September 22, 2023

The Honorable Chuck Schumer
Majority Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Republican Leader
U.S. Senate
Washington, D.C. 20510

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

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

Re: State Bankers Associations Oppose Consideration of Marshall-Durbin-Gooden-Lofgren Credit Card Competition Act in Appropriations Bills and Resolutions

Dear Majority Leader Schumer, Republican Leader McConnell, Speaker McCarthy, and Democratic Leader Jeffries:

As local associations representing virtually all banks of all sizes in the Nation, we write to express our strong opposition to the inclusion of the so-called "Credit Card Competition Act" in any appropriations legislation. The Marshall-Durbin-Gooden-Lofgren bill is an anti-consumer, anti-competitive, and cynical attempt by the largest global merchants and biggest grocery chains to obtain a subsidy for themselves at the expense of smaller competitors and consumers. The Marshall-Durbin-Gooden-Lofgren bill will raise costs on consumers, reduce access to important card benefits, imperil payment system security at a time of growing global risks, and harm community financial institutions and their small business customers. This legislation is opposed by military financial services organizations because it will reduce access to credit to those serving in uniform.

Make no mistake: this bill was specifically written to deliver a major payday for big retail and big grocery at a time that these giant retailers have been getting even bigger[1], increasing their profits, and raising prices on American consumers. We urge Congress to recognize that this bill is meant to distract from questions about big retail's competitive landscape, which have attracted intense bipartisan concern from virtually every corner, including Congress, federal regulators, state attorneys general, consumer watchdogs, small business organizations, and labor and environmental groups.

Don't believe the false claims from big retailers that this bill "exempts" community banks or helps small businesses. The same promises were made during the Durbin Amendment debate

[1] "Until the 1990s, most people shopped in local or regional grocery stores. Now, just four companies – Walmart, Costco, Kroger and Ahold Delhaize – control 65% of the retail market." *Our unequal earth revealed: the true extent of America's food monopolies, and who pays the price*. The Guardian. July 14, 2021. https://www.theguardian.com/environment/ng-interactive/2021/jul/14/food-monopoly-meals-profits-data-investigation

a decade ago, yet small, "exempt" banks saw a quarter of their debit card revenue disappear and fraud costs increased after it became law. Small businesses saw little to no benefit, and many small retailers ended up paying *more* to accept cards because of the law's prescriptive, one-size-fits-all regulations.

Our message to you is simple: on behalf of banks of all sizes in communities across America, we ask that you **commit to actively opposing the Marshall-Durbin-Gooden-Lofgren "Credit Card Competition Act."**

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Introduced by Senators Dick Durbin (IL), Roger Marshall (KS), Peter Welch (VT) and Representatives Lance Gooden (TX), Zoe Lofgren (CA), Tom Tiffany (WI), and Jeff Van Drew (NJ), this bill has no place being attached to any legislative vehicle. **The Marshall-Durbin-Gooden-Lofgren bill is a complex regulatory proposal that is opposed by community banks and military financial services organizations and has received no hearings and should be considered only through regular order.**

This legislation failed to attract a single additional cosponsor in the last Congress and several attempts to add it to appropriations bills failed – and for good reason. Far from increasing competition in the credit card marketplace, this legislation will reduce the number of credit card issuers competing for consumers' business, wring out the competitive differences among card products, and decimate card rewards programs (e.g. airline miles and cashback) valued and commonly utilized by American families. It will hurt our tourism sector and tourism-supported communities, which rely on travel funded by these rewards programs. And it will put the Federal Reserve Board in charge of our nation's private-sector card payments system.

But what about small businesses? The campaigns for the Marshall-Durbin-Gooden-Lofgren bill all carry images of local stores, but this isn't a bill drafted for them. It's a near carbon copy of the failed Durbin Amendment experiment to regulate routing on debit cards, which independent researchers found provided no benefit to most small retailers, nor did it produce lower prices for consumers (according to the Federal Reserve). In fact, payment card acceptance costs went up for many small businesses who lost access to discounted card acceptance programs. Community banks and credit unions saw their per-transaction compensation cut by over 25% despite Durbin's claim that small financial institutions would be held harmless. Banking fees also went up for small businesses. This is a bill by, for, and in the sole interest of big retailers who have flourished during the Durbin era while small businesses have seen their market shares shrink. If there were only costs – and no benefits – to every stakeholder (except big retailers) in the debit card context, it should be an open-and-shut case that trying the same thing with credit cards is a recipe for foreseeable economic harm.

The Marshall-Durbin-Gooden-Lofgren bill is also old school economic favoritism. The bill would award private-sector contracts to a small handful of the sponsors' favored payment networks in order to pad the profits of the largest internet[2] and national[3] merchants who, as Congress well knows, are raising prices on American families far more than the real rate of inflation[4]. These merchants have been hiking their prices on consumers buying groceries and back-to-school essentials. The networks that would benefit from this legislation are owned by large nonbank payment processors who have used the leverage provided the Durbin Amendment against the interests of community banks.

In a hearing on proposed grocery chain consolidation held by the U.S. Senate Judiciary Committee's Subcommittee on Competition Policy, Antitrust, and Consumer Rights, a bipartisan group of senators expressed serious concerns[5] over the steep price increases Americans are facing at food retailers. As Senator Mike Lee stated, "Inflation, to put it gently, is wreaking havoc on our entire economy but not on the grocery industry, it appears." Why should American consumers prop up their profits even more through this bill?

These rocketing profit margins at a time of difficulty for American consumers go to the heart of the disingenuous campaign for the Marshall-Durbin-Gooden-Lofgren bill. Policymakers are told by retail groups that credit card fees make the difference between staying open or not. This is far from true. These retailers recently made record profits and one grocery store chain disbursed a $4 billion "special dividend." The largest food and merchandise retailers have come through the pandemic in better shape than virtually any industry. Their claims of "thin profit margins" do not hold up.[6]

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[2] *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

[3] "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-kroger-albertsons/index.html

[4] "[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

[5] *Kroger, Albertsons CEOs Defend Grocery Merger at Senate Hearing; Senators raise concerns on inflation, job impacts; executives say competition will continue*. The Wall Street Journal. November 29, 2022. https://www.wsj.com/articles/kroger-albertsons-expected-to-defend-grocery-merger-at-senate-hearing-11669684382

[6] "(The lawsuit) is seeking a temporary restraining order to stop a nearly $4 billion payout to Albertsons' shareholders - a payout 57 times greater than the historic dividends Albertsons has provided — until a full review of their proposed merger is complete,' Karl Racine, the attorney general for Washington D.C., said in a statement." *Three attorneys general file lawsuit seeking to block Albertsons' $4 billion payout*. Reuters. November 02, 2022. https://www.reuters.com/markets/deals/exclusive-three-attorneys-general-file-lawsuit-blocking-albertsons-4-billion-2022-11-02/

The "competition" arguments that big retailers make for this bill should also be viewed with skepticism. While they loudly argue for the Marshall-Durbin-Gooden-Lofgren bill in the name of Washington-imposed "competition," some of the most prominent retail giants supporting the legislation are using consolidation to grow even bigger, which small independent retailers say is reducing their ability to compete and access the food supply chain on fair terms.[7]

Further, a decade of research has shown that government favoritism in private payments markets is a backdoor price control that causes significant harm to community banks and credit unions and has failed to produce the consumer savings promised. In fact, since the enactment of the Durbin Amendment over a decade ago, our industry has been clear about how these measures hurt consumers, and the Marshall-Durbin-Gooden-Lofgren bill simply doubles down on this bad idea.

The impacts of this bill are clear: **fewer choices for consumers, increased threats to consumer data and privacy, weakened local banks and credit unions, and the disappearance of card rewards programs** that families of all income levels[8] use to stretch their budgets.

At the same time as big merchants are fighting measures that would scrutinize their steep price increases amid rocketing retail profits, they enthusiastically support the Marshall-Durbin-Gooden-Lofgren federal price controls. They also don't want lawmakers to realize that credit card acceptance fees are dynamic, including a 2022 *reduction* for small merchants and food stores.[9] We urge you to reject this total manipulation of our nation's payments system for narrow financial gain.

Marshall-Durbin-Gooden-Lofgren Puts Breach-Prone Merchants in Charge of our Nation's Credit Card System

The bill's sponsors claimed it would provide merchants a choice of which networks credit card transactions are processed across. *But this dual-routing technology simply does not exist today* - and for good reason. A credit card transaction is an extension of the bank's own funds to its customer. Therefore, it's critical that banks be allowed to carefully and deliberately select the network over which their own funds flow to the merchant. While merchants 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 are also routinely checked for strong privacy, data security, and fair lending practices, while merchants are not.

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[7] *Kroger-Albertsons merger: Many views, many angles*. Supermarket News. October 18, 2022. https://www.supermarketnews.com/retail-financial/kroger-albertsons-merger-many-views-many-angles

[8] *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-amendment-05042022.pdf

[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-document-2022-03-03/

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

The Marshall-Durbin-Gooden-Lofgren bill demands that card issuers enable all types of transactions and security protocols, even if a bank board finds that these methods are unnecessary, unaffordable, or unsecure. Putting merchants in charge of these decisions 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 desires, <u>hundreds of millions of new chip cards</u> would have to be issued, inconveniencing cardholders, exposing consumers to identity fraud through mail theft, and increasing costs, especially when there is a microchip shortage.

<u>The Durbin Amendment Proves That the Marshall-Durbin-Gooden-Lofgren Claims About Protecting Small Banks and Credit Unions Ring False</u>

This legislation doubles down on the harm already caused by the Durbin Amendment. 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."**

The Federal Reserve found that banks and credit unions with assets under $10 billion are now making do with 25% less per-transaction debit card interchange following the Durbin Amendment. This artificial shortfall is increasing pressure to cut costs or increase banking fees to stay competitive. The "$100 billion threshold" in this legislation is another gimmick which will not shield small banks from the distortionary market effects of this far-reaching legislation.

It also came with broken promises, specifically from merchants that stated this regulation would result in savings for consumers. Not surprisingly, 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.

<u>Federal Agency Statistics and Courts Agree: The Credit Card Marketplace is Already Competitive</u>

Our credit card processing system is the most efficient in the world. It moves millions of dollars a second with 99.999% reliability and remains hardened against security intrusions and data theft. It also provides protections like zero-dollar fraud liability for consumers and guaranteed payments for retailers. This 24x7/365 infrastructure is complicated and expensive and credit card interchange is a major source of how it is financed.

There are over 5,000 credit card issuers marketing directly to consumers, demonstrating there is already plenty of competition, 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.

It’s important to note most of these card issuers are small community financial institutions based on the Main Streets of America.

Playing Favorites: This Bill Guarantees Profits for and Steers Private Contracts to Preferred Networks Owned by Large Technology Companies

This bill is one of the worst examples of lawmakers picking winners and losers. Americans have historically rejected this sort of government-forced monopoly – and still do. Yet this bill essentially awards 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 prohibit consumers from choosing superior and more secure options. The networks who will benefit from this legislation are owned by major nonbank payments processors with a history of leveraging the Durbin Amendment against the interests of community banks.

If a merchant group tells you that banks can “pick any two networks” under this bill, don’t believe it. It specifically prohibits banks from selecting certain networks to comply with its provisions – that’s not competition, it’s favoritism written right into the statute.

Lawmakers Should Not Force the Federal Reserve to Override Consumer Choice

The Marshall-Durbin-Gooden-Lofgren bill takes power and choice away from consumers and hands it to government entities. It will force the vast majority of consumers to give up their preferred card and chosen network in favor of a new, federally-mandated regime. This legislation crosses important civil liberty boundaries and leaves the door open for new regulations at any time, reflecting whichever party holds a majority in Congress at the time. The Federal Reserve will also be empowered to change rules about how credit card transactions are processed. It’s too much government control of payments.

Most concerning, this centralization of the major conduit for money in our economy will reduce access to banking services for Americans and harm community financial institutions. There is no surer way to disrupt 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.

To protect consumers and community banks, we urge you to oppose the Credit Card Competition Act.

Sincerely,

American Bankers Association
Alabama Bankers Association
Alaska Bankers Association
Arizona Bankers Association
Arkansas Bankers Association
California Bankers Association
Colorado Bankers Association
Connecticut Bankers Association
Delaware Bankers Association
Florida Bankers Association

Georgia Bankers Association
Hawaii Bankers Association
Idaho Bankers Association
Illinois Bankers Association
Indiana Bankers Association
Iowa Bankers Association
Kansas Bankers Association
Kentucky Bankers Association
Louisiana Bankers Association
Maine Bankers Association
Maryland Bankers Association
Massachusetts Bankers Association
Michigan Bankers Association
Minnesota Bankers Association
Mississippi Bankers Association
Missouri Bankers Association
Montana Bankers Association
Nebraska Bankers Association
Nevada Bankers Association
New Hampshire Bankers Association
New Jersey Bankers Association
New Mexico Bankers Association
New York Bankers Association
North Carolina Bankers Association
North Dakota Bankers Association
Ohio Bankers League
Oklahoma Bankers Association
Oregon Bankers Association
Pennsylvania Bankers Association
Puerto Rico Bankers Association
Rhode Island Bankers Association
South Carolina Bankers Association
South Dakota Bankers Association
Tennessee Bankers Association
Texas Bankers Association
Utah Bankers Association
Vermont Bankers Association
Virginia Bankers Association
Washington Bankers Association
West Virginia Bankers Association
Wisconsin Bankers Association
Wyoming Bankers Association

cc: Members of the United States Senate
Members of the United States House of Representatives