



Submitted via email

May 19, 2021

The Honorable Kevin Cramer
United State Senator
Washington, DC 20510

The Honorable Kelly Armstrong
United States Representative
Washington, DC 20515

The Honorable John Hoeven
United States Senator
Washington, DC 20510

Senators Cramer and Hoeven and Congressman Armstrong:

We write to express our opposition to any attempts to extend or expand the Durbin Amendment to new transaction types, including card-not-present debit and credit transactions. We equally oppose both the routing mandates and price caps that have been lobbied for by special interest groups. In fact, these harmful regulations should be repealed.

Though Senator Dick Durbin (D-Illinois) has spent the last 15 years championing the cause of mandating more regulation on financial institutions and growing the administrative state required to enforce those mandates, his proposals have consistently amounted to corporate welfare for the world's largest and most profitable retailers. Small retailers and community financial institutions have been hurt by his distortionary interventions, which amount to unfair rent-seeking and restraint of legitimate competition.

North Dakota's banks and credit unions issue debit and credit cards because they want customers (both consumers and merchants) to have access to the world's most advanced payment options. We are proud that when a North Dakotan opens a checking account or chooses to accept cards at their business, they are becoming part of a world-class payments system that is safe, secure, and rewarding. We know that they have these options because we invest in them, anticipating needs years before they materialize. This innovation comes at a cost, much of it borne by financial institutions; however, its benefits to consumers and customers alike have been established time and again.

For instance, research consistently shows that cards are among the best value when a merchant wants to be paid. For a small fee, they receive guaranteed and immediate payment for all legitimate transactions, without the higher costs of maintaining an accounts receivable department or taking on the costs of handling fraud- and loss-prone checks and cash. Cards also clear where other payments cannot, such as online. In the case of credit cards, merchants get all the benefits of an in-house financing program without any of the administrative overhead or credit risk. We note that the credit card was invented by retailers in the last century, but for efficiency purposes they chose to outsource consumer financing to banks and credit unions. Now retailers essentially want the government to make banks and credit unions do that work and accept the credit risk for nearly nothing.

We are deeply disturbed about Senator Durbin's aggressive lobbying to expand the Durbin Amendment in both the debit and credit contexts. Using misleading language reminiscent of other recent government mandates like the Affordable Care Act and Net Neutrality, Senator Durbin seeks to compel private companies to act against their own good judgement and their customers' best interests by forcing them to purchase services they do not want at prices that are set by Washington. By using the Federal Reserve to tilt the market to their parochial needs, a handful of large companies receive a windfall, while the incentive to enter and compete in the marketplace erodes.

Unlike the European Union, where overregulation has led to only a handful of financial institutions serving consumers and merchants with homogenous products due to overregulation, North Dakota and the United States generally benefit from a vibrantly competitive payments landscape. Just across the border in Canada, however, Durbin-style regulation has made paying a monthly fee just to get banked an accepted fact.

Sadly, the Durbin Amendment is increasingly making that a reality for consumers in our country too, with Researchers at the University of Chicago and George Mason University finding that because of the Durbin Amendment, consumers have lost out while the biggest retailers have made off with billions. Fortune 100 companies now openly brag on their earnings calls about how much they get from Durbin, with little sympathy for the impact on community financial institutions struggling to survive. Incredibly, proposals to expand Durbin come even as Federal Reserve Bank of Richmond data show that the existing law did not result in lower prices for consumers or lower costs for small businesses. Now is not the time for a new subsidy to retailers with record profits.

It is patently untrue that merchants are paying a premium for card services because of anticompetitive behavior. In fact, a 2017 majority U.S. Supreme Court decision authored by Justice Clarence Thomas ruled that merchants "**offered no evidence that the price of credit-card transactions was higher than the price one would expect to find in a competitive market.**" Joined by Justices Alito, Gorsuch, and Kennedy, this decision made it the law of the land that the card marketplace is a two-sided market where card networks must balance complex dynamics.

And yet, we see overreach not just from Senator Durbin but also from the Federal Reserve, which is now proposing to greatly expand Regulation II's mandates on debit card routing to capture online transactions, demanding that banks and credit unions enable new kinds of transactions even if they have concerns about the security or proprietary of the delivery mechanism that brings them into the financial institution.

We hope you will join us in vigorously opposing any attempts to further regulate the debit and credit card markets by standing up against any legislation with that purpose and asking hard questions of the Federal Reserve on their proposed rulemaking and instead, work to repeal the Durbin amendment in its entirety.

Respectfully Submitted,



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Rick Clayburgh
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Barry Haugen
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Independent Community Banks of ND