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## OHIO'S USURY LAWS AND THEIR EFFECT UPON THE HOME MORTGAGE MARKET: ECONOMIC AND CONSTITUTIONAL INEQUITIES

*The parties to a bond, bill, promissory note or other instrument of writing for the forbearance or payment of money at any future time may stipulate thereon for the payment of interest upon the amount thereof at any rate not exceeding eight per cent per annum payable annually, except that any rate of interest in excess of the maximum rate provided in this section when the original amount of the principal indebtedness stipulated in the bond, bill, promissory note, or other instrument of writing exceeds one hundred thousand dollars.<sup>1</sup>*

OHIO'S USURY STATUTE, noted above, represents legislative regulation setting the maximum annual interest charge legally assessable against instruments evidencing a debt. The obvious purpose of such restrictive legislation is to protect the capital borrower from paying more than a specified rate of interest, adjudged and rendered *malum prohibitum* in accordance with the moral outlook of the legislature.

The concept of usury regulation is a well settled principle in the law,<sup>2</sup> founded primarily upon the misguided perception of interest limitations as efficient and necessary legislation promoting the popular notion of consumer protection by cautiously supervising credit markets. Endowed with a lengthy history, limitations precluding the usurious assessment of interest charges have acquired a time-honored, almost sacred position in the statutory scheme of Ohio, as well as other states.<sup>3</sup> This favored outlook toward usury laws is further bolstered by its ill-founded appeal as legislation in the best interests of the borrower. As a result, usury restrictions are often seen as traditional, protective legislation. A more sophisticated analysis of usury regulation in Ohio reveals that this is not the case.

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<sup>1</sup> OHIO REV. CODE ANN. § 1343.01 (Page 1962), as amended (Supp. 1973). The above section has been recently amended, effective September 30, 1974, to provide for the exclusion of loans made by a broker or dealer registered under the Securities Exchange Act of 1934, as amended, from the operation of the usury laws. See OHIO REV. CODE ANN. § 1343.01 (166 Current Material Bulletin No. 4 1974).

<sup>2</sup> See generally, e.g., Hershman, *Usury and the Tight Mortgage Market*, 22 BUS. LAW. 333, 334-36 (1967); Lowell, *A Current Analysis of the Usury Laws—A National View*, 8 SAN DIEGO L. REV. 193, 194-95 (1971).

<sup>3</sup> Currently, usury limitations by percent in the 50 states are generally as follows: 7.50—one state, 8.00—11 states, 8.50—two states, 9.00—six states, 10.00—16 states, 12.00—six states, 16.00—one state, 18.00—two states, 21.0—one state, no present usury limitations—four states. (Various state interest rate ceilings also possess assorted corporate and governmental exemptions as well as certain statutorily-exempt lenders.)

## ECONOMIC INEQUITY: FREE MARKET SYSTEM V. LEGISLATIVE MORALITY

Capital, like other goods in the free market system, should be viewed as a commodity subject to varying changes in supply and demand. Like these other goods, the allocation of capital within our economic system is determined by variations in the price of capital, or, the interest rate charged for the use of these funds.

The prevailing interest rate on long-term capital is generally considered to be the most influential short-run determinant of housing market activity. Naturally enough, the demand for housing is inversely proportional to the interest rate, or the cost of obtaining the necessary funds to build or buy a home. And yet, the fluctuations of demand in response to changes in the interest rate are not nearly as volatile as the subsequent shifts in the supply of mortgage funds. The demand for housing and mortgage credit has displayed a certain insensitivity to changes in either housing costs or mortgage rates. The result has been the evolution of a fairly inelastic demand curve for housing. On the other hand, the supply of mortgage capital has revealed an extreme sensitivity to short-run fluctuations in interest rates. The limited return on mortgage investments, the high cross-elasticity of demand by investors between mortgages and various other debt instruments, and the volatile and persistent credit demands of the corporate sector, have all contributed in making the supply curve for mortgage market capital relatively elastic.<sup>4</sup>

Adding to these conditions, the usury ceiling in Ohio of 8% serves to intensify the vigorous swings in the levels of mortgage capital available to the residential mortgage market. Crucial to an understanding of the availability of capital in the home mortgage market is a recognition of the underlying relationship between the prevailing mortgage rate and the related capital yields in the aggregate money markets.<sup>5</sup> Increases in the prevailing market rate work to attract capital from the mortgage market as well as exerting an upward pressure upon the mortgage market rate. Conversely, a fall in the prevailing interest rate in the aggregate money market serves to channel increased funds into the mortgage market while exerting a downward influence upon the mortgage rate. Unfortunately, Ohio's usury ceiling serves to distort the operation of the free market system in adjusting to changing credit conditions.<sup>6</sup> In times of

<sup>4</sup> See M. W. LEE, *MACROECONOMICS: FLUCTUATIONS, GROWTH AND STABILITY*, at 64 (1967). See also G. Break, *The Sensitivity of Housing Demand to Changes in Mortgage Credit Terms*, *URBAN ANALYSIS READINGS IN HOUSING AND URBAN DEVELOPMENT* (Page and Seyfried ed. 1967) [hereinafter cited as *Page and Seyfried*].

<sup>5</sup> W. W. Alberts, *Business Cycles, Residential Construction Cycles, and the Mortgage Market*, in *Page and Seyfried* at 94-96.

<sup>6</sup> See generally, e.g., Benfield, *Money, Mortgages, and Migraine—The Usury Headache*, 19 CASE W. RES. L. REV. 819 (1968) [hereinafter cited as *Benfield*]; Stoddard and Hoover, *Effect of Usury Laws on Home Ownership Needs*, 19 CLEV. ST. L. REV. 49 (1970) [hereinafter cited as *Stoddard and Hoover*].

rising interest rates the increased yields of investment opportunities in the corporate sector serve to attract capital from the mortgage market. Naturally, the prevailing mortgage rate must move upward to remain competitive with corporate yields and minimize the decrease in the availability of mortgage market capital. However, when the investment yield in the corporate sector exceeds the statutory ceiling upon the mortgage lending rate (in Ohio: 8%), rate-sensitive capital sources direct investment funds into the higher-yield corporate sector, or out-of-state mortgage markets, and away from the suddenly uncompetitive local mortgage market. The result is little or no supply of mortgage capital within the regulated jurisdiction.

The usury regulation in Ohio is founded upon the honorable objective of maintaining a maximum allowable interest charge upon debt. Unfortunately the rationale of any such interest ceiling ignores the realities of economics.<sup>7</sup> With a proper recognition of the fact that the statutory regulation of Ohio's interest rate ceiling will have little or no effect upon the prevailing interest rate in the corporate investment sector as well as the mortgage rate of surrounding states,<sup>8</sup> it would appear clear that in periods of rising interest rates, the primary effect of Ohio's usury ceiling is not to provide adequate mortgage capital at moderate rates to Ohio home buyers, but to drive vast amounts of potential mortgage funds into other investment opportunities affording a higher yield.<sup>9</sup> Indeed, in times of high interest rates, unrealistic interest ceilings, such as OHIO REVISED CODE section 1343.01, do not maintain adequate supplies of mortgage capital at moderate rates, but, in actuality, block the flow of funds into the mortgage market by preventing the mortgage rate from rising to a level which is competitive with other investment opportunities.

A brief example will quickly reveal the faulty reasoning behind market-distorting usury limitations. Suppose the Ohio legislature, in an attempt to "protect the Ohio consumer" from suddenly rising gasoline prices, set a statutory price ceiling on gasoline of 30 cents per gallon. Certainly no consumer could object to the intent of such legislation: gasoline at moderate prices. Nonetheless, the effect of such legislation would clearly be different. Although all consumers could now afford gasoline at the new bargain ceiling price, no gasoline would be supplied in Ohio as oil firms would distribute their gasoline outside of the state to obtain maximum total revenues.<sup>10</sup>

Mortgage rates, like gasoline prices, must by economic necessity fall

<sup>7</sup> P. SAMUELSON, *ECONOMICS*, at 361-89 (7th ed. 1967) [hereinafter cited as *Samuelson*].

<sup>8</sup> Compare M. K. EVANS, *Macroeconomic Activity* (1969), with J. M. Guttentag, *The Short Cycle in Residential Construction, 1946-59*, in *Page and Seyfried* at 83.

<sup>9</sup> *Id.*

<sup>10</sup> See Snook, *Bankers Rally Behind Bill to Lift Home Loan Rate*, *Cleveland Plain Dealer*, February 26, 1974, at 1, col. 5.

within parameters determined upon a national level, and cannot be significantly influenced by interest-ceiling legislation of any single state. The futility of any such attempts to legislate morality is curtly summarized by Nobel prize-winning economist Paul Samuelson: "The cheap money you can't get does you little good."<sup>11</sup>

Quite clearly, usury limitations and their unsuccessful attempts to influence prevailing interest rates cannot be justified upon economic grounds.<sup>12</sup> With that point established, whether legislation-setting interest rate ceilings should be retained turns upon a subjective determination as to whether or not the social benefit of adequate (though more expensive) supplies of mortgage capital in periods of high interest rates exceeds the social detriment of permitting the creation of debt instruments at higher rates.<sup>13</sup> Of course, any answer to this question hinges greatly upon how interest ceilings are perceived. The goal of usury statutes should be the prevention of unconscionable transactions resulting in debt creation evidencing exorbitant interest rates. This is not the case when interest rate ceilings place an unwarranted economic burden upon the free flow of capital.<sup>14</sup>

### CONSTITUTIONAL VULNERABILITY: EQUAL PROTECTION DIFFICULTIES

Ohio's statutory scheme of interest rate ceilings is a complex and disjointed collection of legislation.<sup>15</sup> Although OHIO REVISED CODE section 1343.01 states the general usury regulation, its 8% limit on debt instruments is subject to many statutory exceptions.

The Ohio Small Loan Law<sup>16</sup> authorizes a licensed lender to extend credit in an amount not to exceed \$2,000. Under this statutory provision, any such licensed lender may charge a maximum of \$16 per \$100 per year for the first \$500 borrowed, \$9 per \$100 per year for the next \$500 borrowed, and \$7 per \$100 per year for the amount between \$1,000 and \$2,000 borrowed. These permissible "add-on" interest charges

<sup>11</sup> Samuelson, *supra* note 7, at 378.

<sup>12</sup> *Id.* at 375-78.

<sup>13</sup> See Note, *An Ounce of Discretion for a Pound of Flesh: A Suggested Reform for Usury Laws*, 65 YALE L.J. 105 (1955), for the discussion of an analogous balancing test. See also, e.g., Merriman and Hanks, *Revising State Usury Statutes in Light of a Tight Money Market*, 27 MD. L. REV. 1 (1967) [hereinafter cited as *Merriman and Hanks*]; Prather, *Mortgage Loans and the Usury Laws*, 16 BUS. LAW. 181 (1960) [hereinafter cited as *Prather*].

<sup>14</sup> Compare Benfield, *supra* note 6, with Stoddard and Hoover, *supra* note 6.

<sup>15</sup> See OHIO REV. CODE ANN. § 1343.01 (Page 1962), as amended (Supp. 1973) (general usury provision). But see, e.g., OHIO REV. CODE ANN. § 1107.27 (Page 1968) (Commercial Bank Revolving Credit Exemption); § 1151.21 (Page 1968) (Building and Loan and Savings and Loan Exemption); § 1321.13 (Page 1962), as amended (Supp. 1972) (Small Loan Exemption); § 1321.57 (Page Supp. 1973) (Second Mortgage Loan Exemption); § 1321.79 (Page Supp. 1973) (Insurance Premium Finance Company Exemption).

<sup>16</sup> OHIO REV. CODE ANN. §§ 1321.01 *et seq.* (Page 1962), as amended (Supp. 1973).

represent effective annual percentage rates as high as 28.32%—well in excess of section 1343.01 guidelines.<sup>17</sup>

Another statutory exception to Ohio's general usury provisions is the Retail Installment Sales Law,<sup>18</sup> where a retail seller may permissibly assess a retail buyer "add-on" finance charges for credit sales which represent effective annual percentage rates of nearly 16% per annum, as well as additional contract service charges and delinquent charges.

Under the statutory provisions concerning second mortgage loans,<sup>19</sup> licensed second-mortgage lenders may charge 8% "add-on" interest charges upon mortgage loans which are other than first liens upon real property, not in excess of \$15,000 in amount nor over 60 months as to term. This permissible interest charge representing an effective annual percentage rate of nearly 16% is but another statutory exception to Ohio's general usury provision of 8%.<sup>20</sup>

In addition, the legislative provision for revolving credit extended by commercial banks<sup>21</sup> represents another statutory exemption to the stated interest rate ceiling in Ohio. Permitted finance charges of 2% per month on the first \$200 of credit, 1½ % per month on the second \$200 of credit, and 1% per month on amounts over \$400 equal effective annual percentage rates well in excess of the 8% general limitation.<sup>22</sup>

These statutory exemptions to Ohio's general usury provision would seem sufficient in and of themselves to show that the legislative scheme of interest rate regulation in Ohio lacks a rational basis. But there is more. Perhaps the most significant exception to Ohio's general usury provision is the statutory exemption to Building and Loan Associations and Savings and Loan Associations.<sup>23</sup> Under these legislative guidelines, these privileged business entities are permitted to invoke *any* interest charges on loans made in any amount not in conflict with "its constitution and bylaws."<sup>24</sup> Moreover, such "assessments shall not be deemed usurious, although in excess of the legal rate of interest."<sup>25</sup> The effect of the usury exemption here is to permit Building and Loan Associations as well as Savings and Loan Associations to make first mortgage loans upon realty evidencing interest charges in excess of 8%, while the very same

<sup>17</sup> Compare OHIO REV. CODE ANN. § 1343.01 (Page 1962), as amended (Supp. 1973), with §§ 1321.01 *et seq.* (Page 1962), as amended (Supp. 1973).

<sup>18</sup> OHIO REV. CODE ANN. §§ 1317.01 *et seq.* (Page 1962), as amended (Supp. 1972).

<sup>19</sup> OHIO REV. CODE ANN. §§ 1321.51 *et seq.* (Page Supp. 1973).

<sup>20</sup> Compare OHIO REV. CODE ANN. § 1343.01 (Page 1962), as amended (Supp. 1973), with OHIO REV. CODE ANN. § 1321.57 (Page Supp. 1973).

<sup>21</sup> OHIO REV. CODE ANN. § 1107.27 (Page 1968).

<sup>22</sup> OHIO REV. CODE ANN. § 1343.01 (Page 1962), as amended (Supp. 1973).

<sup>23</sup> OHIO REV. CODE ANN. § 1151.21 (Page 1968).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

transaction originated by any other commercially prudent yet non-exempt lender is subject to the usury limitations of section 1343.01.

Legislative distinctions regarding permissible interest charges between Building and Loans and Savings and Loans and other commercial organizations whose regular business is originating, servicing, and brokering real estate mortgage loans were based upon valid differences many years ago.<sup>26</sup> Founded upon the theory of a mutual, practically fiduciary relationship between the Association-lender and the member-borrower, Building and Loan Association mortgages made exclusively to Association members were considered radically different than loans initiated by other commercial lenders:

We do not judge these associations by the operation and powers of banking institutions. A member of the former sustains a relation of mutuality to each and all of the other members. If he becomes a borrower, he is at the same time one of the lenders. In making a loan it is not contemplated that the principal debt will be repaid in bulk, but in installments of dues, interest, dividends, and perhaps premiums. When these amount to the sum borrowed, the mortgage is cancelled, the stock returned to the borrower, which he may hold free of liens, or he may withdraw from the association under its rules for that purpose. Therefore, the relation of debtor and creditor, it may be said, does not strictly exist.<sup>27</sup>

While judicial reasoning of this sort may have been adequate to explain the rationality of granting statutory exemption from usury limitation to Building and Loan and Savings and Loan Associations many years ago, the argument retains no persuasive vitality today, since contemporary lending practices of Savings and Loans show that one need not be a member to obtain a first mortgage loan from these institutions.<sup>28</sup>

With what once was a tenuous distinction now at best inoperative, Ohio's differing legislative treatment of contemporary Savings and Loan Associations (and other commercial organizations who originate first mortgage real estate transactions, such as commercial banks and mortgage banking firms) would appear vulnerable to a constitutional attack based upon the Equal Protection Clause of the fourteenth amendment.<sup>29</sup>

<sup>26</sup> The concept of mutuality present between Building and Loan Associations and member-borrowers and absent in other creditor-debtor relationships was held sufficient to justify the legislative distinction. *See, e.g.*, *Cramer v. Southern Ohio Loan & Trust Co.*, 72 Ohio St. 395, 74 N.E., 200 (1905); *Eversmann v. Schmitt*, 53 Ohio St. 174, 41 N.E. 139 (1895); *Lucas v. Greenville Bldg. and Sav. Ass'n*, 22 Ohio St. 339 (1872). *But see Mykrantz v. Glide Bldg. and Loan Ass'n*, 19 Ohio C.C.R. 51, 10 Ohio C. Dec. 250 (1899).

<sup>27</sup> *Cramer v. Southern Ohio Loan & Trust Co.*, 72 Ohio St. 395, 408, 74 N.E. 200, 203 (1905).

<sup>28</sup> OHIO REV. CODE ANN. §§ 1151 *et seq.* (Page 1968) contain no such limitations, and present lending practices indicate that association membership is no longer a requisite to loan eligibility.

<sup>29</sup> The fourteenth amendment of the United States Constitution states in pertinent

While recognizing that there is a strong presumption favoring the constitutionality of legislation challenged under the fourteenth amendment,<sup>30</sup> the guarantees of equal protection require that the legislation under examination draw rational distinctions between classes.<sup>31</sup> In other words, there must be a reasonable basis for the legislative classification which subjects the residual pool of commercial mortgage lenders to the general usury guidelines of section 1343.01 while leaving certain "special interest" lenders, such as Savings and Loans, free from such restrictions by virtue of specially enacted exempting legislation. Based upon these constitutional requisites, it can be argued that there is no rational basis for distinguishing between Building and Loan and Savings and Loan Associations on the one hand and mortgage banking firms and commercial banks on the other, given the fact that all of the foregoing types of organizations engage in basically the same type of transactions and under similar economic conditions.

There may be difficulty in transforming this constitutional objection into a winning argument. The general tenor of judicial examination of legislative enactments in the area of economics against the dictates of equal protection has been one of extreme deference to legislative judgment.<sup>32</sup> Indeed, recognition that the guarantees of Equal Protection "goes no further than *invidious discrimination*"<sup>33</sup> (emphasis added) may well indicate that the imperfect legislative distinction between Savings and Loan Associations and other mortgage lenders does not warrant judicial intervention.

### LEGISLATIVE REFORM: LIFTING THE ECONOMIC BARRIERS

Several attempts are currently under way to alter the present usury limits in Ohio.<sup>34</sup> Contemporary legislation in this area would serve to

part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." Could the same argument be made with regard to legislative distinctions between commercial banks and Savings and Loans concerning demand deposits? Compare OHIO REV. CODE ANN. § 1101.01 (I) (Page 1968) and § 1107.06 (Page 1968) with §§ 1151.01 *et seq.* (Page 1968).

<sup>30</sup> United States v. Carolene Products Co., 304 U.S. 144 (1938).

<sup>31</sup> F. S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920). See generally, e.g., *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969).

<sup>32</sup> See, e.g., McGowan v. Maryland, 366 U.S. 420 (1961); Williamson v. Lee Optical Co., 348 U.S. 483 (1955); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911). But see Morey v. Doud, 354 U.S. 457 (1957).

<sup>33</sup> Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955).

<sup>34</sup> During early 1973 S.B. 355, which was an attempt, in essence, to grant the same exemption from the usury provisions to commercial banks and mortgage banking firms as enjoyed by savings and loans, died in committee. H.B. 1133, an attempt to extend usury exemption to other bona fide commercial mortgage lenders, was introduced in the Ohio House of Representatives by Rep. Tom Fries early in 1974. The bill, which would repeal OHIO REVISED CODE § 1343.01, would render inapplicable 8% usury limitations when "the instrument evidences a loan secured by a mortgage which

eliminate the inadequate flow of funds into the home mortgage market by extending the current usury exemptions enjoyed by several special lenders to include several other bona fide mortgage lenders. These new lenders are currently effectively precluded from significant mortgage market participation in periods where the prevailing mortgage rate exceeds 8%, the current usury ceiling in Ohio. It is also important to note that limited usury exemption and disintermediation in periods of high interest rates also burden the prospective home buyer. As one of the Ohio sponsors of remedial legislation in this area concludes, "Due to the exemption of Ohio's Building and Loan and Saving and Loan institutions under Ohio's present usury statute, the average income recipient is virtually shut out of the home buying market during periods of inflated interest rates."<sup>35</sup> The underlying purpose of such remedial legislation is to minimize the current tendency for sizeable swings in the availability of mortgage capital resulting from short-run fluctuations in credit conditions.

Proposed legislation<sup>36</sup> presently under consideration before the Ohio House of Representatives would extend the current statutory exemption to usury limitation enjoyed by several privileged commercial lenders to commercial bankers as well as "mortgage bankers, or insurance company authorized to do business in this state,"<sup>37</sup> when the debt instrument "evidences a first lien upon real property." The soundness of this proposal rests upon several grounds.

First, the present usury limitations in Ohio do not protect the consumer—they serve to affect him adversely. State interest rate limitations have little or no effect upon regulating the prevailing market rate for mortgages, which is determined on a national basis. Consequently, OHIO REVISED CODE section 1343.01 only discourages lender participation in Ohio during periods of high interest rates as the Ohio consumer is prevented by law from paying the market price necessary to borrow the money. In actuality, the current usury scheme makes the cost of home loans even more expensive as exempted lenders enjoy a virtual monopoly of the home loan mortgage market and are free to dictate terms to the borrower when the prevailing market rate exceeds the 8% usury ceiling.<sup>38</sup>

Secondly, statutory exemptions to interest rate limitations should be predicated on the character of the loan as well as the character of the lender.<sup>39</sup> Any past distinction justifying the differing legislative

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... is a first lien upon real property and the lender is (a commercial bank, a savings and loan association) a mortgage banker, or an insurance company authorized to do business in this state." This bill is currently under consideration in the Ohio House.

<sup>35</sup> Letter from Rep. Tom Fries to author, March 11, 1974.

<sup>36</sup> H.B. 1133.

<sup>37</sup> *Id.*

<sup>38</sup> OHIO REV. CODE ANN. § 1343.01 (Page 1962), *as amended* (Supp. 1973).

<sup>39</sup> See cases cited note 26 *supra* for the judicial view in older cases. This announced distinction may no longer be valid.

treatment between savings and loans and established, bona fide, mortgage lenders would appear to lack any present vitality. Certainly, any distinction between these lenders is arguably insignificant since the mortgage transaction offered by them is identical.

Thirdly, the existing operation of the present usury scheme is unfair and discriminatory. As originally enacted, OHIO REVISED CODE section 1343.01 was fair and equitable because it was applied equally to all lenders without affording special treatment to any select lender or group of lenders. However, the current usury scheme in Ohio is so riddled with statutory exemptions<sup>40</sup> that it now is indeed highly questionable whether the inclusion or exclusion of various commercial lenders in the special exempting provisions can properly be considered as sound and reasonable. The net effect of the exemptions is to single out and except from special treatment state banks and mortgage companies and their various mortgage activities while affording other institutions and/or transactions special treatment.

All of these reasons behind increasing the present exemptions to Ohio's usury scheme would also promote the overall purpose of providing greater stability in supply of mortgage capital as well as the private residential housing market in general.

These are honorable legislative goals. First of all, an element of long-range housing continuity would encourage the development of stable construction organizations with greater continuity of experience. Added stability would further work to induce increased research in design, construction methods, and materials that could greatly benefit the somewhat tenuous housing industry. Large investments in housing equipment is another capital outlay that the tenuous housing industry could benefit from. Housing stability would increase capital investment in the industry, thus speeding up the mechanization of construction operations.<sup>41</sup>

Secondly, by removing the fear of serious depression within the housing sector, the scramble for higher wages and higher profits during boom periods would be lessened. A degree of steadiness and continued employment within the housing market would help reduce the hyper-inflationary wage and price increases characteristic of a cyclical and inconsistent market. As a result, the cost of construction may well be lowered (the continuity of housing exerting a downward pressure on

<sup>40</sup> See, e.g., OHIO REV. CODE ANN. § 1107.27 (Page 1968) (Commercial Bank Revolving Credit Exemption); § 1151.21 (Page 1968) (Building and Loan and Savings and Loan Exemption); § 1317.06 (Page 1962) (Retail Installment Sales Exemption); § 1321.13 (Page 1962), as amended (Supp. 1973) (Small Loan Exemption); § 1321.57 (Page Supp. 1973) (Second Mortgage Loan Exemption); § 1321.79 (Page Supp. 1973) (Insurance Premium Finance Company Exemption).

<sup>41</sup> See, e.g., M. L. COLEMAN AND R. NEWCOMB, STABILIZING CONSTRUCTION: THE RECORD AND THE POTENTIAL (1952); P. F. WENDT, HOUSING POLICY—THE SEARCH FOR SOLUTIONS (1963).

prevailing labor wages and supply prices) thus facilitating a gradually broadened effective demand for residential construction. As a consequence, the private residential housing market would serve as a stabilizing influence upon the economy as a whole (with special reference to the savings-investment dilemma accentuated currently when the prevailing market rate exceeds the legally permissible rate), as the intensification added by construction movements to general economic fluctuations would be eliminated.<sup>42</sup>

All in all, a continuous flow of mortgage capital and its accompanying stabilizing effects upon residential construction would serve to induce greater capital investments and work to put homebuilding on a larger and more efficient scale offering significant economies.<sup>43</sup>

### CONCLUSION

The current legislative scheme of interest rate regulations in Ohio is badly in need of a fundamental overhaul. The general usury provision set forth in OHIO REVISED CODE section 1343.01 has been so severely riddled with exceptions<sup>44</sup> to allow for a greater availability of capital in certain economic sectors, provided by certain exempt lenders, that the overall effect of usury limitations in Ohio is so uneven as to raise severe constitutional questions founded upon the Equal Protection Clause of the fourteenth amendment. And although convincing, it is at least uncertain whether this alleged constitutional infirmity would be sufficient in and of itself to induce the judiciary to depart from its overriding policy of deferring to legislative judgment in economic areas.<sup>45</sup>

Remedial legislation is the answer not only in terminating the unequal treatment currently afforded commercial lenders, but also in assuring the uninhibited supply of mortgage capital in Ohio. Certainly, any sophisticated determination as to precisely where the usury limitation in Ohio should be must be the product of a variety of economic inputs clearly beyond the scope of this article. Nonetheless, at least one conclusion is unavoidable: the present grossly inhibitory ceiling of 8% cannot be justified. By recognizing that usury rates should be intended to set the outside limit for conscionable transactions and not to impose market-disrupting interest rate restrictions which serve to distort the free operation of the real estate mortgage market, the Ohio legislature should move to set interest rate ceilings at a level precluding unconscionable credit transactions while assuring that natural fluctuations of the general mortgage rate will not impair the flow of funds into Ohio's home mortgage market.

DAVID M. HUNTER

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See statutory provisions cited note 40 *supra*.

<sup>45</sup> See cases cited note 32 *supra*.