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Ill. Swipe Fee Ruling Sets Stage For A High-Stakes Appeal

By **Barrie VanBrackle, Jack McNeily and Parag Patel** (March 10, 2026, 5:50 PM EDT)


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In February, the court in Illinois Bankers Association v. Raoul found that the Illinois Interchange Fee Prohibition Act does not directly regulate national banks and falls outside National Bank Act, or NBA, preemption because payment card networks set interchange fees, not banks.

The ruling permanently enjoins the IFPA's data usage limitation, finding it impermissibly restricts banks' broad authority to process transaction data for fraud monitoring and loyalty programs.

With similar bills introduced in over 20 states, an imminent appeal from the U.S. Court of Appeals for the Seventh Circuit will determine whether state-level interchange regulation proliferates nationwide.

This decision matters as it potentially requires all participants in the payments ecosystem to be subject to limitations regarding interchange assessments on a state-by-state basis. It also clears a legal path for state-level regulation of credit and debit card swipe fees, while striking down data usage restrictions, setting the stage for a high-stakes appeal.

As expected, on March 2, the U.S. Court of Appeals for the Seventh Circuit granted the banking and credit union trade groups' unopposed motion to fast-track their appeal, seeking resolution on whether and to what degree the NBA and other sources of federal law preempt the IFPA.

The court scheduled oral arguments for mid-May, with the parties seeking a decision by June 15, two weeks before the IFPA's July 1 effective date.

Introduction

On Feb. 10, U.S. District Judge Virginia Kendall of the U.S. District Court for the Northern District of Illinois issued[1] a 47-page memorandum opinion and order resolving cross-motions for summary judgment over the IFPA.[2] The decision upholds the core provision of the nation's first law restricting interchange fees on sales tax and gratuity portions of credit and debit card transactions, while permanently enjoining the statute's data usage limitation provision.

On Oct. 2, 2024, the Office of the Comptroller of the Currency had filed an amicus brief calling the IFPA

"an ill-conceived, highly unusual, and largely unworkable state law."[3]

Within hours of the issuance, plaintiff banking and credit union trade associations, such as the American Bankers Association, Illinois Bankers Association, America's Credit Unions and Illinois Credit Union League announced their intention to appeal the decision to the Seventh Circuit.[4]

The Interchange Fee Ecosystem

In Illinois Bankers Association v. Raoul, Judge Kendall references data showing that in 2022, Americans conducted over 89 billion debit card transactions worth $4 trillion and over 55 billion credit card transactions worth $5.4 trillion.

When a consumer swipes a credit or debit card, the transaction initiates what Judge Kendall described as "an elaborate dance" involving five actors: the consumer, the merchant, the acquirer (the merchant's bank), the issuer (the cardholder's bank) and the payment card network. The payment card networks establish interchange fee schedules that typically comprise both a fixed fee and a percentage of the total transaction amount, which includes any tax and gratuity.

The IFPA sought to carve out from interchange calculations the portion attributable to state and local taxes and gratuities.

The Preemption Question

Judge Kendall acknowledged that this is a case of first impression, stating that "No other State has an equivalent to the IFPA, and thus no precedent sits directly on point."

The plaintiffs argued that the IFPA is preempted by the NBA. Under the Barnett Bank standard established by the U.S. Supreme Court's 1996 decision in Barnett Bank of Marion County NA v. Nelson, and codified by the Dodd-Frank Act, a state law is preempted only if it "(i) discriminates against national banks as compared to state banks; or (ii) prevents or significantly interferes with the exercise by the national bank of its powers."

The plaintiffs contended that the IFPA conflicts with national banks' power under OCC regulations to "charge its customers non-interest charges and fees,"[5] as well as the powers to process card transactions, receive deposits and make loans through credit cards.

Judge Kendall's rejection of this argument turned on what she called "the core snag in Plaintiffs' case — third parties set the fees." As she described the pleadings, "[t]he parties all agree that the interchange fees are set and calculated by Payment Card Networks … not by national banks themselves. ... [E]ven the Office of the Comptroller does not meaningfully contest that the third parties set the fees."

Because banks receive, but do not set, interchange fees, the IFPA "does not directly regulate banks," Judge Kendall said, and therefore is not preempted by the NBA.

The court distinguished the IFPA from cases the plaintiffs used to argue preemption because in those cases, "the regulations directly restricted banks' ability to charge fees for their direct services." The IFPA, by contrast, "does not impact a customer's decision of whether or not to use a bank's services, because all financial entities are subject to the law."

Judge Kendall also declined to extend federal preemption to federal credit unions because the plaintiffs failed to establish that the Federal Credit Union Act is governed by the same heightened Barnett Bank preemption standard that applies to national banks under the NBA. The court noted that while Congress explicitly codified the Barnett Bank standard for national banks and federal savings associations, it did not do so for federal credit unions, and the court declined to read that standard into the FCUA "in the absence of specific Congressional designation."

Data Usage Limitation Enjoined

The court reached a different conclusion on the IFPA's data usage limitation, which prohibited entities other than merchants from using transaction data "except to facilitate or process the electronic payment transaction or as required by law."

Judge Kendall found this provision "directly constrains" national banks' broad and express federal power to engage in data processing for activities like fraud monitoring and loyalty programs.

Critically, she stated that "[t]he IFPA's Data Usage Limitation would not only limit the federal institution's power, but, in many respects, wholly eliminate it." The court therefore granted permanent injunctive relief on this provision.

Reactions and Implications

The Merchants Payments Coalition called the ruling "a major victory for merchants, their customers and their employees," arguing that merchants are unfairly punished with fees for performing a pass-through service (i.e., collecting taxes remitted to the government and tips given to workers), while consumers bear the ultimate cost through higher prices.[6]

The Illinois Retail Merchants Association also praised the ruling as a road map for other states considering similar legislation: "As the first law in the nation to restrict onerous swipe fees, we hope this measure can serve as a model for other states to seek relief for businesses and working families struggling with higher costs."[7]

On the other hand, the aforementioned banking industry associations represented by the plaintiffs characterized the decision as "a serious error that will unleash chaos and confusion on Illinois consumers and businesses," urging Illinois lawmakers to repeal the IFPA and pledging to appeal the ruling.[8]

The Electronic Transactions Association, an advocacy and trade association for the payments industry, issued a statement stating that it was confident that the Seventh Circuit will overturn the decision.[9] It separately warned that the law threatens to disrupt the card-based payments system and could require significant infrastructure changes if similar laws proliferate across the U.S.[10]

Looking Ahead

The IFPA's interchange fee restriction takes effect on July 1 — one year later than originally intended after the Illinois General Assembly extended the effective date to account for litigation.

As Judge Kendall acknowledged, "compliance with the IFPA will be costly, with declarations indicating potentially business-ending consequences for some members of the market."

Banks are therefore expected to act quickly to attempt to obtain an emergency stay from the Seventh Circuit. With similar bills introduced in at least 20 states, the outcome of the appeal could shape the trajectory of state-level payments regulation across the U.S.

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Update: This article has been updated to reflect the Seventh Circuit's granting of the banking and credit union trade groups' motion to fast-track their appeal.

[1] https://www.aba.com/-/media/documents/amicus-briefs/2102026-illinois-interchange-judge-kendall.pdf.

[2] https://ilga.gov/Legislation/ILCS/Articles?ActID=4515&ChapterID=67&Print=True.

[3] https://electronicpaymentscoalition.org/resources/office-of-the-comptroller-of-the-currency-amicus-brief-opposing-illinois-credit-card-law/.

[4] https://www.aba.com/about-us/press-room/press-releases/ifpa-ruling-joint-statement.

[5] https://www.law.cornell.edu/cfr/text/12/7.4002.

[6] https://merchantspaymentscoalition.com/mpc-welcomes-court-ruling-favor-illinois-ban-swipe-fees-sales-tax-and-tips.

[7] https://x.com/ILRetail/status/2021342303000883614.

[8] https://www.aba.com/about-us/press-room/press-releases/ifpa-ruling-joint-statement.

[9] https://aijourn.com/electronic-transactions-association-statement-on-the-courts-decision-in-illinois-bankers-association-v-raoul/.

[10] https://www.paymentsdive.com/news/judge-backs-illinois-law-on-card-fees/811924/.