through extrinsic evidence and the CSPA.**

In 1975, Congress expanded the scope of the FTC Act to reach unfair or deceptive acts or practices that were deemed to have an adverse impact upon interstate commerce specifically to address the needs of lower income people who were frequently victimized by all sorts of business fraud. See Report of the ABA Commission to Study the Federal Trade Commission (1969); Cox, Fellmuth, and Schulz, the Nadar Report on the Federal Trade Commission (1969). The elderly and low income persons still are particularly vulnerable to deceptive and unfair practices in consumer transactions.

Ohio has a large population of low income, disabled, and elderly citizens. 13.3% of Ohioans live in poverty according to the latest U.S. Census data.<sup>5</sup> Urban areas in Ohio have experienced an even high rate of poverty. For example, Cleveland's poverty rate is 32.4%, and poverty in Cincinnati exceeds 25%.<sup>6</sup> Compounding these poverty statistics, over 17% of Ohioans older than 25 do not have a high school diploma or a GED<sup>7</sup>, 13.5% of Ohio's population is over the age of 65<sup>8</sup>, and roughly 16.6% of Ohioans over the age of 5 have a disability, according to the 2005 U.S. Census Bureau's American Community Survey.<sup>9</sup>

These groups make up the general population served by Legal Service providers in Ohio. They are the most vulnerable sections of society, and often have many consumer-related problems because of their lack of resources. In 2007, Southeastern Ohio Legal Services commissioned a client needs survey to identify legal issues facing low income and disabled clients.<sup>10</sup> A significant number of legal aid clients and community leaders in Southeastern Ohio identified unfair treatment by car dealers and other businesses as a problem faced by low income consumers.<sup>11</sup> Another survey conducted by ProSeniors and AARP found that one in six Ohioans over the age of 60 feel

---

<sup>5</sup> U.S. Census 2006 Data, <http://www.census.gov/compendia/statab/ranks/rank34.html>

<sup>6</sup> U.S. Census 2005 Data

<sup>7</sup> 2000 Census data compiled by Data Analysis, Survey, and Health Group at Ohio University's Voinovich School for Leadership and Public Affairs, [http://www.ournonprofitalliance.org/researchanddata\\_appohio\\_factsheet.aspx](http://www.ournonprofitalliance.org/researchanddata_appohio_factsheet.aspx).

<sup>8</sup> U.S. Census 2006 Data, <http://www.census.gov/compendia/statab/ranks/rank04.html>

<sup>9</sup> U.S. Census Bureau's Community Survey Board, 2005, [http://www.pascenter.org/state\\_based\\_stats/state\\_statistics\\_2005.php?state=ohio](http://www.pascenter.org/state_based_stats/state_statistics_2005.php?state=ohio)

<sup>10</sup> Southeastern Ohio Legal Services, Legal Problems Survey Report, prepared by the Voinovich School of Leadership and Public Affairs at Ohio University, January, 2007

<sup>11</sup> *Id.* at 4.

that they have been the victim of a consumer fraud.<sup>12</sup> Lack of financial stability forces consumers to seek out less reputable businesses where they may be promised “great deals,” but the resulting contract may not be what was promised to the consumer. In addition, a general lack of education puts low income and disabled consumers at a disadvantage, unable to negotiate a fair deal with businesses. Businesses have the upper hand over these consumers, and some choose to use this advantage to create unfair and deceptive deals. The CSPA deters and provides a remedy for such conduct.

The Ohio Attorney General’s Public Inspection File<sup>13</sup> contains numerous cases in which courts heard testimony from consumers describing how the contract that was signed differed from the contract that was promised. *See, e.g., Wrobel v. Carperis by Otto* (Feb. 19, 1998), Toledo Municipal No. 9800910, PIF No. 10001691; *Schottenheimer v. William Stuart Inc.* (Sept. 18, 2003), C.P. Summit No. 2002127496, PIF No. 10002184; *Hezo v. Jim Marsh Ford* (Nov. 26, 1986), App. 8<sup>th</sup> Dist. No. 084135, PIF No. 10000825; *Damask v. Modern Communications* (Sept. 10, 2000), C.P. Lucas No. 1993859, PIF No. 10001940; *State of Ohio v. New Century Financial Corp.* (Nov. 25, 2008), C.P. Cuyaholga No. CV07618660, PIF No. 10002733.

The case of *Harrel v. Talley*, Athens App. No. 06CA41, 2007-Ohio-3784, typifies the experience of some consumers who entered into transactions with unscrupulous

---

<sup>12</sup> Legal Needs of Older Ohioans: A 2008 Survey, ProSeniors and AARP Ohio State Office, 1.

<sup>13</sup> R.C. § 1345.05(A)(3) authorizes the Attorney General to “[m]ake available for public inspection all rules and all other written statements of policy or interpretations adopted or used by the attorney general in the discharge of the attorney general’s functions, together with all judgments, including supporting opinions, by courts of this state that determine the rights of the parties and concerning which appellate remedies have been exhausted, or lost by the expiration of the time for appeal, determining that specific acts or practices violate section 1345.02, 1345.03, or 1345.031 [1345.03.1] of the Revised Code.”

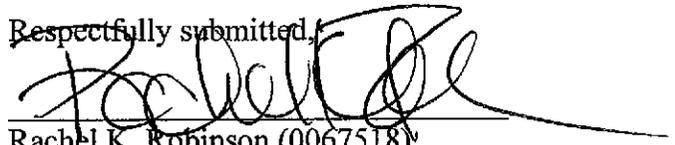
suppliers. That plaintiff agreed to buy a used Chevy Blazer that had the price of \$800 painted on the windshield. *Id.* at P2. After signing, she noted that the price written in the contract price was over \$1200. *Id.* at P3. With the assistance of Southeastern Ohio Legal Services, she filed a lawsuit seeking, and obtaining, remedies under the CSPA. *Id.* at P7.

If the Parol Evidence Rule had been applied to the *Harrel* case, that plaintiff would have been barred from presenting testimony to show that the defendant engaged used a classic “bait and switch” tactic to obtain her signature on the contract. This case shows that for some suppliers, the financial benefits of engaging in trickery and chicanery may outweigh the risks of being hailed into court by a wronged consumer despite the protections of the CSPA and its well-established exception from the Parol Evidence Rule.

### CONCLUSION

Amici urge this Court to reject Appellant’s Proposition of Law and to affirm the Fifth District Court of Appeals decision in this case.

Respectfully submitted,



Rachel K. Robinson (0067518)<sup>v</sup>

*Counsel of Record*

Equal Justice Foundation

88 East Broad Street, Suite 1590

Columbus, Ohio 43215

Telephone: (614) 221-9800

Facsimile: (614) 221-9810

Email: rkr@equaljusticefoundation.com

*Counsel for Amici Curiae Ohio State  
Legal Services Association, Southeastern  
Ohio Legal Services, Legal Aid of  
Western Ohio, Inc., Advocates for  
Basic Legal Equality, Legal Aid  
Society of Columbus, Legal Aid  
Society of Cleveland, Housing Advocates,  
Inc., and the Equal Justice Foundation*

**CERTIFICATE OF SERVICE**

I hereby certificate that on this 6<sup>th</sup> day of March 2009, a copy of the foregoing Brief of Amici Curiae in Support of Appellee was served by regular U.S. Mail, postage prepaid, on the following:

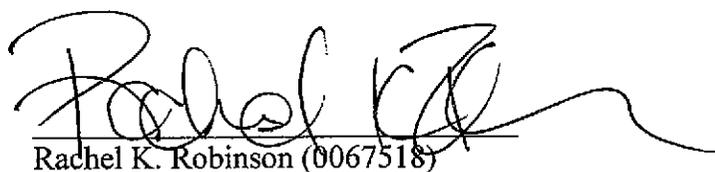
G. Ian Crawford  
Crawford, Lowry & Associates  
116 Cleveland Avenue NW, Suite 800  
Canton, Ohio 44702-1732  
*Counsel for Appellee Reynold Williams, Jr.*

Anthony B. Giardini  
Giardini, Cook, & Nicol, LLC  
520 Broadway, Second Floor  
Lorain, Ohio 44052  
*Counsel for Appellant Spitzer Autoworld Canton LLC*

Kurtis A. Tunnell  
Anne Marie Sferra  
Eric S. Bravo  
Bricker & Eckler, LLP  
100 South Third Street  
Columbus, Ohio 43215  
*Counsel for Amici Curiae National Federation of Independent Business/Ohio and American Tort Reform Association*

David A. Brown  
Deanna L. Stockamp  
Stockamp & Brown, LLC  
5100 Parkcenter Avenue, Suite 100  
Dublin, Ohio 43017  
*Counsel for Amicus Curiae Ohio Automobile Dealers Association*

Benjamin C. Mizer  
Elisabeth A. Long  
Melissa G. Wright  
Office of Ohio Attorney General  
Richard J. Cordray  
30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215  
*Counsel for Amici Curiae State of Ohio*



Rachel K. Robinson (0067518)  
*Counsel for Amici Curiae Ohio State Legal Services Association, Southeastern Ohio Legal Services, Legal Aid of Western Ohio, Inc., Advocates for Basic Legal Equality, Legal Aid Society of Columbus, Legal Aid Society of Cleveland, Housing Advocates, Inc., and the Equal Justice Foundation*