INDIANA COMMUNITY ACTION POVERTY INSTITUTE
Research and Public Policy

Testimony before the House Financial Institutions Committee

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Greetings Chairman Speedy and Members of the Committee

Thank you for the opportunity to provide public testimony today. My name is Erin Macey, and I am director of the Indiana Community Action Poverty Institute.

95% of Republicans and 93% of Democrats believe they should have the right to settle their banking disputes in court, according to Pew Research Center. SB 188 dramatically curtails those rights for the vast majority of your constituents by limiting both the time they have to bring action and the amount they can recover – we will have gone from 10 years in 2021 to 2 years. This bill applies to: (1) Share. (2) Share draft. (3) Share certificate. (4) Draft. (5) Certificate of deposit. (6) Savings. (7) Passbook. (8) Checking. (9) Money market. (10) Transaction. (11) Time deposit (12) Savings deposit. (13) Accounts similar to those listed in subdivisions (1) through (12). It is my understanding we would have the lowest statute of limitations for these types of contracts in the country. Why do Hoosiers who have been harmed deserve less time and less damages than people in the next state over?

Banking disputes should be decided on their merits, not a legal technicality. Did the bank unfairly or improperly take a consumers money, or not? Getting away with improperly taking someone's money or failing to give them what they are due because you made it past the statute of limitations frustrates our very sense of what is just and fair. The passage of time has little – if anything – to do with whether someone was harmed in a contract dispute. Further, allowing wrongdoers to escape liability might even embolden them. Legal action, especially class action, offers a deterrent effect; by having the lowest in the country for deposit accounts, we may be inadvertently inviting bad actors into our system whose hope is to take advantage and escape culpability.

I know you have heard arguments questioning the merits of recent cases having to do with overdraft and NSF fees. Having read a few of the complaints, I believe they raise legitimate issues and attempt to address harms caused to many borrowers – especially financially vulnerable ones. Two quick examples of recent cases:

- There have been several lawsuits related to high-to-low re-ordering of transactions – or similarly "authorize positive, settle negative." So, today, I buy several small things using my debit card…a bus ticket, a cup of coffee and a Twix from the snack bar, parking, and a gallon of milk on the way home. My account shows I have enough money and even appears to "reserve" the money…and the next day a larger payment I forgot about goes through and is put first in the order. I'm charged five overdraft fees instead of one.
- Charging multiple non-sufficient fund fees on a single item. If you read, for example, the complaint against Centier bank, the attorneys for the plaintiffs do a

good job of showing that the contract language suggests only a single fee will be charge, and even compares to a number of other contracts that spell this out differently.

It's not just me who thinks these practices are problematic. Even the Chair of the National Credit Union Administration has spoken out about some of these practices, calling them "antithetical to the purpose of credit unions, detrimental to members, and inconsistent with the credit union system's statutory mission of meeting the credit and savings needs of consumers, especially those of modest means..."

A lot of consumers I have talked to about these fees feel they are unjust, but also feel powerless to stop them. And it's impractical to expect they will individually litigate these – "Only a lunatic or a fanatic files a lawsuit over $30." (7th Circuit Judge Posner). Class action is an important systems-level accountability mechanism to prevent abuse. It often depends on attorneys willing to take a case on contingency – meaning they believe there's been harm – and who can survive a motion to dismiss. Class action is one the only ways to hold institutions accountable for small harms across many people.

But however you feel about fees and class action, the scope of this bill goes far beyond that. If there's one thing I have learned from attending Financial Institutions hearings, it's that the math of finance can be extremely complex - there are very likely to be other harms that may not be realized within a two-year window. A shorter statute of limitations means fewer consumers have remedies when they are treated unfairly by their financial institution. And where consumers have been wrongfully harmed, they deserve their day in court and they deserve to be made whole.

NOTES:

Federal Deposit Insurance Corp said banks can fix the problem with overdraft practices by 'ensuring that any transaction authorized against a positive available balance does not incur an overdraft fee, even if the transaction later settles against a negative available balance.'"

The Chair of NCUA went on to argue, "De-emphasizing consumer financial protection in credit unions and at the NCUA carries real consequences, such as serious harm to consumers, who could end up paying more for financial products and services, being denied a mortgage to buy a home, and being blocked from wealth building." We would expand this argument to say that this body, too, should be thinking about the role of consumer financial protection in preventing harm to Hoosiers and promoting financial well-being. And a statute of limitations for holding banks and credit unions accountable is a consumer protection – by providing accountability, it both prevents harm and offers restitution when harm has occurred.