SUPREME COURT OF THE UNITED STATES

No. 03–377

KOONS BUICK PONTIAC GMC, INC., PETITIONER *v.* BRADLEY NIGH

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[November 30, 2004]

JUSTICE THOMAS, concurring in the judgment.

I agree with the Court that the judgment of the Court of Appeals should be reversed. I write separately, however, because I believe that it is unnecessary to rely on inferences from silence in the legislative history or the perceived anomalous results posed by an alternative interpretation to answer the question presented in this case. See *ante*, at 11–12 and n. 10. Instead, in my view, the text of 15 U. S. C. §1640(a)(2)(A) prior to Congress's 1995 amendment to it, the consistent interpretation that the Courts of Appeals had given to the statutory language prior to the amendment, and the text of the amendment itself make clear that Congress tacked on a provision addressing a very specific set of transactions otherwise covered by the Truth in Lending Act (TILA) but not materially altering the provisions at issue here.

If the text in this case were clear, resort to anything else would be unwarranted. See *Lamie* v. *United States Trustee*, 540 U. S. 526, 532–533 (2004). But I agree with the Court that §1640(a)(2)(A) is ambiguous, *ante*, at 1, rather than unambiguous as JUSTICE STEVENS contends, *ante*, at 1 (concurring opinion), because on its face it is susceptible of several plausible interpretations. Congress, as the Court points out, used "'subparagraph'" consistently in TILA, albeit not with perfect consistency, to refer to a

third-level division introduced by a capital letter. See *ante*, at 10 and n. 4 (majority opinion). This consistent usage points toward the view that "subparagraph" here refers to the whole of subdivision (A). But other textual evidence is in tension with that reading. As the Court of Appeals correctly pointed out and JUSTICE SCALIA notes, *post*, at 3–4 (dissenting opinion), if "subparagraph" refers to the whole of subdivision (A), the limit of $100–$1,000 for liability set forth in clause (ii) is in direct conflict with the $200–$2,000 limit on liability found in clause (iii). 319 F. 3d 119, 126–127 (CA4 2003). Still other textual clues point away from the Court of Appeals' reading. It is possible, for example, to read the $100–$1,000 limit in clause (ii) to be an exception that applies only to the liability set forth in clauses (i) and (ii), since it comes after clauses (i) and (ii) but before clause (iii). These conflicting textual indicators show that, whatever the practices suggested in the manuals relied upon by the Court, *ante*, at 9 and n. 3, §1640(a)(2)(A) is not a model of the best practices in legislative drafting.

The statutory history of §1640(a)(2)(A) resolves this ambiguity. Prior to the 1995 amendment, the meaning of subdivisions (A)(i) and (ii) was clear. As the Court recounts, after the 1976 amendment and prior to 1995, §1640(a) provided for statutory damages equal to

> "(2)(A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, or (ii) in the case of an individual action relating to a consumer lease . . . 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000." 15 U. S. C. §1640(a) (1976 ed.).

See *ante*, at 4. There is no doubt that under this version of

the statute the phrase "under this subparagraph" extended the liability limits to subdivision (A)(i) as well as subdivision (A)(ii). As noted above, "subparagraph" is generally used in TILA to refer to a section's third-level subdivision introduced by a capital letter. By virtue of the phrase "under this subparagraph," the liability extended to the whole of subdivision (A). The placement of this clause at the end of subdivision (A) further indicated that it was meant to refer to the whole of subdivision (A). The clarity of the meaning is borne out by the Courts of Appeals' consistent application of the limit to both clauses (i) and (ii) as they stood before the 1995 amendment. *Purtle* v. *Eldridge Auto Sales, Inc.*, 91 F. 3d 797, 800 (CA6 1996); *Cowen* v. *Bank United of Tex., FSB*, 70 F. 3d 937, 941 (CA7 1995); *Mars* v. *Spartanburg Chrysler Plymouth, Inc.*, 713 F. 2d 65, 67 and n. 6 (CA4 1983); *Dryden* v. *Lou Budke's Arrow Finance Co.*, 661 F. 2d 1186, 1191, n. 7 (CA8 1981); *Williams* v. *Public Finance Corp.*, 598 F. 2d 349, 359 and n. 17 (CA5 1979).

Congress's 1995 amendment did not materially alter the text of §1640(a)(2)(A)(i) or (ii). It removed "or" between clauses (i) and (ii) and placed it between clause (ii) and the new clause (iii). Pub. L. 104–29, §6, 109 Stat. 274. Apart from this change, it neither deleted any language from clause (i) or clause (ii) nor added any language to these clauses. The only substantive change that amendment wrought was the creation of clause (iii), which established a higher $2,000 cap on damages for a very specific set of credit transactions—closed-end credit transactions secured by real property or a dwelling—that had previously been covered by §1640(a)(2)(A)(i) and subject to the lower $1,000 cap. *Ibid.* By so structuring the amendment, Congress evinced its intent to address only the creation of a different limit for a specific set of transactions.

In light of this history, as well as the text's clear meaning prior to the 1995 amendment and the lower courts'

consistent application of the limit in clause (ii) to clause (i) prior to the 1995 amendment, the limit in clause (ii) remains best read as applying also to clause (i).