

10/30/24

No. 24-552

In The
Supreme Court of the United States

Deborah Walton,

v.

Petitioner,

First Merchants Bank, and
J.P. Morgan Chase,

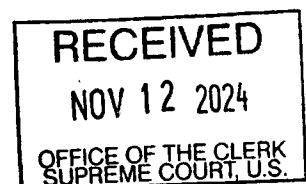
Respondents.

On Petition for a Writ of Certiorari to the
Seventh Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the 7th Cir. Violated Article III of the United States Constitution and the 5th Amendment when they allowed JPMorgan Chase, to enter as a defendant, whom had no legal standings, defined under FRCP 24(b); to intervene almost two years after the case was closed, and after a petition for writ of certiorari was denied by the U. S. Supreme Court.

Whether the 7th Cir. Violated the 5th Amendment of the Petitioner, when they allowed First Merchants Bank and J P Morgan Chase, to request sanctions almost two years after the case was closed, and without allowing the Petitioner the opportunity to respond, resulting in unjust fees.

PARTIES

Petitioner Deborah Walton and Respondents the
First Merchants Bank and J. P. Morgan Chase.

RULE 29.6 STATEMENT

None of the petitioners is a nongovernmental
corporation. None of the petitioners has a parent
corporation or shares held by a publicly traded
company.

STATEMENT OF RELATED CASES

Indiana, ex rel. Deborah Walton, Petitioner v.
Superior Court 6 of Indiana, Hamilton County, et al.
U. S. Supreme Court, Petition for Writ of Certiorari
Docketed October 10, 2024
Case No. 24-405

Walton v. J.P. Morgan Chase, et al.
Southern District of New York
Case No. 1:24-cv-02078-JMF
Ended: April 12, 2024

Walton v. First Merchants Bank et al.
Southern District of Indiana
Case No. 1:17-cv-01888-JMS-MPB
Ended: September 28, 2022

Walton v. First Merchants Bank et al.
Southern District of Indiana
Case No. 1:2021-cv-0419- JRS-TAB
Ended: February 14, 2022

Walton v. First Merchants Bank, et al.
Seventh Circuit Court of Appeals
Case No. 22-1240
Ended: September 1, 2022

Walton v. First Merchants Bank et al.
Seventh Circuit Court of Appeals
Case No. 19-1338
Ended: June 28, 2019

Walton v. First Merchants Bank et al.
U. S. Supreme Court
Case No. 19-93
Ended: October 7, 2019

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OPINIONS AND ORDERS BELOW

Seventh Circuit Court of Appeal order dismissing the case. App. 1

JURISDICTION

The District Courts order was entered on February 14, 2022, and the Seventh Circuit entered an order on September 1, 2022, and then another order from the Seventh Circuit was entered on July 31, 2024. The Petitioner filed the Application (24A151) for an extension of time on August 6, 2024; which was granted on August 9, 2024, and extended to December 28, 2024. Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III of the United States Constitution, requires legal standings, defined under FRCP 24(b).

The Fifth Amendment's Due Process Clause protects people from the government depriving them of life, liberty, or property without due process of law. The clause applies to all people in the U.S., including citizens, aliens, and corporations.

The Due Process Clause requires the government to provide certain procedural protections before depriving someone of a protected interest. These protections often include: Notice and An opportunity for a hearing.

The Due Process Clause prohibits arbitrary deprivations and promotes separation of powers principles. The Supreme Court has interpreted the term "liberty" broadly, extending it to the full range of conduct an individual is free to pursue.

STATEMENT OF THE CASE

I. INTRODUCTION

The Petitioner filed a complaint labeled *Walton v. First Merchants Bank*; under cause number 1:2021-cv-00419; which was closed on February 14, 2022; then appealed on February 15, 2022; then petition for writ of certiorari was filed under the cause number 22-428, and denied on January 9, 2023

Therefore, on **September 1, 2022**, the District Courts decision was upheld and sanctions were entered, both monetarily and a Mack Bar was imposed. However, on **July 31, 2024**, the Seventh Circuit Court of Appeals allowed First Merchants Bank to reopen the appeal, and J.P. Morgan Chase filed for the right to intervene and impose sanctions, on the Petitioner on **July 12, 2024**. *See Dkt [19-1]*

The Seventh Circuit Court of Appeals received First Merchants Banks motion to re-open the appeal on **July 29, 2024**, *See Dkt [20-1]* to extend the Mack bar and enforce additional sanctions on the Petitioner, and **July 31, 2024** the 7th Circuit Court of Appeals entered an order approximately two days after they received the motion, which was almost two

years from the date the appeal was closed on **September 1, 2022.**

Therefore, when the Seventh Circuit entered an Order two days after the motion was received, not allowing the Petitioner the opportunity to respond, it violated the Petitioners 5th Amendment Rights. They also violated Article III, when they allowed J.P. Morgan the opportunity to intervene.

II. REASONS FOR GRANTING THE PETITION

The Petitioner was not allowed Procedural Due Process; which deprived her of her 5th Amendment Rights, and the 7th Cir. Violated Article III of the United States Constitution.

III. ARGUMENT

THIS COURT SHOULD GRANT REVIEW OF THE 7TH CIRCUIT COURT OF APPEALS DECISION AFTER IMPOSING ADDITIONAL SANCTIONS FOR THREE REASONS: ONE; THE 7TH CIRCUIT FAILED TO APPLY PROCEDURAL DUE PROCESS, TWO: THE TIME TO RE-OPEN AN APPEAL HAD EXPIRED AND THREE: THERE WAS NO LEGAL BASES FOR THE 7TH CIRCUIT TO ALLOW J P MORGAN CHASE THE OPPORTUNTITY TO INTERVENE

A. J. P. Morgan Chase Is Without Legal Standings To Intervene As a Defendant.

The Petitioner filed an Appeal on February 15, 2022 and the Seventh Circuit Court of Appeals upheld the District Court order, and barred the Petitioner for filing any new papers in the Seventh Circuit for two years starting September 1, 2022. However, J.P. Morgan Chase filed a motion to extend the bar on July 12, 2024, and First Merchants Bank filed motions to extend the bar on July 29, 2024.

The Seventh Circuit entered an order two days later and imposed additional sanctions after First Merchants Bank filed a motion to extend the bar on the Petitioner. *(However, the Petitioner was not afforded Procedural Due Process, since she was not given the opportunity to answer).* Furthermore, the 7th Circuit allowed J.P. Morgan Chase the opportunity to intervene in the case as a defendant, when they had No Legal Standings.

The Federal Rule of Civil Procedure (FRCP) 24(b)(2) allows a third party to intervene in a case if they have a claim or defense that shares a common question of law or fact with the main action. However, J.P. Morgan Chase was not given a conditional right to intervene by a federal statute; or has a claim or defense that shares with the main action a common question of law or fact. FRCP 24(b) allows permissive intervention when a third party has a claim or defense that shares a common question of law or fact with the main action. The court has discretion to allow or deny permissive intervention,

and may consider whether it would cause undue delay or prejudice.

However, to the degree to which Article III also requires defendants to possess a personal stake. The significance of defendant standing often goes unnoticed in case law and scholarship, because the standing of the defendant in most lawsuits is readily apparent: any defendant against whom the plaintiff seeks a remedy has a personal interest in defending against the plaintiff's claim. See *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997) ("Standing to defend on appeal in the place of an original defendant, no less than standing to sue, demands that the litigant possess 'a direct stake in the outcome.'" (quoting *Diamond v. Charles*, 476 U.S. 54, 62 (1986))); *Mills v. Green*, 159 U.S. 651, 653 (1895) (dismissing where there was "no actual controversy involving real and substantial rights between the parties to the record").

But the issue of standing to defend takes on outsized importance when third parties who are not targeted by the plaintiff's requested remedy seek leave to intervene in order to oppose the plaintiff's claim for relief. In cases featuring intervenor-defendants—often cases that concern important issues of public law—the personal-stake requirement becomes a real and not merely theoretical concern for the defendant. Contested issues of defendant standing thus arise only in unusual circumstances: (1) in the trial court, when nonparties seek to be heard through intervention, and (2) on appeal, when parties against whom no relief was ordered seek to overturn the trial court's judgment. Because these

circumstances occur most commonly in public law cases with significant policy implications, one might expect to find serious studies of defendant standing in the case law and the academic literature. In fact, however, the topic has been all but ignored. Many law review articles have addressed standing to sue, but not one has comprehensively considered the question of how standing doctrine limits who may defend a claim.

The Supreme Court has said, it 'plainly dispenses with any requirement that the intervenor... have a direct personal or pecuniary interest in the subject of the litigation. See *Charles Alan Wright, Arthur R. Miller, and Mary Kay Kane*, 7C Federal Practice and Procedure § 1911 at 356 (West 1986), quoting *SEC v. US Realty & Improvement Co*, 310 US 434, 459 (1940). Despite this apparently helpful explanation of requirements for intervenors, the current split among circuits and commentators demonstrates that the requirements are not so plain after all.

B. J.P. Morgan Chase Failed To Identify What Rights They Had In Their Rule 60(B) Motion.

How was J.P. Morgan Chase allowed to file a 60B motion, when they had no standings. As a matter of text, structure, and history, a "mistake" under Rule 60(b) means a mistake has occurred or judge's errors of law. When the Rule was adopted in 1938 and revised in 1946, the word "mistake" applied to any "misconception," "misunderstanding," or "fault in opinion or judgment." Webster's New International

Dictionary 1383. Likewise, in its legal usage, “mistake” included errors “of law or fact.” Black’s Law Dictionary 1195. Thus, regardless whether “mistake” in Rule 60(b) carries its ordinary meaning or legal meaning, it includes a judge’s mistakes of law. However, J.P. Morgan Chase never raised the argument that a mistake had occurred; or judge’s error of law, nor should they have been able to file a 60B motion when they were never apart of the case; hence, they never identified what part of the 60B they were seeking relief from (1), (2), (3), (4), (5) or (6). Furthermore, a 60B can only be raised up to one year, from the time of the final judgment. Yet the 7th Circuit imposed sanctions, based in part of their motion.

Therefore, the sole purpose J.P. Morgan Chase wanted the court to extend the Bar, was because they continued to over charge the Petitioner, and they know they still have problems with the Mortgage Loans they acquired from Washington Mutual. J.P Morgan Chase doesn’t want to take accountability for the continued accounting errors, because they know that the habitual offenses that the Petitioner continues to endure, is a violation of the Dodd Frank Act. This is why J.P. Morgan Chase raised the 60(B) motion with the 7th Circuit, which was a willful act to skew the facts of the case, as if they were an interesting party, which gave them the opportunity to foreclose on the property. See Petition for Writ of Certiorari No. 24-405 pending with the U.S. Supreme Court. What is most disturbing is that the District Judge in the Southern District of New York accepted a letter from J.P. Morgan Chases legal counsel, and entered an order based solely on the

letter. See the case number 1:24-cv-02078-JMF, at Docket [11]; the Judges order at Docket [6] Letter from J.P. Morgan Chase legal counsel.

C. J.P. Morgan raised the issue of a 41(E), without any knowledge of what it means.

Trial Rule 41(E) of the Federal Rules of Civil Procedure (FRCP) states that a case can be dismissed if there is no action taken for 60 days or more, or if the plaintiff fails to comply with the rules. However, the case had been closed for almost two years, so how does J. P. Morgan Chase thinks Trial Rule 41(E) somehow applies to intervening in a closed Appeal.

D. First Merchants Bank Time To Re-Open An Appeal Had Expired

The time limit for First Merchants Bank to re-opening an appeal at the circuit court would have been 180 days from the entry of a judgment order, or 7 days after receiving notice of entry, whichever is earlier. The winning party can shorten this time period by sending a notice of entry of judgment.

E. First Merchants Bank Was Allowed Sanctions On Judgments That Do Not Exist.

First Merchants Bank has alleged, that the Petitioner has outstanding Judgments in the amount of \$432,548.53; however, this is not the case. When the Petitioner sue First Merchants Bank, under cause number 1:17-cv-01888-JMS-MPB, prior to the trial, they sought sanctions against the Petitioner in the

amount of \$13,108.00 for attorney fees. The reason was because First Merchants Bank produced an email during discovery to the Petitioner, that Mr. Brian T. Hunt wrote notes on, and when it was entered into evidence at Mr. Brian T. Hunt's deposition, they never objected to the email. However, it wasn't until the next day they requested the email back, at which time the Petitioner gave it to them. However, First Merchants Bank wanted the Petitioner to retrieve the email from the Exhibits that was entered as evidence at the deposition. However, the Petitioner was without power to do so. So, the Petitioner **PAID** the attorney fees of **\$13,108.00**. See Docket 1:17-cv-01888-JMS-MPB [209], the District Judge instructed the Petitioner to pay the \$13,108.00 by May 3, 2019, or her case would be dismissed, and her Trial would be canceled.

However, **After** to the bench trial under cause number 1:17-cv-01888-JMS,-MPJ. First Merchants Bank ask for sanctions again in the amount of \$57,751.00, citing the Petitioner filed a frivolous complaint under Reg E and was awarded attorney fees against her again. See 1:17-cv-01888-JMS-MPB, at Docket [305]. So, the Petitioner **PAID** the attorney fees again, at Docket [424-3; pg. 11] in the amount of **\$57,951.00**. However, if the **Reg E**, claim was frivolous, then why did the District Judge let both sides argue **Reg E** at trial. What is more disturbing, is that when counsel for First Merchants Bank raised the argument of a frivolous **Reg E** claim for the first time, in their after-trial Brief, why did the District Judge deny the Petitioners Attorney the right to respond. The Petitioner Appealed the judgment at the 7th Circuit Court of Appeals under cause No. 19-1338,

and it was Remanded back to the District Court for one of the Counts to be heard by a Jury, while the judgment for the \$57,710.00 was upheld. Therefore, the Petitioner filed a Petition for Writ of Certiorari with the U.S. Supreme Court at No. 19-93, which was denied.

Therefore, after the Petitioners case was denied by the U.S. Supreme Court, the District Judge sanctioned the Petitioner again under the cause number 1:17-cv-01888-SEB-MJB, **\$29,232.50**, for more attorney fees, of which the Petitioner did **NOT PAY**. See Docket [436].

However, the Petitioner had a pending case against First Merchants Bank under cause number 1:21-cv-0419-JRS-TAB, and the Petitioner was sanctioned to pay attorney fees of \$186,220.33 and pay the court \$1,000.00 for filing a frivolous complaint that was not frivolous and therefore, the Petitioner did **NOT PAY** the **\$186,220.33**, that was entered under **Docket [131]** but the Petitioner did **Pay** the **\$1,000.00** into the Court. See **Docket [132]**. The Petitioner filed an Appeal with the 7th Circuit Court of Appeals under cause number **22-428**, at which time the Mack Bar was entered and the Petitioner had another Judgment in the amount of **\$5,000.00** from the 7th Circuit. Then the Petitioner filed a Petition for Writ of Certiorari, under cause number **22-428**, of which was denied. Therefore, the Petitioner filed a T.R. 60(B) motion under cause number 1:2021-cv-00419-JRS-TAB, at 1:23-cv-01512-TWP-MG, awaiting the Mack Bar to expire.

Now, let's do the math, on the total Judgment

amounts all add up to **\$292,311.33**, and the total amount the Petitioner **PAID** was **\$72,059.00**, yet the total amount that First Merchants Bank submitted to the Seventh Circuit was for **\$432,548.53**; hence, the Petitioner does not have any additional judgments against her in the Federal Courts. Therefore, First Merchants Bank requested the 7th Circuit sanction the Petitioner an additional **\$140,237.20**, and extent the Mack Bar until it is paid.

So, if the 7th Circuit Court of Appeals, wants to impose additional sanctions in the amount of \$140,237.20, two days after First Merchants Bank filed their motion, then why didn't they allow the Petitioner the opportunity to Respond. See Appeal case number 22-1240 at Docket [21].

The U.S. Supreme Court, in the little-known case *Goodyear v. Haeger*, 581 U.S. 101, 137 S. Ct 1178 (April 18 2017), set important limits on a judge's inherent authority sanctions, which could have significant implications in discovery disputes. The Court held that when imposing sanctions, a judge must determine which fees and costs would not have been borne "but for" the misconduct and can assess only "the fees the innocent party incurred solely because" of that misconduct.

In a unanimous 8-0 decision, the Supreme Court vacated the sanction. See 581 U.S. 101 (2017). The Court explained that fee-shifting sanctions are constitutionally limited to reimbursing the aggrieved parties for costs they would not have incurred "but for" the alleged malfeasance. They are solely compensatory sanctions. If an award extends beyond

the costs and fees caused by the alleged malfeasance, it crosses the boundary and becomes a punitive sanction. If the court seeks to impose punitive sanctions, the defendant is owed heightened due process protections such as those afforded in criminal proceedings, including a higher standard of proof.

While the opinion was fairly short, the ruling could have a large impact if properly implemented. Defense counsel could use it to ensure that there remains a semblance of balance between inherent authority and rule-based sanctions, and to impede plaintiffs' lawyers from manipulating sanctions to generate money for cases, particularly those that lack substantive merit.

The tension between inherent authority and rule Based sanctions relates back more than twenty-five years to *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991). In *Chambers*, the Court provided judges with inherent authority to "assess attorney's fees when a party has acted in bad faith" during discovery even when procedural rules existed to sanction that misconduct. In an effort to achieve some balance, the Court pointed out that fee shifting sanctions, like other penal measures, "must comply with the mandate of due process."

As the Supreme Court appreciated, parties subject to sanctions, just as with liability, are entitled to due process protections. If a remedial sanction is greater than compensation, it raises the same "acute danger of arbitrary deprivation of property" that the Court observed in *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432 (1994). Similarly, as the Court held in *BMW*

of N. Am. v. Gore, regardless of whether the award is for sanctions or liability, a person must “receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty.” 517 U.S. 559, 574 (1996). The punishment for violating a discovery order is paying the costs that one wrongly made another party incur. A judge, no matter how rightly or wrongly inflamed, can no longer fine a party more without providing a higher level of due process.

First Merchants Bank, took all of the Judgments, paid; unpaid and the Judgment amounts that don't exist and put a lien on the Petitioner residential property to forced a foreclosure. The Petitioner has a pending dispute under RESPA with J. P. Morgan Chase Home Loans, and they still foreclosed on the property.

CONCLUSION

The 7th Circuit Court of Appeals decision ignored Article III under FRCP 24(b), and didn't apply due process. This Court should grant the Petition.

Respectfully submitted,

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