

December 7, 2022

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

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

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

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

Re: Joint State Financial Services Associations Letter Opposing S.4674/H.R. 8874 & Expansion of Durbin Amendment Routing to Credit

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

As state and national trade associations representing virtually all banks, we write to express our strong opposition to the so-called “Credit Card Competition Act of 2022” (S. 4674./H.R. 8874) in any lame duck legislation, including potential omnibus or continuing spending bills. Introduced by Senators Roger Marshall (KS) and Dick Durbin (IL) and Representatives Lance Gooden (TX) and Peter Welch (VT), this flawed legislation has no place in any appropriations bill. The Marshall-Durbin 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.

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.

The Marshall-Durbin bill achieves these ends by awarding private-sector contracts to a small handful of the sponsors’ favored payment networks in order to pad the profits of the largest internet¹ and national² merchants who, as Congress well knows, are raising prices on American families far more

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/>

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-kroger-albertsons/index.html>

than the real rate of inflation³. As you are aware, in a recent 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 concerns⁴ 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."

These rocketing profit margins at a time of difficulty for American consumers go to the heart of the disingenuous Marshall-Durbin bill campaign waged by major retailers, including the national grocery chains, biggest online sellers, and big boxes. All of them have argued that big retail faces so many challenges that credit card fees make the difference between staying open or not. This is far from true. These retailers are making record profits and one grocery store chain recently tried to disburse 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.⁵

The "competition" arguments that big retailers make for this bill should also be viewed with skepticism. While they loudly argue for the Marshall-Durbin 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.⁶

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

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 *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>

⁵ "(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.*

<https://www.reuters.com/markets/deals/exclusive-three-attorneys-general-file-lawsuit-blocking-albertsons-4-billion-2022-11-02/>

⁶ Supermarket News. October 18, 2022

<https://www.supermarketnews.com/retail-financial/kroger-albertsons-merger-many-views-many-angles>

Amendment over a decade ago, our industry has been clear about how these measures hurt consumers, and the Marshall-Durbin 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 levels⁷ 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 profits⁸, they enthusiastically support the Marshall-Durbin federal price controls. They also don't want lawmakers to realize that credit card acceptance⁹ fees were recently *reduced* for small merchants and food stores. We urge you to reject this total manipulation of our nation's payments system for narrow financial gain during this lame duck legislative period.

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

The bill's sponsors claim it will 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.

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

The Marshall-Durbin 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, hundreds of millions of new chip cards 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.

⁷ 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>

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-say-padding-bill-rcna9200>

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/>

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

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 Card Networks

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.

Lawmakers Should Not Force the Federal Reserve to Override Consumer Choice

The Marshall-Durbin 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 Durbin Amendment Has Already Hurt Community Banks and Credit Unions. Why Would Congress Double Down On These Mistakes?

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.”**

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.

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 of 2022's inclusion in any legislation considered during the lame duck period of this Congress, and beyond.

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