June 9, 2023

The Honorable Charles E. Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Hakeem Jeffries
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Majority Leader Schumer, Minority Leader McConnell, Speaker McCarthy, and Minority Leader Jeffries:

The American Bankers Association, Association of Military Banks of America, Bank Policy Institute, Consumer Bankers Association, Credit Union National Association, Electronic Payments Coalition, Independent Community Bankers of America, Mid-Sized Bank Coalition of America, National Association of Federally-Insured Credit Unions, and National Bankers Association write to express our strong opposition to the "Credit Card Competition Act of 2023" (S. 1838) introduced by Senators Dick Durbin and Roger Marshall.

Far from increasing competition in the credit card marketplace, this legislation will hurt consumers and benefit big box retailers by reducing the number of credit card issuers competing for consumers' business, removing a consumer's choice of preferred card network, wringing out the competitive differences among card products, limiting popular credit card rewards programs, and putting the nation's private-sector payments system under the micromanagement of the Federal Reserve Board. The Durbin-Marshall bill accomplishes this by using legislation to circumvent the free market to award private-sector contracts to a small handful of the sponsors' favored payment networks to pad the profits of the largest e-commerce[1] and

[1] The World's Largest Retailers 2022: Pandemic Helps Amazon Cement Its Lead. Forbes. May 12, 2022. https://www.forbes.com/sites/laurendebter/2022/05/12/worlds-largest-retailers-2022-amazon-walmart-alibaba/

multi-national[2] retailers who are raising prices on American families far more than the real rate of inflation[3]. As then-Federal Reserve Board Vice Chair Lael Brainard stated last fall, retailer profits recently neared their highest levels since World War II[4], but the global retail giants are demanding that Washington intervene on their behalf, even as they reject measures to cap their sudden retail price increases.

Contrary to its sponsors' misguided claims, the adverse effects of this bill are clear: fewer options for consumers, greater threats to consumer data and privacy, weakened community banks and credit unions, and the disappearance of card rewards programs that families of all income levels[5] use to stretch their budgets.

The federal government's attempt to impose price controls by regulating interchange through Section 1075[6] (Durbin Amendment) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) was the purest example of a failed government policy. If the goal of the requirement that credit unions and banks enter contractual relationships with many payment networks was to reduce costs to consumers, then it failed. The Durbin Amendment has resulted in additional compliance burdens and related business costs to financial institutions, a reduction in interchange revenue, and a massive transfer of money to the largest retailers.[7] Since the enactment of the Durbin Amendment in 2010, the financial services industry (comprised of institutions of all sizes and charters) has been clear, consistent, and in lockstep in our opposition to that destructive policy. The Durbin-Marshall bill manages to take a bad policy and make it worse.

While big merchants are fighting against bicameral legislation that would scrutinize their spiraling price increases amid rocketing retail profits8, they eagerly support the Durbin-Marshall federal price controls

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[2] "Kroger CEO Rodney McMullen said on an earnings call with analysts Thursday, 'A little bit of inflation is always good in our business.' Kroger can pass off costs to consumers when inflation hovers around that mark, McMullen said, and 'customers don't overly react to that.'" Grocery stores are excited to charge you higher prices. CNN. June 18, 2021 https://www.cnn.com/2021/06/18/business/grocery-store-inflation-krogeralbertsons/index.html

[3] "[A] Guardian analysis of top corporations' financials and earnings calls reveals most are enjoying profit increases even as they pass on costs to customers, many of whom are struggling to afford gas, food, clothing, housing and other basics. The analysis of SEC filings for 100 US corporations found net profits up by a median of 49%, and in one case by as much as 111,000%. Those increases came as companies saddled customers with higher prices and all but ten executed massive stock buyback programs or bumped dividends to enrich investors." Revealed: top US corporations raising prices on Americans even as profits surge. The Guardian. April 27, 2022. https://www.theguardian.com/business/2022/apr/27/inflation-corporate-america-increased-prices-profits

[4] "[I]n the second quarter [of 2022], measures of profits in the nonfinancial sector relative to GDP remained near the postwar peak reached last year… Similarly, overall retail margins—the difference between the price retailers charge for a good and the price retailers paid for that good—have risen significantly more than the average hourly wage that retailers pay workers to stock shelves and serve customers over the past year, suggesting that there may also be scope for reductions in retail margins. With gross retail margins amounting to about 30 percent of sales, a reduction in currently elevated margins could make an important contribution to reduced inflation pressures in consumer goods." Prepared remarks of Federal Reserve Vice Chair Lael Brainard at a financial services conference, New York, September 7, 2022.

[5] Joint Bank and Credit Union Statement for the Record to the U.S. Senate Judiciary Committee. May 4, 2022. https://www.aba.com/-/media/documents/testimonies-and-speeches/joint-trades-sfr-on-durbin-amendment05042022.pdf

[6] Section 1075 of the Dodd- Frank Act amends the Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693 et seq.) to add a new section 920 regarding interchange transaction fees for electronic debit transactions and rules for payment card transactions.

[7] *See* Wang, Z., Schwartz, S., and Mitchell, N. (2014). The Impact of the Durbin Amendment on Merchants: A Survey Study. Federal Reserve Bank of Richmond and Javelin Strategy & Research ("FRB Richmond Study"). Also See Haltom, R. and Wang, Z. (2015). Did the Durbin Amendment Reduce Merchant Costs? Richmond Fed Economic Brief. Retrieved from: https://www.richmondfed.org/-/media/richmondfedorg/publications/research/economic_brief/2015/pdf/eb_15-12.pdf. Stating that after the Durbin Amendment was implemented, 98.8% of merchants did not pass-through savings realized from debit regulation to consumers, and over 20% increased prices.

[8] Companies use inflation to hike prices and generate huge profits, report says. NBC News. December 20, 2021 https://www.nbcnews.com/business/consumer/food-suppliers-blame-inflation-price-hikes-lawmakers-saypadding-bill-rcna9200

and fail to mention that credit card acceptance[9] fees were recently reduced for small merchants and food stores. We urge you to reject this cynical manipulation of our nation's payments system for narrow financial gain for the nation's largest retailers.

Interchange is the Cost Merchants Pay for Services Provided

The merchant discount fee (MDF) is the cost that retailers pay to their financial institution or card processor in return for the many benefits associated with card acceptance: higher sales, a larger customer base, reduced risk associated with handling cash, reduced bounced checks, and guaranteed payment. The interchange fee is the portion of the MDF that the retailer's financial institution pays to the cardholder's credit union or bank for the service of utilizing the card system.

Merchants and consumers derive significant benefit from the current card system. In the moment the card is run for payment, the transaction is instantaneously authorized, cleared, and settled – but to make that possible, financial institutions incur operational costs for software, hardware, equipment, labor, network processing fees, and transaction monitoring. These costs, as well as billing and collection, data processing, fraud prevention, card replacement, customer inquiries, and customer service, are borne by the card issuer. The card-issuing financial institution ultimately bears responsibility for fraud and insufficient funds, while the merchant receives full, guaranteed payment for the goods and services rendered.

Merchants cannot receive these benefits for free. The interchange fee is the cost of participating in the card system. The credit card network allows merchants to avoid the cost of processing transactions and offers them quick, guaranteed payment. This saves merchants the trouble and risk of extending credit to customers, and it increases the number and value of sales they can make.[10] The robust security features that make credit cards so appealing to consumers come at a cost.

Last year, the Federal Reserve published new research on credit card profitability, finding that net interchange revenues for card issuers are slightly *negative* – card issuers spend more on providing benefits to other parties in the transaction than they earn from transaction fees. The Net Transaction Margin (NTM) has declined over time because interchange fees have been more than offset by increasing expenses. In fact, NTM has been negative since 2016.[11]

The Fundamental Difference for Credit Transactions

The Durbin-Marshall bill purports to provide merchants with a choice of which networks credit card transactions are processed across, but this dual-routing technology does not exist today, and for good reason. Credit cards represent an extension of unsecured credit to a consumer, meaning financial institutions make a loan every time a credit card is used to purchase goods and services from a retailer or merchant. Although many view debit and credit cards as virtually indistinguishable, they are very different products utilizing different networks. A credit card allows for instant access to a loan and does so over a network that was singularly developed for this purpose. Consumers have come to rely on credit cards from their financial institutions to build credit and gain access to funds that otherwise may not be available to them.

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[9] Visa to cut consumer credit fees for U.S. small businesses by 10%. Reuters. March 3, 2022. https://www.reuters.com/business/finance/visa-cut-consumer-credit-fees-us-small-businesses-by-10-document2022-03-03/

[10] *See Ohio v. American Express Co.,* 585 U.S. (2018).

[11] Adams, Robert, Vitaly M. Bord, and Bradley Katcher (2022). "Credit Card Profitability," FEDS Notes. Washington: Board of Governors of the Federal Reserve System, September 09, 2022, https://www.federalreserve.gov/econres/notes/feds-notes/credit-card-profitability-20220909.html

The Durbin-Marshall bill will cause the cost of these loans to increase, leading to less spending power for consumers and possibly a reduction in the important credit building aspect of credit cards.

This extension of credit benefits both consumers and merchants. Consumers are not limited in making purchases by the amount of money in their wallet or account, and merchants are able to make sales that might not otherwise have occurred. Unlike merchants that specialize in selling groceries or shoes, financial institutions are payments experts responsible for and best positioned to protect their customers against fraud, loss of private data, and the inefficiencies of unreliable systems. Financial institutions' card programs allow small businesses to outsource credit risk and compete with large retailers without having to operate their own card programs.

This Legislation Hands Control of Our Nation's Credit Card System to Breach-Prone Merchants

Banks and credit unions help to cover a consumer's costs when fraud occurs. Any reduction in interchange fees would directly affect bank and credit union investment in fraud management systems and processes that are dedicated to reducing fraud risk in the system—forcing institutions to increase costs to cover these necessary expenses.

From data breaches to skimmed cards, electronic payments are a prime target for bad actors. Every year, consumers spend $9.1 trillion using credit and debit cards.[12] Meanwhile, the rate—and cost—of criminal activity is on the rise:

- 400+ million individuals were affected by data breaches in 2022,[13] due in part to retailer negligence.[14]
- Over the past 5 years, fraud losses have more than doubled. In 2022 alone, $12 billion was lost to fraud in the United States.[15]
- Over $10 billion in losses were attributed to card-not-present fraud alone in 2022, up 70% from 5 years ago.[16]
- Between 2021 and 2022, there was a 30% increase in reports of consumer fraud losses.[17]

Financial institutions are examined for compliance with privacy, data security, and fair lending laws, while merchants are not. As a result, interchange fees cover the costs of fraud detection, credit monitoring, and fraudulent purchase protection that make consumers and merchants whole when bad actors attack. When a merchant's systems are breached, or a card is otherwise compromised, financial institutions absorb a significant portion of the costs:

- $2,618/card—The average fraud payout in 2022.[18]

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[12] The Nilson Report (2021).

[13] Identity Theft Resource Center, 2022 Annual Data Breach Report. https://www.idtheftcenter.org/publication/2022-data-breach-report/?utm_source=press+release&utm_medium=web&utm_campaign=2022+Data+Breach+Report+

[14] For example, in 2019, Wawa reported a data breach affecting 30 million consumers and 5,000 financial institutions. Over the past three years, they have paid financial institutions $28.5 million to make up for the costs associated with their negligence, which included Wawa's failure to take "adequate and reasonable measures to protect its point-of-sale payment terminals, fuel dispensers, and payment processing servers," according to the filings cited here: https://www.cstoredive.com/news/wawa-pay-up-to-285m-data-breach-settlement/645145/.

[15] Euromonitor (2023)

[16] Euromonitor (2023)

[17] New FTC data show consumers reported losing $8.8 billion to scams in 2022. https://www.ftc.gov/news-events/news/press-releases/2023/02/new-ftc-data-show-consumers-reported-losing-nearly-88-billion-scams-2022

[18] Fraud Reports by FTC. 2022. https://public.tableau.com/app/profile/federal.trade.commission/viz/FraudReports/FraudLosses

- Skyrocketing costs to replace contactless cards.[19]

Consumers have a wide variety of cards, processors, and issuing institutions to choose from when selecting a card, and so their choice must be respected. The consumer expects that their choice will be honored, not that the government will override their choice and place it in the hands of the merchant, who bears no risk. The merchants are looking to undermine the will of the consumer and disregard the significant protections and security that exist today to protect credit cards by routing the credit transactions to the cheapest networks. Many of these alternative networks have underinvested in their platforms with little concern for security innovations.

If You Like Your Credit Card, You Can't Keep It: Bill's Mandates Render Existing Cards Inoperable

This bill requires much more than "routing choice" or two networks per card. It also contains an explicit requirement that card issuers enable all types of transactions and security protocols, even if a bank or credit union board finds that these methods are unnecessary, unaffordable, or unsecure. Supporting the whims of any merchant in our large country would mean adopting many more than two networks, the only route to avoid a costly enforcement action from regulators. Each time a network is added or changed to keep up with merchant demands, hundreds of millions of new chip cards would have to be issued, inconveniencing cardholders, exposing consumers to identity fraud through mail theft, and increasing the cost of the payment system, particularly when there is a microchip shortage.

Federal Agency Statistics and Courts Agree: The Credit Card Marketplace is Competitive

Let us be clear: there is no deficiency in the current credit card processing system. To the contrary, it moves millions of dollars a second with 99.999% reliability and remains hardened against security intrusions and data theft. It provides protections like zero-dollar fraud liability for consumers and guaranteed payments for merchants, the kind of benefits that might be taken for granted but aren't available through other payment methods. This 24x7/365 infrastructure is expensive and credit card interchange is a meaningful source of how it is financed.

And with over 5,000 credit card issuers marketing directly to consumers, the credit card industry is competitive, as confirmed by metrics used by the FTC and DOJ, and a recent U.S. Supreme Court decision where no Justice found evidence of anticompetitive market structure[20]. And, in fact, the Court affirmed that the credit card system is a "two-sided platform" in which no credit card transaction can occur unless both the merchant and the cardholder agree to use the same network and thus, they "cannot raise prices on one side without risking a feedback loop of declining demand." Furthermore, the Consumer Financial Protection Bureau (CFPB) found in their biennial consumer credit card market report that "In 2019 and 2020, innovation continued to reshape the credit card market for both users and providers. New providers, including large and small financial institutions as well as startup and mainstream technology companies have entered—or are in the process of entering—the market with competing products, features, and methods for issuing credit cards."[21] The list of market participants is extensive and includes new payment systems for merchants such as Clover and Square.[22] Retailers have also embraced Buy Now Pay Later

[19] Chip shortage drives up card costs. Payments Dive. May 26, 2022. https://www.paymentsdive.com/news/chip-shortage-drives-up-card-costs/624317/.
[20] *See Ohio v. American Express Co.,* 585 U.S. (2018).
[21] *See* Bureau of Consumer Financial Protection, The Consumer Credit Card Market (2021).
[22] The list of market participants is extensive: Visa, MasterCard, American Express, Discover, PayPal, Venmo, Zelle, Square, Apple Pay, Amazon Pay, Samsung Pay, Kroger Pay, Walmart Pay, Target RedCard, Affirm, Klarna, AfterPay,

(BNPL) products where they are charged as much as 6% more than they would pay under the current payment card system.[23]

The vast majority of these card issuers are small community financial institutions based on the Main Streets of America. For Americans who receive frequent marketing to try a new card, Representatives Gooden and Welch's claims that there is no competition in the credit card marketplace will come as a surprise.

Durbin-Marshall is Anti-Free Market. It Guarantees Profits for and Steers Private Contracts to Its Favored Card Networks

This bill is not borne of real needs in the American payments system. It is about Congress picking winners and losers. The Durbin-Marshall bill is a throwback to regulatory rent-seeking of the worst kind - reminiscent of the Washington-enforced Ma Bell phone network monopoly and the price fixing of the Civil Aeronautics Board, when central planners limited choices and guaranteed corporate profits. In this case, regulators will essentially award credit card franchises and routes to certain payment networks using complex studies, policy task forces, and formulas not yet created. While its sponsors speak of increasing options, this bill contains mandates that our members buy from certain companies, while prohibiting them from choosing better and more secure options.

Congress Should Not Force the Federal Reserve to Override Consumers' Choice of Credit Cards

The Durbin-Marshall bill is an overreach that should concern people of all political persuasions. It reaches into the pockets of every American who uses a credit card and forces the vast majority of them to give up their preferred card and chosen network in favor of a new, federally mandated regime. Our members think that Americans are smart enough to pick what goes in their wallets without getting a government seal of approval. By placing control of routing, a key part of transaction approval and authorization, into the hands of the government, this bill crosses important civil liberty boundaries and leaves the door open for new regulations at any time, reflecting the political perspectives of the appointees in power at that moment.

The Durbin Amendment Hurt Community Banks and Credit Unions, Why Create a Sequel?

This experiment has been tried before, with the Durbin Amendment on debit cards, leading to a precipitous drop in the availability of low-cost banking services and free checking accounts for consumers. A recent GAO report found that the Durbin Amendment was "among the top five laws and regulations most cited…as having significantly affected the cost and availability of basic banking services." Further, the merchant lobby's promise that this regulation would result in savings for consumers never happened – the merchants pocketed the savings. According to the Federal Reserve Bank of Richmond, after the Durbin Amendment was implemented, 98.8% of merchants failed to pass through savings realized from debit regulation to consumers, and over 20% increased prices.

Most dangerously, this central planning of the major conduit for money in our economy will reduce access to banking services and harm community financial institutions. While supposedly "exempt" from the Durbin Amendment, community banks and credit unions still suffered a 30% decrease in their interchange revenue. Though the restrictions for "exempt" issuers are not explicit price controls, they have the same practical effect of distorting the market and transferring wealth from community financial institutions and consumers to a handful of high-volume, highly profitable large merchants. There is no surer way to disrupt

Google Pay; in addition to bank and credit union led person-to-person payment capabilities; also, European account to account (a2A) payments firms are in the process of entering the U.S. market.

[23] *See* Riley, B. (2021). The Buy Now Pay Later Merchant Proposition: Credit Card Interchange is Cheaper. https://www.mercatoradvisorygroup.com/the-buy-now-pay-later-merchant-proposition-credit-card-interchange-is-cheaper/

the economics of small credit card issuers than to enact this legislation, which will wipe out already-thin margins of lower-volume issuers, causing them to leave the credit card market and concede the product category to larger firms better able to absorb these changes.

For the numerous reasons laid out above, and to protect consumers and banks and credit unions alike, we urge you to oppose the Credit Card Competition Act of 2023.

Sincerely,

American Bankers Association
Association of Military Banks of America
Bank Policy Institute
Consumer Bankers Association
Credit Union National Association
Electronic Payments Coalition
Independent Community Bankers of America
Mid-Sized Bank Coalition of America
National Association of Federally-Insured Credit Unions
National Bankers Association

cc: Chairman Brown, Ranking Member Scott, Chairman McHenry, Ranking Member Waters