No. 20-311

In The
Supreme Court of the United States

DEBORAH WALTON

Petitioner,

v.

FIRST MERCHANTS BANK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR REHEARING

Deborah Walton
P.O Box 598
Westfield, Indiana 46074
(317) 565-6477

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PETITION FOR REHEARING

Pursuant to Rule 44.2 of the Rules of the United States Supreme Court, Deborah Walton respectfully petitions for rehearing of this Court's October 19, 2020 Order denying her petition for a writ of certiorari. Walton has petitioned this Court to Remand this case back to the District Court, in the Southern District of Indiana, to be included in the upcoming Trial on her surviving TCPA claim. When the Dodd Frank Act was enacted, which includes the Electronic Funds Transfer Act (EFTA) that requires a valid consent form, before any Institution, backed by the Federal Reserve Board can legally withdraw funds from a Consumers Account.

REASONS FOR GRANTIG THE PETITION FOR REHEARING

1. **New substantial grounds not previously presented warrant rehearing of the denial of Walton's Petition for Writ of Certiorari.**

Rule 44.2 of the Rules of the Supreme Court of the United States allows Petitioners, to file petitions for rehearing of the denial of a petition for writ of certiorari and permits rehearing on the basis of "substantial grounds not previously presented."

The substantial, grounds in this case is a renewed national focus on the way Institutions impose fees upon Consumers whom have never Opted-In to overdraft protection. This illegal process allows Publicly Traded Institutions to increase their profitability, by inflating their illegal profits, for the sole purpose of reporting gains to their shareholders. However; at the end of the day, it's the shareholder that will

ultimately suffer. *See* TD Bank's fine by the Consumer Financial Protection Bureau for Overdraft Protection abuse.[1]

The Federal Reserve Board has laid out a very comprehensive, with extensive guidelines on Regulation E, which was enacted under the Dodd Frank Act. The enforcing agencies: Security Exchange Commission, Department of Justice, Federal Reserve Board and Consumer Financial Protection Bureau, all play a vital role, in enforcing the Dodd Frank Act. If the governing agencies aren't enough to show that the abuse of Overdraft Protection is a Statewide issue, then what is.

2. Overdraft Protection is costing Consumers and Shareholders Millions of dollars even after Congressional Regulation of Overdraft Fees.

When Congress defined "Overdraft" as a banking term describing a deficit in a bank account caused by drawing more money than the account holds. Before the development of electronic fund transfer (EFT) systems, banks generally provided overdraft coverage for check transactions only. See Electronic Fund Transfers, 74 Fed. Reg. 59,033, 59,033 (Nov. 17, 2009). When a bank customer overdrew her account by writing a check in an amount that exceeded the amount of funds in the account, her financial institution applied its discretion in deciding whether to honor the customer's draft, in effect extending a small line of credit to its customer and imposing a small fee for the convenience. Id.

[1] **TD Bank** agreed to pay $97 million in restitution to approximately 1.42 million customers, as well as a $25 million civil **penalty** to settle allegations brought by the Consumer Financial Protection Bureau that it engaged in illegal overdraft fee practices. Aug 21, 2020

Online banking transformed how financial institutions handled overdrafts and overdraft fees. New EFT systems provided customers with more ways to make payments from their accounts, including automatic teller machine (ATM) withdrawals, debit card transactions, online purchases, and transfers to other accounts. Id. Most financial institutions chose to extend their overdraft coverage to all EFT transactions. Some further decided to cover automatically all overdrafts their customers might generate from their EFTs. Id. These changes had the Case: 17-14968 Date Filed: 08/27/2019 Page: 3 of 29 4 benefit to financial institutions of "reduc[ing] cost[s]" from manually reviewing individual transactions and furthering "consistent treatment of consumers." Id. at 59,033-34. But they came at a significant and sometimes unexpected cost to consumers: financial institutions generally assessed a flat fee each time an overdraft occurred, sometimes charging additional fees—for each day an account remained overdrawn, for example, or incrementally higher fees as the number of overdrafts increased. Id. at 59,033.

Congress enacted EFTA with the aim of outlining the rights, responsibilities, and obligations of individuals and institutions using EFT systems. Id. In EFTA's implementing regulations (Regulation E, 12 C.F.R. pt. 1005), Congress set out to "assist consumers in understanding how overdraft services provided by their institutions operate and to ensure that consumers have the opportunity to limit the overdraft costs associated with ATM and one-time debit card transactions where such services do not meet their needs." Id. at 59,035. Doing away with the practice of automatic enrollment of consumers in overdraft coverage, Regulation E required

financial institutions to secure consumers' "affirmative consent" to overdraft services through an opt-in notice. Id. at 59,036. The opt-in notice was to be "segregated from all other information describing the institution's overdraft service," 12 C.F.R. § 1005.17(b)(1)(i), and be "substantially similar" to a model form (Model Form A-9) provided by the Federal Reserve, id. § 1005.17(d). Case: 17-14968 Date Filed: 08/27/2019 Page: 4 of 29 5

"But the opt-in requirement and model form have not dispelled all the controversy and confusion surrounding overdraft fees." Chambers v. NASA Fed. Credit Union, 222 F. Supp. 3d 1, 6 (D.D.C. 2016). Model Form A-9 does not address which account balance calculation method a financial institution should use to determine whether a transaction results in an overdraft. See 12 C.F.R. pt. 1005, app. A. Without any such provision in the model form, "some financial institutions have failed to disclose the balance calculation method that they use to determine whether a transaction results in an overdraft." Chambers, 222 F. Supp. 3d at 6.

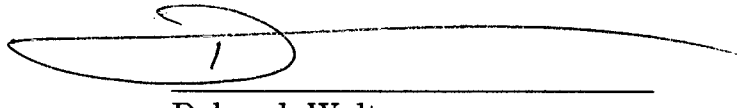
In determining whether a customer has made a withdrawal or incurred a debit that exceeds the balance in her account—an overdraft—financial institutions typically use one of two methods of calculating the balance in a customer's account: the "ledger" balance method or the "available" balance method. The ledger balance method considers only settled transactions; the available balance method considers both settled transactions and authorized but not yet settled transactions, as well as deposits placed on hold that have not yet cleared. Consumer Fin. Prot. Bureau, Supervisory Highlights 8 (Winter 2015), available at

https://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter2015.pdf (last visited May 24, 2019). These two competing methods of calculating a consumer's balance and charging overdraft fees based on that balance lie at the heart of this case. (Case: 17-14968 Date Filed: 08/27/2019 Page: 5 of 29 6)

CONCLUSION

Rehearing is appropriate here, because Walton has met this Court's requirement for rehearing under Rule 44.2. Rehearing is justified in light of the substantial events that require every court in this country – including the U.S. Supreme Court – to renew their commitments to recognizing those laws and precedents which uphold systemic fee shifting. The Court should grant Rehearing and reverse the denial of the Petition for Writ of Certiorari.

Respectfully submitted,



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RULE 44.2 CERTIFICATE OF PRO SE

Pursuant to Rule 44.2, the undersigned pro se Deborah Walton hereby certifies that the attached petition for rehearing of an order denying writ of certiorari is restricted to the grounds specified in Rule 44.2: it is limited to substantial circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. Walton further certifies that the attached petition is presented in good faith and not for delay.

By:_____

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