No. 02-857

IN THE
Supreme Court of the United States
OCTOBER TERM, 2003

HOUSEHOLD CREDIT SERVICES, INC. and
MBNA AMERICAN BANK, N.A.,
Petitioners,

v.

SHARON R. PFENNIG,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR WILLIAM P. SCHLENK, PETITIONER IN U.S. CASE NO. 03-112, AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether the Sixth Circuit improperly substituted its interpretation of the Truth in Lending Act for that of the Federal Reserve Board — the agency authorized by Congress to interpret the statute — in invalidating an important provision of Regulation Z that affects tens of millions of consumer credit card agreements?

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INTEREST OF *AMICUS CURIAE*

The *amicus curiae*, William P. Schlenk, is the petitioner in *Schlenk v. Ford Motor Credit Corp.*, U.S. Case No. 03-112 (petition for *certiorari* filed July 11, 2003), in which his petition for a writ of *certiorari* is currently pending before the Court. He respectfully submits that he has a direct interest in the issues presented here, which overlap significantly with the issues presented in his own case.[1]

In both of these cases, the Sixth Circuit Court of Appeals considered and decided issues raised under the Truth in Lending Act, 15 U.S.C. § 1601 *et seq*. ("TILA"), and the implementing regulations adopted by the Federal Reserve Board, which is the expert agency charged by Congress with the authority to administer the TILA. In both cases, as the *amicus curiae* and petitioners here contend, the Sixth Circuit erred by failing to give proper deference to the Board's controlling interpretation of these statutes and of its own regulations that implement the statutory terms. This case concerns the Board's Regulation Z as applied to consumer credit card transactions, whereas the *Schlenk* case concerns the Board's Regulation M as applied to motor vehicle leasing transactions. Yet there is no meaningful difference in the controlling statutory and regulatory principles that govern these and other similar cases brought to enforce the terms of the TILA.

This brief *amicus curiae* is submitted for two reasons. First, we intend to illustrate more fully the immense breadth of the categories of consumer transactions covered by the TILA, which in turn fortifies the Court's mandate of judicial deference to the Board exercising its expert regulatory authority. Second, we intend to underscore the evenhandedness of the rule of deference that the Court applies in these situations. As shown by the specific contrast between the facts of this case and the facts of the *Schlenk* case, a

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[1] The parties have consented to the filing of this brief in letters that are on file with the Clerk. Pursuant to S. Ct. R. 37.6, the undersigned counsel for the *amici curiae* state that they alone have authored this brief, and no other persons or entities made any monetary contribution to its preparation or submission.

regime of judicial deference to agency action does not systematically advantage any particular set of judicial parties.

For these reasons, the *amicus curiae* has a direct interest in the issues presented here and submits this brief in an attempt to be of assistance to the Court in this case.

SUMMARY OF ARGUMENT

The core issue in this case, on which the court below erred, concerns the proper level of deference that courts are supposed to give to actions taken by the Federal Reserve Board to implement the provisions of the Truth in Lending Act. The Court has already spoken to this precise issue in several prior decisions, which have uniformly held that the Board is entitled to substantial deference in interpreting and enforcing these statutes and its own implementing regulations. *See, e.g.*, *Mourning v. Family Publication Serv., Inc.*, 411 U.S. 356, 363-75 (1973); *Ford Motor Co. v. Milhollin*, 444 U.S. 555, 559-69 (1980); *Anderson Bros. Ford v. Valencia*, 452 U.S. 205, 211-23 (1981). In a sense, these holdings simply appear to be standard applications of the Court's settled approach to the broader issue of the proper relationship between the judicial power to interpret and apply the law and the administrative function to exercise delegated authority as a means to fill in the details of congressional enactments. *See, e.g.*, *United States v. Mead Corp.*, 533 U.S. 218 (2001); *Auer v. Robbins*, 519 U.S. 452 (1997); *Chevron U.S.A., Inc. v. Natural Resources Defense Ccl., Inc.*, 467 U.S. 837 (1984).

In this particular context, however, the Court has gone somewhat further, holding that because Congress has conferred such unusually "broad administrative lawmaking power" upon the Board and its staff, "a court that tries to chart a true course to the Act's purpose embarks on a voyage without a compass when it disregards the agency's views." *Milhollin*, 444 U.S. at 566. Indeed, the Court has squarely held that the Board and its staff must be treated as one and the same for purposes of affording judicial deference, since "Congress has conferred special status upon official staff interpretations. *See* 15 U.S.C. § 1640(f); 12 C.F.R. § 226.1(d) (1979)." *Id.* at 566 n.9. By these means, Congress expressed its decisive "preference for resolving interpretive issues [under the TILA] by uniform administrative decision, rather than piecemeal through litigation," in order to produce the "coherent and predictable body of administrative rules" demanded by this complex statute. *Id.* at 568 & n.12.

The rationale for this approach remains sound. If anything, the immense breadth of the categories of consumer transactions covered by the TILA, which has greatly expanded even since the Court decided *Mourning* and *Milhollin*, fortifies in turn the Court's steadfast determination to require judicial deference to the Board's exercise of its expert regulatory authority. As the Court has cogently stated: "Because of their complexity and variety, however, credit transactions defy exhaustive regulation by a single statute. Congress therefore delegated expansive authority to the Federal Reserve Board to elaborate and expand the legal framework governing commerce in credit." *Milhollin*, 444 U.S. at 559-60. Those categories of consumer transactions range, for example, from the ubiquitous credit card transactions whose regulation is under review in this case to the motor vehicle leases at issue in *Schlenk* – which by themselves now constitute a multi-billion-dollar industry.

In addition, the propriety of this approach is underscored by the evenhandedness of the rule of deference that the Court has embraced to govern the situations that arise in this case, the *Schlenk* case, and many other such cases. The Federal Reserve Board, of course, is entirely neutral as a regulatory body. It adopts administrative rules that it judges to be most faithful to the text and purposes of the TILA, and most sensible to balance the rights and interests of consumers against those of the vendors and providers with whom they transact business. The Board supplements and elaborates its rules with official staff commentary that clarify and explain in greater detail how and why those regulations apply to particular transactions and distinct scenarios. As shown by the contrast between the circumstances of this case and the facts of the *Schlenk* case, a consistent rule of judicial deference to agency expertise and delegated congressional authority does not uniformly favor either plaintiffs or defendants, consumers or vendors. The settled approach of great deference to the Board's interpretation of its own governing statutes and regulations is right not because it presses forward any particular policy agenda, but by virtue of the fact that it is true to the appropriate relationships among the three branches of the Federal government.

ARGUMENT

I. THE SIXTH CIRCUIT ERRED BY REFUSING TO DEFER TO THE FEDERAL RESERVE BOARD'S BINDING CONSTRUCTION OF ITS OWN STATUTES AND REGULATIONS.

The question presented here is whether the Sixth Circuit improperly substituted its interpretation of the Truth in Lending Act for that of the Federal Reserve Board, thereby effectively invalidating a regulation that affects tens of millions of consumer credit card arrangements. In light of the background to the TILA and the Court's consistent construction of the regulatory regime administered pursuant to these statutes, the court below clearly erred.

A. Statutory and Regulatory Background.

Congress passed the Truth in Lending Act in 1968, 82 Stat. 148, 15 U.S.C. § 1601 *et seq*., which "culminated several years of congressional study and debate as to the propriety and usefulness of imposing mandatory disclosure requirements on those who extend credit to consumers in the American market." *Mourning v. Family Publication Serv., Inc.*, 411 U.S. 356, 363 (1973). "Because of the divergent, and at times fraudulent, practices by which consumers were informed of the terms of the credit extended to them, many consumers were prevented from shopping for the best terms available and, at times, were prompted to assume liabilities they could not meet." *Id.*

In the text of the Act itself, Congress stated the key findings that justified the new legislation:

> The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms, so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit and to protect the consumer

> against inaccurate and unfair credit billing and credit card practices.

15 U.S.C. § 1601. To this end, the House Committee on Banking and Currency reported that "by requiring all creditors to disclose credit information in a uniform manner, . . . the American consumer will be given the information he needs to compare the cost of credit and to make the best informed decision on the use of credit." H.R. Rep. No. 1040, 90th Cong., 1st Sess. 13 (1967).

Because the provisions of the law and practices in this field are complicated, Congress empowered the Federal Reserve Board "to define such classifications as were reasonably necessary to insure that the objectives of the Act were fulfilled." *Mourning*, 411 U.S. at 366; *see also Milhollin*, 444 U.S. at 559-60 ("Because of their complexity and variety, however, credit transactions defy exhaustive regulation by a single statute. Congress therefore delegated expansive authority to the Federal Reserve Board to elaborate and expand the legal framework governing commerce in credit."). Pursuant to that extensive regulatory authority, the Board adopted Regulation Z, which specifies in detail various permissible and impermissible aspects of consumer credit charges, including what is and is not to be included in finance charges. *See* 12 C.F.R. Part 226; *see also* 15 U.S.C. § 1604(a). In 1976, Congress supplemented the provisions of the TILA by extending its coverage to leasing transactions, which were becoming increasingly prevalent among consumers. *See* Consumer Leasing Act, 90 Stat. 259, 15 U.S.C. § 1667 *et seq*. The Board implemented the consumer leasing provisions of the TILA by adopting its Regulation M. *See* 12 C.F.R. Part 213.

B. The Court Has Mandated that the Board's Definitive Interpretation of Its Governing Statute and Rules Merits Broad Deference.

The Sixth Circuit erred in this case because it failed to give deference to the agency's own definitive interpretation of its governing statute. The TILA is no more than "silent or ambiguous with respect to the specific issue" of whether the over-limit fee at issue in this case is either a "finance charge" within the meaning of

15 U.S.C. § 1605(a) or one of the "other charges which may be imposed" on the account as countenanced by 15 U.S.C. § 1637(a)(5). *Chevron*, 467 U.S. at 843. In such circumstances, this Court has firmly held that "considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer . . . and the principle of deference to administrative interpretations has been consistently followed by this Court." *Id.* at 844 (footnote and quotation omitted); *see also United States v. Mead Corp.*, 533 U.S. 218, 227-31 (2001) (reaffirming *Chevron* rule and explicating agency materials, such as administrative regulations and other less formal indices of agency decisionmaking, that are entitled to receive judicial deference). The Court has based this jurisprudential approach on its recognition that an agency's authority to administer the governing statutes in the substantive area entrusted to it by Congress "necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress." *Morton v. Ruiz*, 415 U.S. 199, 231 (1974). And where the agency's construction of its governing statutes relies in part on an interpretation of its own regulations, substantial judicial deference is "even more clearly in order." *Udall v. Tallman*, 380 U.S. 1, 16 (1965); *see also Auer*, 519 U.S. at 461 (same).

That is precisely the case here. Regulation Z is the Federal Reserve Board's implementing regulation with respect to the definition and categorization of different consumer credit transactions, including finance charges and other charges related to credit card transactions. The regulation expressly excludes over-limit fees from its definition of finance charges. *See* 12 C.F.R. 226.4(c)(2). This position is further reinforced by the Official Staff Commentary explaining the provisions of Regulation Z, which also requires over-limit fees to be disclosed as "other charges" on initial and periodic disclosures. *See* 12 C.F.R. Part 226 Supp. I, Official Staff Interpretations, Cmts. 6(b)-1(i), 7(h)-4.

Not only does this case implicate the standard rule of *Chevron* deference, therefore, but it also invokes the Court's emphatic holding that staff opinions of the Federal Reserve Board should be found to be controlling on the appropriate interpretation of the TILA and of the implementing regulations that the agency administers. In

Milhollin, the Court expressly held that "[u]nless demonstrably irrational, Federal Reserve Board staff opinions construing the Act or Regulation should be dispositive for several reasons." 444 U.S. at 565. First, as stated above, the Court "has often repeated the general proposition that considerable respect is due 'the interpretation given a statute by the officers or agency charged with its administration.'" *Id.* at 566 (quotation omitted). Second, Congress has "specifically designated the Federal Reserve Board and staff as the primary source for interpretation and application of [this consumer protection] law." *Id.* Third, deference to the agency "is compelled by necessity," since "a court that tries to chart a true course to the Act's purpose embarks on a voyage without a compass when it disregards the agency's views." *Id.* at 568.

Because the TILA gives the Board and its staff such unusually "broad administrative lawmaking power," *Milhollin*, 444 U.S. at 566, this Court has noted that Congress has stated its decisive "preference for resolving interpretive issues [under the TILA] by uniform administrative decision, rather than piecemeal through litigation," in order to produce the "coherent and predictable body of administrative rules" demanded by this complex statute. *Id.* at 568 & n.12. Indeed, in *Milhollin*, this Court squarely held that the Federal Reserve Board and its staff must be treated as one and the same for purposes of affording judicial deference:

> But to the extent that deference to administrative views is bottomed on respect for agency expertise, it is unrealistic to draw a radical distinction between opinions issued under the imprimatur of the Board and those submitted as official staff memoranda. . . . At any rate, it is unnecessary to explore the Board/staff difference at length, because Congress has conferred special status upon official staff interpretations. *See* 15 U.S.C. § 1640(f); 12 C.F.R. § 226.1(d) (1979).

Id. at 566 n.9. Accordingly, "judges ought to refrain from substituting their own interstitial lawmaking for that of the Federal Reserve, so long as the latter's lawmaking is not irrational" under the provisions of the TILA. *Id.* at 568.

The court below declined to give deference to the Board and its implementing regulation in this case, primarily because it thought itself obliged to apply a different rule of construction. In particular, the court below explained that based on the TILA's core purpose of protecting consumers in credit transactions, the statute must be construed liberally in the consumer's favor. The *amicus curiae* agrees that this is an important guidepost for determining close questions about the proper interpretation and application of the TILA. It is, indeed, a pertinent canon of construction that illuminates the meaning and purpose of all such consumer protection statutes, and it should be employed to guide both the Board and the courts in situations that are governed by their terms. *See, e.g., Milhollin*, 444 U.S. at 559 (TILA's purpose is to assure "meaningful disclosure of credit terms to consumers"); *Mourning*, 411 U.S. at 371 (same). *Cf. Blue Shield of Va. v. McCready*, 457 U.S. 465, 472 (1982) (construing antitrust laws in light of Congress' "expansive remedial purpose" to protect and benefit consumers); *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967) (in construing the Securities Exchange Act, "we are guided by the familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes").

But the error here is that canons of construction cannot be employed to trump the judicial deference to agency action that is mandated by the Court's consistent line of precedents running from *Chevron* to *Mead* and down to the present. To the contrary, *Chevron* teaches that *only* where the statute reflecting "the intent of Congress is clear, that is the end of the matter." *Id.*, 467 U.S. at 842-43. But where the statute is "silent or ambiguous," *id.* at 843 — as is so, by definition, where the courts must turn away from the statutory text itself to seek interpretive guidance from canons of construction, *see, e.g., Hassett v. Welch*, 303 U.S. 303, 313-14 (1938) ("Resort is had to canons of construction as an aid [when the statute has] sufficient ambiguity to warrant our seeking such aid.") — then controlling precedent dictates that the Board's construction of the statute must control, especially where, as here, a uniform administrative construction is essential to weaving a coherent web of federal regulations to govern all consumer credit transactions. *See, e.g., Milhollin*, 444 U.S. at 559-60.

Congress's actions and the Court's precedents thus establish a decisive preference for uniform administrative construction of the TILA rather than piecemeal decisionmaking through the lower courts. The Court has since reaffirmed the same directive that courts must defer to the Board's authority in *Valencia*, a case involving the disclosures required on an installment contract to purchase an automobile: "as we so plainly recognized in [*Milhollin*,] absent some obvious repugnance to the statute, the Board's regulation implementing this legislation should be accepted by the courts, as should the Board's interpretation of its own regulation." *Valencia*, 452 U.S. at 219.

Accordingly, in this case, as in *Chevron* and *Milhollin*, "the Court of Appeals misconceived the nature of its role in reviewing the regulations at issue." *Chevron*, 467 U.S. at 845. Once the courts have discerned that Congress did not speak specifically and explicitly in the TILA to the question whether over-limit fees are finance charges rather than other permissible charges, the only remaining issue is whether the agency's own views on that subject are merely "reasonable" — and if so, they must be upheld. *Id.*; *see also Mead*, 533 U.S. at 227-31.

C. The Court's Reasons for Requiring Deference Are Sound and Fully Applicable Here.

Although the Court has not revisited the proper relationship between the courts and the Federal Reserve Board under the TILA for more than two decades, the original rationale for granting substantial judicial deference to the Board remains sound. As an initial matter, the Court had noted the complexity of the matters covered by the statute and the consequent importance of a uniform administrative interpretation of the statutes governing consumer credit transactions throughout the country. *See, e.g., Milhollin*, 444 U.S. at 566-68.

In the years since the Court's decisions in *Mourning* and *Milhollin*, the justification for this approach has only become more compelling. In the last twenty years, there has been an explosion of consumer credit transactions of all kinds, including, in particular, the kinds of credit card transactions at issue in this case. The amount and kinds of credit that are routinely extended to ordinary consumers now dwarfs the nature of the industry in the 1970s. In addition, the extension of the TILA to consumer leases has brought under its ambit an entirely new range of credit transactions, including leases and lease-to-own purchases such big-ticket items as automobiles and other consumer durables. *See* Consumer Leasing Act, 90 Stat. 259 (1976), 15 U.S.C. § 1667 *et seq*. The banking and finance industries also have become increasingly national in scope in recent decades; whereas thirty years ago much of that regulation occurred on a state-by-state basis, the Federal Reserve Board has since assumed a much greater role in ensuring the soundness of financial institutions and regulating their practices with respect to both business creditors and individual borrowers.

The sheer magnitude of consumer transactions covered by the TILA, which has greatly expanded even since the Court decided *Mourning* and *Milhollin*, thus reinforces the basis for the Court's steadfast determination to require judicial deference to the Board's exercise of its expert regulatory authority. As the Court has cogently stated: "Because of their complexity and variety, however, credit transactions defy exhaustive regulation by a single statute. Congress therefore delegated expansive authority to the Federal Reserve Board to elaborate and expand the legal framework governing commerce in credit." *Milhollin*, 444 U.S. at 559-60. The categories of transactions now range from the credit card transactions whose regulation is under review here — involving virtually all consumers — to the motor vehicle leases at issue in the *Schlenk* case, which by themselves now constitute a multi-billion-dollar industry. Congress's acknowledged "preference for resolving interpretive issues [under the TILA] by uniform administrative decision, rather than piecemeal through litigation" is thus all the more essential, in the wake of these developments, in order to produce the "coherent and predictable body of administrative rules" demanded by this complex statute. *Milhollin*, 444 U.S. at 568 & n.12.

II. THE RULE OF DEFERENCE THAT THE COURT HAS ESTABLISHED IS EVENHANDED, FOR IT BENEFITS PLAINTIFFS IN SOME CASES AND DEFENDANTS IN OTHERS.

The propriety of the settled rule of judicial deference to the Federal Reserve Board in these types of cases is underscored by the evenhandedness of the rule. There is no particular pattern to which parties — plaintiffs or defendants — can be expected to benefit by this approach in any given case. That is as it should be, for the Board plays an entirely impartial role as a regulatory body. It carries out its prescribed function, which is authorized and mandated by Congress, through its adoption of neutral administrative rules that it judges to be most faithful to the text and purpose of the TILA. The Board itself must be evenhanded insofar as it balances the rights and interests of consumers against those of the vendors and providers with whom they transact business. The Board also supplements its rules with official staff commentary that clarify and elaborate in more detail — based on its specialized expertise — how and why its regulations apply to different transactions and scenarios involving consumer credit.

As shown by the contrast between the circumstances of this case and the facts of the *Schlenk* case, a consistent rule of judicial deference to agency expertise and delegated congressional authority does not uniformly favor either plaintiffs or defendants, consumers or vendors. In this case, for example, it happens to be the credit card companies who seek the benefit of the Board's interpretation of the TILA, since the Board has determined that over-limit fees are not "finance charges" within the meaning of 15 U.S.C. § 1605(a), but more appropriately are defined to fall within the "other charges which may be imposed" on the account under 15 U.S.C. § 1637(a)(5). According, the Board's interpretation of the TILA happens to disserve the interests pressed by the individual consumer in this case. In *Schlenk*, by contrast, it is the motor vehicle lessor that is fighting the Board's interpretation of the statute, and the individual consumer who seeks to uphold it. There the Board has correctly determined that "acquisition fees" (a type of handling charge that is imposed on many motor vehicle leases) must be disclosed on the face of the lease, but the lower court (as in this case) declined to defer to the Board's construction of the TILA and of its own implementing rules, hewing instead to its own preferred reading of statutory and regulatory provisions that cannot fairly be regarded as unambiguous.

The same evenhandedness in applying the rule of deference is apparent from the Court's few decisions involving the TILA. In *Mourning*, the first case in which the Court addressed the provisions of this statute, an individual consumer who contracted to buy some magazine subscriptions sued because she believed the company had failed to comply with the terms of Regulation Z — the same regulation at issue in the present case. As happened here, the district court upheld Regulation Z, but the court of appeals reversed, holding that the Board had exceeded its statutory authority under the TILA by adopting the relevant provisions of the regulation. *See id.*, 411 U.S. at 358-63. In *Mourning*, the defendant company argued that the TILA only mentions disclosure in regard to transactions in which a finance charge is imposed, but Regulation Z as adopted would apply even to transactions where no such charge exists. This Court rejected the argument, however, noting that Congress did not attempt "to list comprehensively all types of transactions to which the Board's regulations might apply," but instead conferred a "broad grant of rulemaking authority" to capitalize on the expertise and other beneficial "attributes of agency administration." *Id.* at 372-73. The Court therefore reversed the decision below and ruled in favor of the consumer.

When the next case involving the TILA came to the Court a few years later, the shoe was on the other foot. In *Milhollin*, the suit was brought by individual consumers who had purchased their automobiles through installment contracts. They contended that the defendant, a motor vehicle finance company, had violated the TILA by failing to disclose on the front page of the contract that the creditor retained the right to accelerate payment of the debt in certain circumstances. The lower courts had ruled in favor of the consumers, based on their interpretation of the TILA and of Regulation Z, which once again was at issue there. *See id.*, 444 U.S. at 557-59.

This Court reversed, concluding that neither the statute nor the regulation clearly resolved the issue. In that situation, "judges are not accredited to supersede Congress or the appropriate agency by embellishing on the regulatory scheme." *Id.* at 565. Instead, they must defer to the agency's own views, even as expressed in "Federal Reserve Board staff opinions construing the Act or Regulation," which "should be dispositive" unless they are "demonstrably irrational." *Id.* In *Milhollin*, it turned out that this approach favored the finance company defendant, since the Board and its staff had consistently interpreted the statute and regulations to impose no such uniform requirement of disclosure. *See id.* at 562-70.

The same evenhanded results show up in other lower court cases as well. *Compare Benion v. Bank One*, 144 F.3d 1056, 1059 (7th Cir.) (ruling granting deference to Board favored defendant bank because "consumer credit disclosures are comprehensively regulated by the Federal Reserve Board . . . [and] courts should generally leave the plugging of loopholes to the agency, lest the court's reparative efforts create confusion and disrupt the regulatory scheme") (citing *Milhollin*), *cert. denied*, 525 U.S. 963 (1998) *with Riviere v. Banner Chevrolet, Inc.*, 184 F.3d 457, 460 (5th Cir. 1999) (ruling granting deference to Board favored plaintiff consumer because "Congress 'delegated expansive authority to the Federal Reserve Board to elaborate and expand the legal framework governing commerce in credit'") (quoting *Milhollin*).

In the end, the settled approach of great judicial deference to the Board's interpretation of its own governing statutes and regulations is right because it reflects the appropriate relationships among the three branches of the Federal government. In this field, as in many other areas where the Congress has enacted general statutes and expressly authorized administrative agencies to fill in the details by applying their expertise to the intricate regulatory questions that must arise in everyday life, the questions are technical and practical rather than rigidly ideological. Under the TILA, in particular, as the case law shows, the Federal Reserve Board and its staff have enforced no systematic policy that favors plaintiffs or defendants, consumers or vendors. In any situation where reasonable interpreters of the governing statutes and regulations could differ, therefore, the Board's own views are entitled to substantial deference from the courts.

CONCLUSION

The decision below should be reversed.

Respectfully submitted,

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August 2003