



Advocates File Amicus Brief To Defend Consumers Against Capital One Overdraft Fee Practice

Roberts v. Capital One Financial Corporation alleges bank misled customers

Capital One's practice of multiplying overdraft fees harms low-income customers, drives people from banking system

WASHINGTON, D.C. – **The Center for Responsible Lending (CRL), National Consumer Law Center (NCLC), and New Economy Project** filed an amicus brief in *Roberts v. Capital One Financial Corporation*, in support of the plaintiff, Tawanna M. Roberts, against Capital One's misleading overdraft fee practice. In the brief, submitted earlier this month, the group urged the U.S. Court of Appeals for the Second Circuit to overturn a district court ruling in favor of the bank.

The case focuses on Capital One's misleading overdraft fee practice--specifically, the bank's improper charging of \$35 overdraft fees on debit card purchases, even when customers had sufficient funds in their accounts to cover transactions when they were made. Even though the bank places a "hold" on funds needed to pay transactions, it still sometimes charges overdraft fees on those same purchases. This practice is not only misleading, but also is especially harmful to consumers struggling to make ends meet, since it multiplies the number of overdraft fees assessed.

According to the groups' amicus brief: "Capital One has a high-cost overdraft program and is expanding it to accounts that were previously safe from overdraft fees Last year, CFPB [the Consumer Financial Protection Bureau] made public the complaint narratives consumers have filed with the agency related to checking accounts, offering a qualitative look at consumer experiences with overdraft fees. One of the most salient themes within these complaints is difficulty avoiding overdrafts even when consumers tried desperately to avoid them and, often, believed they had. The most common

complaints were those where customers believed, based on an actual review of their available balance, that funds were available for transactions they made, but later learned the transactions had triggered overdraft fees. This is the exact situation at issue in this case, where customers' reasonable expectations about their ability to avoid overdraft fees were based not only on the plain meaning of 'available balance' but on Capital One's misleading representations."

The group argues that Capital One's overdraft practice is yet another way in which banks mislead consumers to maximize the number of exorbitant overdraft fees they charge. The brief cites research documenting how bank overdraft programs disproportionately harm lower income communities and communities of color. Bank overdraft practices drive many low-income people out of the banking system altogether.

The brief also cites a recent [study](#) by the CFPB, which exposed the extent to which large banks' abusive overdraft fees drain working families' checking accounts. The study found that nearly 80% of bank overdraft and non-sufficient funds (NSF) fees are borne by only 8 percent of account holders, who incur ten or more fees per year, with many of those customers paying far more. For one group of hard hit consumers, the median number of overdraft fees was 37, nearly \$1,300 annually, meaning some pay much more. The study also confirmed that overdraft fees on debit cards can lead to extremely high cumulative fees for consumers.

Over the last 15 to 20 years, many financial institutions have betrayed the trust of their account holders by replacing what was once an occasional accommodation with an exploitative system of routine high-cost overdraft fees that drive account holders deep into debt. The fees are so lucrative for banks, particularly on debit card transactions, that banks push them on customers and misrepresent the purported benefits of overdraft products and how they work. Often, these misrepresentations lead consumers to believe they will not be charged an overdraft fee in circumstances when in fact they will. These misrepresentations help banks to maximize the number of individual overdraft fees they charge—averaging an unreasonable and disproportionate \$35 each, totaling \$14 billion annually. Some banks do not charge overdraft fees on debit cards or at the ATM, and the groups urge other institutions to follow their lead.

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