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Committee on Financial Services
United States House of Representatives

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Mr. Chairman, Ranking Member Waters and Members of the Committee, thank you for inviting me to appear at this hearing and to submit written testimony. I have been a practicing lawyer representing community banks, their shareholders, directors, officers and related entities on a wide range of matters for the past 45 years and am also the principal shareholder of a Texas State Savings Bank with roots in rural West Texas.

When I last had the opportunity to testify before this Committee's Subcommittee on Financial Institutions in 2017 at the request of Mr. Luetkemeyer, there were over 6,300 banks in the United States. As of September 30, 2024, there were 4526, a loss of nearly 30% in the past eight years.[1]

This loss is extremely unfortunate and is a trend that I strongly encourage Congress to reverse. During my professional career I have witnessed the value of having one or more locally owned and operated banks, which can serve as engines in these local economies, particularly in smaller rural communities, that suffer from a lack of access to capital. No other country in the world has anything like this historic and even currently diminished community bank population.

This unique element of the American economy has undergone significant stress especially during the past 15 years. The enactment of Dodd Frank dramatically increased regulation on banks of all sizes. As a result, new bank charters effectively ceased in sharp contrast to the approximately 200 new charters that had been established annually over the prior 20 years.

Also, during this same period, Bank capital requirements were increased through adoption of the European based Basel Committee's initiatives which were designed for only the largest banks in the world. These complex and substantially higher capital levels were soon imposed on all banks – even the

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[1] Statement of former FDIC Chairman, William M. Isaac - "*During the 1980s, when some 3,000 banks failed, the US banking system declined from 13,000 banks to 10,000. The largest bank at that time was Citibank at $100 billion. During the period since then, mergers and failures caused the U.S. bank population to decline further by a staggering 6,000 banks, leaving the U.S. bank population at a mere 4,000 banks. The four largest banks (JP Morgan Chase, Bank of America, Citicorp, and Wells Fargo) comprise some $12 trillion in asset size or roughly 50% of the total banking system. It is critically important that this consolidation trend be halted. It should be a priority that we add more and stronger community banks in the U.S.*

smallest community banks. This has placed costly and unnecessary burdens on Americas unique community bank system, limiting its attractiveness.

Despite laudable attempts by Congress and the agencies during President Trump's first term to lessen that burden through establishment of the Community Bank Leverage ratio concept, the 9% capital ratio minimum adopted by regulatory authorities despite industry recommendations of a more traditional 8% ratio, has continued to put profitability pressure on community banks and discourage entry into the business of banking.[2]

Congress thankfully expanded the value of the community bank charter 27 years ago by permitting banks to elect taxation under Subchapter S similar to the now most popular form of business entity – the limited liability company. The relative benefit of an S election was continued in Section 199A of the Tax Cuts and Jobs Act of 2017 but currently expires at the end of this year. Making 199A permanent for the benefit of the nearly 1500 community banks with an S election and the entire LLC and flow through business community is vitally important. The Main Street Certainty Act introduced last week would accomplish this objective.

While there are many other laudable initiatives identified by the Chairman, I want to underscore the importance of encouraging and allowing responsible innovation by community banks. Financial technology has and will continue to create substantial value for the industry through efficiency and reduction in costs for all.[3] This is an important means to cope with the ever-growing regulatory burdens experienced throughout all American business and importantly within the banking community. It is extremely important for the industry to have an appropriate regulatory framework and guidance to permit and encourage innovation.

Our rapidly advancing digital economy demands that prudential regulators embrace these trends and initiatives and continue to hire talented professionals who can stay fully abreast of these industry trends. Chairman Hill has also wisely suggested meaningful re-evaluation of the CAMELS rating system with focus on proper weighting of components and clear definitions. I would add that utilizing a more "dynamic" approach which captures trends rather than a snapshot of a point in time will foster a more thoughtful and robust community banking environment.

The regulatory enforcement framework could benefit from revision by more open and timely discussion of material supervisory determinations. Public enforcement actions should be reserved for egregious situations and should not be used to emphasize or publicize new policies or approaches developed from time to time. The industry could benefit by an overall more cooperative and open dialogue among banks and their regulators.

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[2] James Watkins, President Secura Isaac Group provided the following statement - *"The regulators require only 8% leverage ratio of a de novo bank, which has not been through the business cycles, but requires a long-standing bank to hold 9% leverage capital – it is time to bring back common sense to capital requirements and lower the community banks leverage capital requirement."*

[3] Ian Maloney, SVP, Head of Policy and Regulatory Affairs, American Fintech Council "*There are over 200 banks currently engaged in innovative activities with financial technology companies. Ian Moloney, American Fintech Council"*

The personal risks of serving as a bank board member or controlling investors should also be rethought. While banking agencies should carefully vet new applicants and investors, they need to develop the resources to do so quickly, efficiently and effectively and not let new charters or other application decisions linger. I strongly support Chairman Hill's suggestion that bank merger applications be acted upon within 120 days and suggest this timeline be applied to all other bank agency applications.

Finally, I believe that appropriate pricing of examination and application fees may need to be adjusted to achieve the foregoing including potentially FDIC insurance assessments. The banking industry is and should be, self-funding. As such, regulatory burden can be adjusted to wisely promote community banking and its benefits whether defined by geography, affiliation or otherwise.

I again thank the Committee for permitting me to appear today.