INDIANA COMMUNITY ACTION POVERTY INSTITUTE

Research and Public Policy

Testimony before the House Financial Institutions Committee

1/17/2024

Greetings Chairman Speedy & Members of the Committee,

Thank you for the opportunity to provide testimony. My name is Erin Macey, and I am director of the Indiana Community Action Poverty Institute. Our research and policy advocacy focuses on promoting the financial well-being of all Hoosiers. We take a particular interest in consumer protection issues because practices like payday lending and overdraft fees disproportionately drain the resources of low-income consumers.

For two years in a row now, the Indiana Supreme Court has decided cases where financial institutions have tried to avoid overdraft fee lawsuits by amending arbitration clauses into their customers' contracts. In 2022, five Republican-appointed Indiana Supreme Court justices unanimously sided with consumers in the Decker v. Star case, and in 2023, Justices Goff, Rush, Slaughter and Molter again blocked an effort to compel arbitration, arguing that the credit union did not meet the bar necessary to amend the customer's contract. Both cases raised questions about what constitutes reasonable notice, when silence can be construed as acceptance, and what kinds of burdens can be placed on the consumer to refuse an offer.

I am concerned that by putting this language into state law, you are giving banks broad license to change or add new terms without the agreement of the customers, which is a significant power.

I have consulted with national and state consumer law experts - they share my concern and caution that, without some guardrails on this new power, it could be left open to the potential for misuse and abuse. To address these, I've assembled recommended additions to the language to ensure that

- Financial institutions can change terms of contracts going forward as long as they do so in good faith, so that an institution doesn't add new terms that are retroactive or that would permit a bank to essentially change the contract in the past. For example, if the bank had been charging overdraft fees that were not permitted by its agreement, this language would stop the bank from adding a term to the contract that says customers waive any right to refunds of those fees.
- provide conspicuous notice that continued use will be deemed assent so that notices won't be buried somewhere a consumer is unlikely to see them, such as in the fine print on page 14 of a monthly e-statement and
- provide a long enough period for customers to make an informed decision to continue the banking relationship so that a customer doesn't have to scramble to close an account and redirect all their payments, which is burdensome. [In the Decker case, customers were only given 10 days to close their bank account.]

This language would still allow financial institutions the flexibility to update their contracts, while preventing this broad new power from being used for purposes that harm consumers, especially since closing a bank or checking account is a burdensome action for a consumer to take to signal that they do not consent to changes. I particularly want to thank the bill author Representative Pierce for the time he

took to meet with me on this issue, I hope you will give this effort to strike an appropriate balance consideration and I thank you for your time.