UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

ILLINOIS BANKERS ASSOCIATION, AMERICAN BANKERS ASSOCIATION, AMERICA'S CREDIT UNIONS, and ILLINOIS CREDIT UNION LEAGUE, *Plaintiffs*, v. KWAME RAOUL, in his official capacity as Illinois Attorney General, *Defendant*.	Case No. 1:24-cv-07307 Hon. Virginia M. Kendall

PLAINTIFFS' COMBINED REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND A PERMANENT INJUNCTION AND OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

This Court has already recognized that the Interchange Fee Prohibition Act ("IFPA") is preempted with respect to national banks and Federal savings associations. The Attorney General resists this conclusion by again asserting that when the Supreme Court has repeatedly said the standard for National Bank Act ("NBA") preemption is "*significant* interference," what it really meant was "*extreme* interference." But this Court has already rejected that distortion of controlling precedent, and rightly so. This Court has further correctly recognized that federal law entitles out-of-state-chartered banks to parity of treatment with national banks. The Attorney General fights that conclusion with a dizzying argument about "branches" that is unsupported by any on-point precedent. Those arguments fall short as well.

That means that, at a minimum, national banks, out-of-state state-chartered banks, and Federal savings associations are protected from the Interchange Fee Prohibition and the Data Usage Limitation. But as Plaintiffs demonstrated in their Memorandum, ECF 125 ("Pl. Br."), federal-law protections for their members do not stop there. Federal law also shields federal credit unions (under preemption principles) and all out-of-state institutions (under the dormant Commerce Clause) from Illinois' overreach. *Id.* at 23-32. In addition, to give practical effect to the guarantees of federal law, this Court must issue an injunction that allows card networks, processors, and any other non-exempt entities to carry out functions that facilitate the charging or receipt of interchange by protected institutions. *Id.* at 32-38.

The Attorney General dismisses the idea of extending relief beyond national banks, Federal savings associations, and out-of-state banks as resting on "a hodgepodge of secondary arguments." ECF 138 ("AG Br.") at 2. But the principles on which Plaintiffs rely flow directly from the NBA and the Supremacy Clause and are vital to the dual banking system on which the state and national economy rest.

That system depends on the existence of parallel state and federal regulatory regimes, on the one hand, and competitive equality, on the other. For parallel regulatory regimes to exist, the federal government must retain its primacy as the regulator of federally chartered institutions; preemption precludes states from usurping that role. Federal credit unions are just as entitled to this protection as national banks and Federal savings associations—all are federal instrumentalities.

At the same time, competitive equality between different types of financial institutions is essential to the dual banking system because, otherwise, legislatures and regulators could use their authority to favor their preferred institutions and undermine others. Eventually, some types of institutions would be squeezed out, and the overall system would suffer as competition diminished. So, over the years, lawmakers—including Congress and the Illinois legislature—have adopted various measures to ensure equal treatment of different types of financial institutions. And the dormant Commerce Clause provides a constitutional backstop, guaranteeing that out-of-state institutions will not suffer discrimination when they are not on their home turf. As this Court has already correctly recognized, the cost of compliance with the IFPA would be "onerous"—indeed, for many financial institutions, it would be "crippling." ECF 104 at 33, 35. It is not "audacious" (AG Br. 2) to ask this Court to interpret and give effect to the interlocking provisions that, together, are designed to preclude Illinois from selectively imposing these regulatory burdens on some financial institutions while sparing others.

What *is* audacious is the Attorney General's argument that, where federal-law protection applies, this Court cannot provide meaningful relief. He does not dispute that, as a factual matter, an issuer can collect a dollar of interchange on a transaction only if the card network, processor, and any other participants in that transaction are able to pass along the full dollar. Nor does he dispute, therefore, that national banks (and other protected institutions) will be unable to charge or receive the full amount of interchange as they are entitled to do if card networks and other participants in the payment process are subject to penalties under the IFPA. His response? "Tough luck"—if card networks, processors, or others in the payment ecosystem are not independently protected by federal law, Illinois can go after them, even if that means protected institutions never see a dime of interchange on tax and tip. This position is baseless.

NBA preemption is not so feeble that states can easily circumvent it by regulating those who transact with national banks instead of the banks themselves. The Supreme Court has long held state laws invalid where they accomplish a "significant interference" with national banks' business by burdening the banks' customers or other third parties—there, as here, preemption flows from the rights and powers of the national bank itself, not the third party. And nowhere in the Dodd-Frank Act—which reaffirmed the robust, pre-existing "significant interference" standard—did Congress purport to change this rule or decree that it could be evaded through the artifice of targeting those that interact with national banks, rather than the banks themselves. In any case, this Court, as a federal court sitting in equity, has the power to fashion a remedy that affords complete relief to Plaintiffs. Congress must speak very clearly to restrict this Court's equitable authority, and it has not come close to doing so here. This Court should reject the Attorney General's effort to hollow out the Supremacy Clause and should enter a broad injunction that provides meaningful relief.

ARGUMENT

I. THE ATTORNEY GENERAL'S OVERARCHING STANDING AND SOVEREIGN IMMUNITY ARGUMENTS FAIL.

A. The Attorney General Has Authority to Enforce the Interchange Fee Prohibition.

The Attorney General renews his argument that this Court lacks jurisdiction over Plaintiffs' challenge to the Interchange Fee Prohibition because, he says, he lacks authority to enforce it. *See*

AG Br. 4-5. As the Attorney General admits, however, this Court has already ruled otherwise. *Id.* at 5 (citing ECF 104 at 8). For the same reasons Plaintiffs explained at the preliminary-injunction stage, *see* ECF 93 at 6-9, and the Court accepted, ECF 104 at 7-11, the Court should again reject the Attorney General's argument, which he makes solely "to preserve [it] for review." AG Br. 5.

B. Plaintiffs Have Standing to Challenge the Data Usage Limitation Because It "Arguably Proscribes" Plaintiffs' Members' Desired Conduct.

The Attorney General also renews his argument that Plaintiffs lack standing to challenge the Data Usage Limitation unless "they establish that their members intend to engage in conduct that the IFPA proscribes." AG Br. 5 (brackets and internal quotation marks omitted). But as the Supreme Court has explained, "[n]othing in this Court's decisions requires a plaintiff who wishes to challenge the constitutionality of a law to confess that he will in fact violate the law." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 163 (2014). Instead, plaintiffs need demonstrate only that their desired conduct is "arguably proscribed by the statute they wish to challenge." *Id.* at 162 (brackets, ellipses, and internal quotation marks omitted). That standard is readily met here.

The IFPA prohibits disseminating or using data from an electronic payment transaction, with only narrow carveouts "to facilitate or process the electronic payment transaction or as required by law." 815 ILCS 151/150-15(b). As Plaintiffs explained at the preliminary-injunction stage, the IFPA arguably proscribes their conduct, including using data from *one* transaction to create a fraud-detection model for use on *other* transactions, because the data arguably is not being used to "facilitate or process *the* electronic payment transaction" from which it came. *See* ECF 93 at 15 (quoting 815 ILCS 151/150-15(b)). The Court agreed, holding that "the existence of the Data Usage Limitation provision implies a threat of enforcement," because "[s]uch uses for data exceed the narrow function of facilitating and processing a particular transaction." ECF 104 at 12, 24 (internal quotation marks omitted).

The Attorney General—as he did at the preliminary-injunction stage, *see* ECF 76 at 13-15, ECF 94 at 13—offers an alternate reading of the IFPA's exception under which facilitating other transactions is good enough. *See* AG Br. 5-6. But he still has not offered any "affidavit or … official action purporting to disavow any intent to enforce the challenged provisions." *See* *Ind. Right to Life Victory Fund v. Morales*, 112 F.4th 466, 470 (7th Cir. 2024). His litigating position in this case—not binding in future enforcement proceedings—is thus insufficient to defeat Plaintiffs' standing. The Court should reject this argument just as it already has.[1]

II. FEDERAL LAW PREEMPTS THE IFPA.

As the Court has already concluded is likely the case, the NBA, HOLA, and 12 U.S.C. § 1831a(j) preempt the IFPA as to national banks, Federal savings associations, and out-of-state state banks. ECF 104 at 16-24; ECF 115 at 7-8. And as Plaintiffs have explained, the FCUA and dormant Commerce Clause do the same as to federal credit unions and out-of-state savings banks and credit unions (and banks). Pl. Br. 20-32. The Attorney General's responses are unpersuasive.

A. The IFPA Is Preempted as to National Banks and Federal Savings Associations by the NBA and HOLA, Respectively.

In its preliminary-injunction opinion, the Court correctly concluded both that the dispositive question for preemption under the NBA is whether a state law "prevents or significantly interferes with the exercise by the national bank of its [enumerated or incidental] powers," ECF 104 at 16 (brackets in original), and that, under that test, both the Interchange Fee Prohibition and

[1] The Attorney General's suggestion that Plaintiffs provided insufficient details about their desired data uses is also flawed, as he himself admits that several of Plaintiffs' members "use transaction data to build predictive models that detect and combat fraud." *See* ECF 137 at 14, ¶ 53; *see also* Rule 56.1(b)(3)(C) Statement ¶¶ 1-4.

the Data Usage Limitation are likely preempted, *id.* at 24.[2] At the summary-judgment stage, the Attorney General does little more than reraise the contrary arguments the Court has already rejected. They are no more persuasive now.

1. The Court has correctly rejected the Attorney General's attempt to read "extreme interference" into the NBA preemption inquiry.

All parties agree that *Cantero* reaffirmed *Barnett Bank*'s rule that the NBA preempts a state law when it "prevents or significantly interferes with the exercise by the national bank of its powers." *Cantero v. Bank of Am., N.A.*, 602 U.S. 205, 209 (2024) (quoting *Barnett Bank of Marion Cnty, N.A. v. Nelson*, 517 U.S. 25 (1996)); *see* Pl. Br. 13; AG Br. 8. The Attorney General insists, however, that when the Supreme Court repeatedly used that phrase, it actually meant that a law is preempted "[o]nly" if it works an "extreme interference" that "threatens the banks' economic viability," AG Br. 7—even though the word "extreme" appears not once in *Barnett Bank* and in *Cantero* only in the completely separate context of describing one party's argument as at "the opposite extreme" from the other's. *See Cantero*, 602 U.S. at 221. Nor can the Attorney General's reading be squared with the cases to which *Cantero* directed courts to analogize in assessing NBA preemption. *See* Pl. Br. 15-17 (describing several of those cases); ECF 24 at 21-24 (similar). To take just one example, in *Franklin National Bank of Franklin Square v. New York*, 347 U.S. 373, 378 (1954)—described by *Cantero* as "[t]he paradigmatic example of significant interference," 602 U.S. at 216—the federal power was to offer savings accounts, and the state law scarcely "threatened the banks' economic viability" when it left them free to offer such accounts, and even to advertise doing so, as long as they did not use the words "saving" or "savings." There is simply

[2] As the Court and all parties agree, HOLA preemption rises or falls with NBA preemption. ECF 104 at 24; Pl. Br. 22; AG Br. 7 n.3. For ease of reference, Plaintiffs refer here simply to national banks and the NBA, but the analysis applies equally to Federal savings associations and the HOLA.

no way to call that interference "extreme" or a "threat[]" to "the banks' economic viability," as the Attorney General apparently would, without draining those words of all meaning.

Perhaps for that reason, when the Attorney General made essentially the same argument for requiring "extreme" interference at the preliminary-injunction stage, *compare* AG Br. 7-10 *with* ECF 76 at 18-23, the Court rejected it, *see* ECF 104 at 16-17. It should do so again and apply the test that *Cantero* laid out in the way that *Cantero* directed: "based on the text and structure of the [state law], comparison to other precedents, and common sense." 602 U.S. at 220 n.3.

2. The Interchange Fee Prohibition prevents or significantly interferes with national banks' exercise of multiple powers granted by the NBA.

The Attorney General's arguments specific to the Interchange Fee Prohibition fare no better. To reiterate: the Interchange Fee Prohibition purports to ban financial institutions including national banks from charging any fee or receiving any compensation for issuing services when it comes to card payments for tax and tip. The Attorney General is dismissive of this "significant interference" with their business. He first claims that because the Interchange Fee Prohibition applies to "fee[s] established, charged, or received by a payment card network" rather than a bank, it somehow does not implicate national banks' "power to receive fees." AG Br. 11. This ignores that the IFPA defines "Interchange fee" as "a fee established, charged, or received by a payment card network *for the purpose of compensating the issuer*." 815 ILCS 151/150-5 (emphasis added). And it further bans *all* participants in the payment system, including "issuer[s]," from "receiv[ing] or charg[ing]" any interchange fee on tax and tip. *Id.* § 151/150-10(a). The IFPA's ban on compensating issuers for this portion of their services could not be clearer.

Contrary to the Attorney General's contention, nothing in the NBA limits the "power to receive fees"—which the Attorney General does not dispute that national banks possess, *see* AG Br. 11—to fees the bank itself sets. Both the Attorney General and his amici question whether 12

C.F.R. § 7.4002(a) has direct applicability to interchange fees, *see* AG Br. 11; ECF 135-1 at 6-7; ECF 139-1 at 7-11, but none of them engage with the fact that—as the Court recognized at the preliminary-injunction stage—"the [NBA itself] authorizes banks to engage in any activity that is 'incidental to the business of banking,'" which is defined by regulation as any "activity 'convenient or useful to … part of the business of banking.'" ECF 104 at 18 (quoting 12 C.F.R. § 7.1000(d)(1)); *see* 12 U.S.C. § 24 (Seventh). As the OCC's amicus brief explains, "[i]t is a fundamental principle that the authority conferred by federal banking law to provide a banking service necessarily carries with it the authority to charge for that service." ECF 61-1 at 7. Otherwise, the "business of banking" would hardly be a "business" at all. [3]

Next, the Attorney General asserts that the Interchange Fee Prohibition is permissible because, in his view, it would affect only "an exceedingly small percentage of an electronic payment transaction." AG Br. 11. That is factually incorrect; the average combined state and local sales tax in Illinois is nearly 9%, and in Chicago it is 10.25%, *see generally* Ill. Dep't of Revenue, Tax Rate Database—to say nothing of tips. But more important, the Attorney General's focus on the economic impact misapplies *Cantero* because the NBA bars the state from significantly impairing—much less flatly barring—national banks' exercise of a portion of their powers. As Plaintiffs explained, and the fee cases Plaintiffs cite support, *see* *Bank of Am. v. City & Cnty. of San Francisco*, 309 F.3d 551, 562-64 (9th Cir. 2002); *Baptista v. JPMorgan Chase Bank, N.A.*, 640 F.3d 1194, 1198 n.2 (11th Cir. 2011); *Wells Fargo Bank of Tx. NA v. James*, 321 F.3d 488, 495 (5th Cir. 2003), a state may not specifically bar the exercise of a national bank power

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[3] Indeed, § 7.4002—a limitation on interbank agreements about fees—and its predecessors imply an existing general power to set fees. For example, in 1975, the rule read "Charges by banks. All charges to customers should be arrived at by each bank on a competitive basis and not on the basis of any agreement, arrangement, undertaking, understanding or even discussion among banks or their officers." 12 C.F.R. § 7.8000 (1975).

based on a factor that the federal government has not made a prerequisite to exercising the power. Nothing in *Cantero* changed that rule.

Finally, the Attorney General claims that Plaintiffs offered insufficient evidence that the Interchange Fee Prohibition would "interfere[] with national banks' powers to process credit and debit card transactions." AG Br. 12. But the Attorney General "admits that issuers use the interchange that they receive on credit and debit transactions to pay for the operating expenses associated with their card programs … and to fund services and benefits that they offer cardholders." ECF 137 at 10, ¶ 43. Using the "common sense" that *Cantero* demands, 602 U.S. at 220 n.3, the loss of a significant chunk of that revenue would "significantly interfere" with the provision of services that "issuers use the interchange that they receive … to pay for." That is all the clearer given the exorbitant costs of complying, if compliance is technically feasible at all.

3. The Data Usage Limitation prevents or significantly interferes with national banks' exercise of multiple powers granted by the NBA.

The Attorney General's arguments specific to the Data Usage Limitation are also unpersuasive. He rests primarily on a strawman, accusing Plaintiffs of contending that "the state cannot impose any limits at all" on a national bank power. AG Br. 13. But as the Court recognized at the preliminary-injunction stage, the Data Usage Limitation is no minor interference. Rather, "by prohibiting national banks from using data from credit and debit card transactions for anything other than facilitating or processing the electronic payment transaction, the IFPA's Data Usage Prohibition would not only limit this power, but, in many respects, wholly eliminate it." ECF 104 at 23 (brackets and internal quotation marks omitted). This, of course, a state may not do—particularly given the express authority OCC has granted national banks by regulation to "provide data processing and transmission services for itself and others, where that data relates to banking, finance, and economics." *Id.* (citing 12 C.F.R. § 7.5006(a)).

B. The IFPA Is Preempted by the Federal Credit Union Act.

The Attorney General fundamentally misstates both how preemption law applies to federal instrumentalities and severability's place in legal analysis. Properly understood, *Barnett Bank*'s preemption standard applies to federal credit unions and preempts application of the IFPA as to them. Even if that standard did not apply, the FCUA would still preempt the IFPA. And even if the Court were to reject both of those arguments, the Court would still have jurisdiction to conclude that application of the IFPA to credit unions alone is inseverable and therefore also preempted.

1. The *Barnett Bank* standard applies, and the FCUA preempts the IFPA under it.

Barnett Bank's preemption standard applies to federal credit unions for the same reason it applies to national banks: They are federal instrumentalities exercising federally conferred powers. Applying *Barnett Bank*, the IFPA's application to federal credit unions is preempted.

a. *Barnett Bank* applies because federal credit unions are federal instrumentalities.

The federal government, its agents, and its instrumentalities have broad immunity from state law that dates back to the Supreme Court's decision in *McCulloch v. Maryland*. *See* *United States v. Washington*, 596 U.S. 832, 838 (2022). NBA preemption is an application of that doctrine. Soon after that statute's passage, the Supreme Court explained that, because "[n]ational banks are instrumentalities of the federal government, created for a public purpose," any state law that "impairs the efficiency of these agencies of the federal government to discharge the duties for the performance of which they were created" is preempted. *Davis v. Elmira Sav. Bank*, 161 U.S. 275, 283 (1896). *Barnett Bank* applied the same principles, explaining that national banks' powers are "not normally limited by, but rather ordinarily preempt[], contrary state law." 517 U.S. at 32. The cases on which *Barnett Bank* relied for that point put the reason for the NBA's presumption of preemption clearly: "This court has often pointed out the necessity for protecting federal agencies against interference by state legislation." *First Nat'l Bank of San Jose v. California*, 262 U.S. 366, 370 (1923); *see also* *Easton v. Iowa*, 188 U.S. 220, 230 (1903) ("National banks organized under the act are instruments designed to be used to aid the government," so "it must be obvious that their operations cannot be limited or controlled by state legislation" (internal quotation marks omitted)).

Congress was presumably aware of the broad preemptive effect of the federal instrumentalities' powers when, in 1934, it created federal credit unions, another set of federal-instrumentality financial institutions. *Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010) ("We normally assume that, when Congress enacts statutes, it is aware of relevant judicial precedent."). And indeed, courts, including the Supreme Court, have regularly applied principles drawn from or akin to NBA cases in assessing preemption as to other financial institutions that are federal instrumentalities. *See, e.g.*, *Knox Nat'l Farm Loan Ass'n v. Phillips*, 300 U.S. 194, 202-03 (1937) (relying on NBA preemption cases because "a national farm loan association is an instrumentality of the federal government"); *Fed. Savings & Loan Ass'n of Wis. v. Loomis*, 97 F.2d 831, 836-37 (7th Cir. 1938) (federal savings and loan associations); *Rust v. Johnson*, 597 F.2d 174, 178-79 (9th Cir. 1979) (federal land banks and federal home loan banks); *James v. Fed. Res. Bank of N.Y.*, 471 F. Supp. 2d 226, 241 (E.D.N.Y. 2007) (Federal Reserve Bank of New York); *Federal Nat'l Mortg. Ass'n v. Lefkowitz*, 390 F. Supp. 1364, 1368 (S.D.N.Y. 1975).

Nor can there be any doubt that federal credit unions are federal instrumentalities, as two circuits have held. *TI Fed. Credit Union v. DelBonis*, 72 F.3d 921, 935 (1st Cir. 1995); *United States v. Michigan*, 851 F.2d 803, 807 (6th Cir. 1988). The Attorney General hardly disputes the point; his only response is that federal instrumentality status is a complicated question not susceptible to bright line rules. AG Br. 23-24. Maybe so, but he offers no reason to doubt that the

First and Sixth Circuits conducted the correct analysis in concluding that federal credit unions fit the bill. That is for good reason. As those courts recognized, federal credit unions are created by the federal government, perform "a variety of government functions," are exempt from not just state but also federal taxes, and are subject to sweeping federal regulation. *DelBonis*, 72 F.3d at 931-35; *see also, e.g.*, IRS Rev. Ruling 89-94, 1989-2 C.B. 233 (explaining that federal credit unions are exempt from tax as entities "described in [26 U.S.C.] section 501(c)(1)," which, in turn, applies to "[a]ny corporation organized under Act of Congress which is an instrumentality of the United States"). The Attorney General does not acknowledge those factors, much less explain why they are insufficient to make federal credit unions federal instrumentalities.

The Attorney General's other responses simply miss the point. He claims it is significant that the FCUA lacks the supposed "express preemption" provisions that Dodd-Frank added to the NBA and HOLA. AG Br. 22. But as relevant here, that portion of Dodd-Frank merely codified longstanding NBA preemption standards for "state consumer financial laws," 12 U.S.C. § 25b(b), which is why the same standard continues to apply for state laws that fall outside its scope, *Cantero*, 602 U.S. at 214 n.2. In other words, NBA preemption does not arise from an "express preemption" that the FCUA lacks. HOLA's Dodd-Frank preemption provision does not help the Attorney General's case either—it was enacted to *narrow* preemption doctrine for Federal savings associations (by conforming it to the scope of NBA preemption). *See Henning v. Wachovia Mortg., FSB*, 969 F. Supp. 2d 135, 145 (D. Mass. 2013); 12 C.F.R. § 34.6. So the only inference that can be drawn from Congress's decision not to similarly constrict preemption under the FCUA is that federal credit unions continue to enjoy the robust preemption that shields federal instrumentalities from significant state interference.

b. The Interchange Fee Prohibition and Data Usage Limitation both prevent or significantly interfere with powers federally guaranteed by the FCUA.

The Attorney General does not dispute that the IFPA fails the *Barnett Bank* standard as to federal credit unions. Rightly so. Federal credit unions have the powers to make loans and extend lines of credit, 12 U.S.C. § 1757(5), issue credit cards, 12 C.F.R. § 701.21(a), and "earn income from those activities determined to be incidental to [their] business," 12 C.F.R. § 721.6. They also have the power to engage in "[e]lectronic financial services," including "data processing." 12 C.F.R. § 721.3(d), (e). Just as for national banks, the IFPA prevents or substantially interferes with the exercise of those powers, so it is preempted. *See supra* Part II.A.

2. The FCUA preempts both substantive IFPA provisions independent of *Barnett Bank*.

Even under the preemption standard that applies outside of the federal-instrumentality context, the IFPA is preempted. To start, 12 C.F.R. § 701.21(b)(1)(i) precludes enforcement of the Interchange Fee Prohibition against federal credit unions because that IFPA provision is a state law "purporting to limit or affect … [c]losing costs, application, origination, or other fees." The Attorney General nods to an argument that 12 C.F.R. § 701.21(b) is invalid, AG Br. 26, but he fails to develop it. "It is well-settled that insufficiently-developed arguments are forfeited." *Sabbia v. Comm'r of Soc. Sec. Admin.*, 669 F. Supp. 2d 914, 920 (N.D. Ill. 2009). In any event, § 701.21(b) falls well within the NCUA's "broad powers." *Sisters of Presentation of Blessed Virgin Mary of Aberdeen, S.D. v. NCUA*, 961 F.2d 733, 734 (8th Cir. 1992). That broad authority to "prescribe rules and regulations for the administration" of the FCUA, 12 U.S.C. § 1766(a)—including regulations of federal credit unions' powers "to make loans … and extend lines of credit," 12 U.S.C. § 1757—supports 12 C.F.R. § 701.21(b)(1)(i)'s regulation of the terms on which federal credit unions extend credit.

And on its face, § 701.21(b)(1)(i) forecloses the IFPA's effort "to limit or affect" the "fees" federal credit unions charge in association with credit cards because the lost revenue from interchange fees will compel credit unions to raise fees on members or increase interest rates. The Attorney General attempts to dismiss that effect on fees as indirect. AG Br. 29 n.14. But as this Court recognized, what matters is whether "interchange fees are directly tied to loan interest or repayment terms." ECF 115 at 6. They are—the different ways credit unions earn revenue from credit cards are of course "directly tied" together, exerting hydraulic pressure on each other. *See* ECF 124 ¶ 49. So a law that limits one revenue source directly—and prevents corresponding changes to a wide class of other revenue sources, *see* 815 ILCS 151/150-10(d)—necessarily affects other revenue sources for which no similar constraints exist.

Beyond its conflict with § 701.21(b)(1)(i), the IFPA also more broadly "stands as an obstacle to" the FCUA. *Petr ex rel. BWGS, LLC v. BMO Harris Bank N.A.*, 95 F.4th 1090, 1102 (7th Cir. 2024). The Attorney General does not dispute that driving federal credit unions from the credit-card market would stand as an obstacle to the FCUA's purpose—making "credit available on liberal terms and at low rates of interest to middle-class Americans who, because they frequently lack adequate security, might otherwise have to turn to small loan financiers who can extort excessive interest rates in times of unexpected need." *Michigan*, 851 F.2d at 806. Instead, he merely quibbles with the volume of evidence Plaintiffs provided that the IFPA will have exactly that effect, while providing no evidence to the contrary. AG Br. 30. The evidence speaks for itself, and further reinforces that the FCUA preempts the IFPA.

3. The Court has jurisdiction over the severability question, which prevents application of the IFPA to credit unions alone.

The Attorney General's argument that this Court does not have jurisdiction to address severability asks this Court to upend the settled understanding of severability doctrine and conclude that countless Supreme Court and Seventh Circuit decisions addressing whether a state statutory provision is inseverable (and countless state attorneys general arguing the point) missed a glaring jurisdictional defect. *See, e.g.*, *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 328-31 (2006), *abrogated on other grounds by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022); *Leavitt v. Jane L.*, 518 U.S. 137, 139-46 (1996) (per curiam); *Burlington N. & Santa Fe Ry. Co. v. Doyle*, 186 F.3d 790, 804 (7th Cir. 1999). This Court should decline that invitation. Severability analysis determines the consequences of finding a statute unconstitutional or preempted—it answers the question whether "in preempting the part [the Court] should invalidate the whole." *Burlington N.*, 186 F.3d at 804. For state statutes, courts answer that question as a matter of state law. *Id.* But the injunction itself issues under federal law because a statute being inseverable simply means that the whole statute is preempted or unconstitutional. *See, e.g.*, *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 83-84 (1976) (holding a state statute inseverable), *abrogated on other grounds by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022); *Barnett v. Raoul*, 756 F. Supp. 3d 564, 658 (S.D. Ill. 2024) (same). It therefore raises no *Pennhurst* problem to conclude that the Court "should invalidate the whole." *Burlington N.*, 186 F.3d at 804.

This Court should do so. The Attorney General points to the IFPA's severability clause, but "[u]nder Illinois law, severability clauses are not conclusive," and instead "are regarded as little more than a formality." *In re Pension Reform Litig.*, 32 N.E.3d 1, 29 (Ill. 2015). The question is whether the legislature would have "pass[ed] the residue independently." *Cincinnati Ins. Co. v. Chapman*, 691 N.E.2d 374, 382 (Ill. 1998). And the Attorney General offers no reason the Illinois legislature would have enacted a law that targets credit unions alone to bear the IFPA's burdens.

C. Federal law preempts the IFPA as to out-of-state financial institutions.

Federal law extends the preemptive effect of the NBA, HOLA, and FCUA to financial institutions chartered by states other than Illinois as well. The dormant Commerce Clause, in conjunction with state wildcard statutes, compels that result for all three types of financial institutions, and 12 U.S.C. § 1831a(j) does the same specifically for out-of-state state banks.

1. The dormant Commerce Clause issue is ripe and precludes application of the IFPA to out-of-state state financial institutions.

As Plaintiffs have explained, Illinois law extends the effect of federal preemption to financial institutions that Illinois itself charters, and the dormant Commerce Clause's non-discrimination rule requires extending that same benefit to financial institutions that are chartered by other states. Pl. Br. 20-23, 30. Although the Court ruled otherwise at the preliminary-injunction stage, it did so based on the premise that "the wildcard laws apply to all entities doing business [in] Illinois," ECF 104 at 31—an interpretation the Attorney General himself rejects, *see* AG Br. 34. And while the Attorney General asserts that there are "many reasons" to reject Plaintiff's dormant Commerce Clause argument, *see* *id.* at 31, he posits only two—both fatally flawed.

a. The dormant Commerce Clause issue is ripe.

The Attorney General first argues that the dormant Commerce Clause argument is unripe because it is supposedly contingent on the way a state court interprets the wildcard statutes. *See* AG Br. 31-32. That curious argument implies that a state statute has no meaning until a state court interprets it. Our federal system does not work that way. When a state law discriminates on its face against out-of-state entities, a federal court need not wait for a state court to confirm that the law means what it says before finding a dormant Commerce Clause violation. Indeed, Plaintiffs have cited multiple dormant Commerce Clause cases—which the Attorney General's brief ignores—in which federal courts have interpreted state law in the course of resolving a federal dormant Commerce Clause challenge. *See* Pl. Br. 20 n.7 (citing *Williams ex rel. J.E. v. Reeves*, 954 F.3d 729, 739-40 (5th Cir. 2020), and *Everett v. Schramm*, 772 F.2d 1114, 1119 (3d Cir. 1985)). Both cases the Attorney General cites for his ripeness argument, by contrast, were unlike this one, because both depended on the judgment in another case, not an interpretive question. *See* *Lincoln House v. Dupre*, 903 F.2d 845, 847 (1st Cir. 1990) (whether, as a practical matter, a party could collect a judgment that might be obtained in another case); *In re Lowenschuss*, 170 F.3d 923, 932 (9th Cir. 1999) (question of bankruptcy priority of a judgment whose validity was on appeal in the other case).

There is no ripeness or federalism obstacle to this Court reading the plain language of Illinois wildcard statutes and the IFPA and determining their meaning. Federal courts are perfectly well equipped to address "routine questions of [state] statutory interpretation." *Knutson v. Vill. of Lakemoor*, No. 18 C 1804, 2018 WL 10509387, at *4 (N.D. Ill. Dec. 4, 2018) (citing *Vill. of Bedford Park v. Expedia, Inc.*, 876 F.3d 296, 302-03 (7th Cir. 2017)). The Court should do so here. A contrary rule would allow states to thwart the vindication of constitutional rights while plaintiffs wait for a state court to confirm that the statute means what it says.

b. The wildcard statutes protect Illinois institutions from state law to the same degree the NBA, HOLA, and FCUA protect corresponding federal institutions.

The Attorney General's second argument—that, on the merits, the wildcard statutes do not actually protect Illinois institutions from the IFPA—fares no better. The Attorney General concedes that the Illinois bank and savings associations wildcard statutes on their face apply "[n]otwithstanding any other provisions of this Act or any other law." AG Br. 33 (quoting 205

ILCS 5/5(11) and citing 205 ILCS 205/6002(a)(11)).[4] While he denigrates this language as "prefatory," none of his three arguments for giving it no effect persuades.

First, he cites the principle that "more-specific statutes control over the general." AG Br. 33. But that principle has no purchase in the presence of a "notwithstanding" clause like the ones at issue here, because, as the Illinois Supreme Court explained just this past December, "the use of a notwithstanding clause *clearly signals* the drafter's intention that the provisions of the notwithstanding section override conflicting provisions of *any other section*." *People v. Molina*, __ N.E.3d __, 2024 WL 4982908, at *6 (Ill. Dec. 5, 2024) (ellipses, brackets, and internal quotation marks omitted; emphases added). "In short, [a] 'notwithstanding' clause means that [what follows it] prevails over any conflicting provision of law." *Id.* (internal quotation marks omitted). Moreover, even if the specific-controls-the-general principle could apply here, it is far from clear that the IFPA is more specific and the wildcard statutes more general. After all, the former applies on its face to all financial institutions and other entities that do business in Illinois, while each wildcard statute defines the effect that other laws will have on a particular category of Illinois-chartered institution.

Second, the Attorney General argues that "later-enacted statutes control over earlier statutes." AG Br. 33. But again, there is no conflict between the statutes that the plain text does not already resolve. The wildcard statutes contain no language limiting their protective effect to pre-existing law, and nothing in the IFPA commands reading it as a disfavored repeal by

[4] While the Illinois Credit Union Act's wildcard provision does not use the word "notwithstanding," it accomplishes the same thing by providing a single, specific exception for federal credit union powers or activities that "violate any provision of this [Illinois Credit Union] Act." 205 ILCS 305/65. Because the IFPA is not part of the Illinois Credit Union Act, the wildcard statute takes precedence.

implication of the wildcard statutes. *See Molina*, 2024 WL 4982908, at *7 ("[R]epeals by implication are not favored.").

Third, the Attorney General argues that "one legislature cannot bind a future legislature." AG Br. 33. For similar reasons, that is a red herring. Plaintiffs' argument is not that the Legislature *could not have* specifically overridden the wildcard statutes in the IFPA; rather it is that there is no textual (or other) evidence to conclude, or even suggest, that it *actually did so*.

Perhaps unsurprisingly, Illinois regulators have long understood the laws as Plaintiffs do. Thus, in 2000, the Department of Financial and Professional Regulation wrote in an interpretive letter that "Illinois state banks for more than 30 years have enjoyed parity with national banks pursuant to Section 5(11) of the Illinois Banking Act," which "provides that notwithstanding *any* provision of Illinois law, state banks are permitted to perform any act or make any investment permitted for a national bank." Ill. Dep't of Financial & Professional Regulation, Interpretive Ltr. 2000-02, at 1 (Jan. 12, 2000) (emphasis added). Notably, nothing in that letter suggests that the parity and protection the statute provides was frozen in place and applied notwithstanding only pre-existing Illinois law.

c. The wildcard statute's differential protection for Illinois and out-of-state financial institutions is unconstitutional.

As Plaintiffs have explained, the combination of the IFPA and the wildcard statutes' facial discrimination violates the dormant Commerce Clause. The Attorney General's brief nowhere disputes that, if the statutes mean what Plaintiffs say they do, they are unconstitutional. And because, as demonstrated above, the statutes have those meanings, out-of-state financial institutions are entitled to the same protection those statutes accord Illinois entities. *See, e.g.*, *W. Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 199 (1994) (recognizing "cardinal principle that a State may not benefit in-state economic interests by burdening out-of-state competitors").

2. 12 U.S.C. § 1831a(j) precludes application of the IFPA to out-of-state state banks.

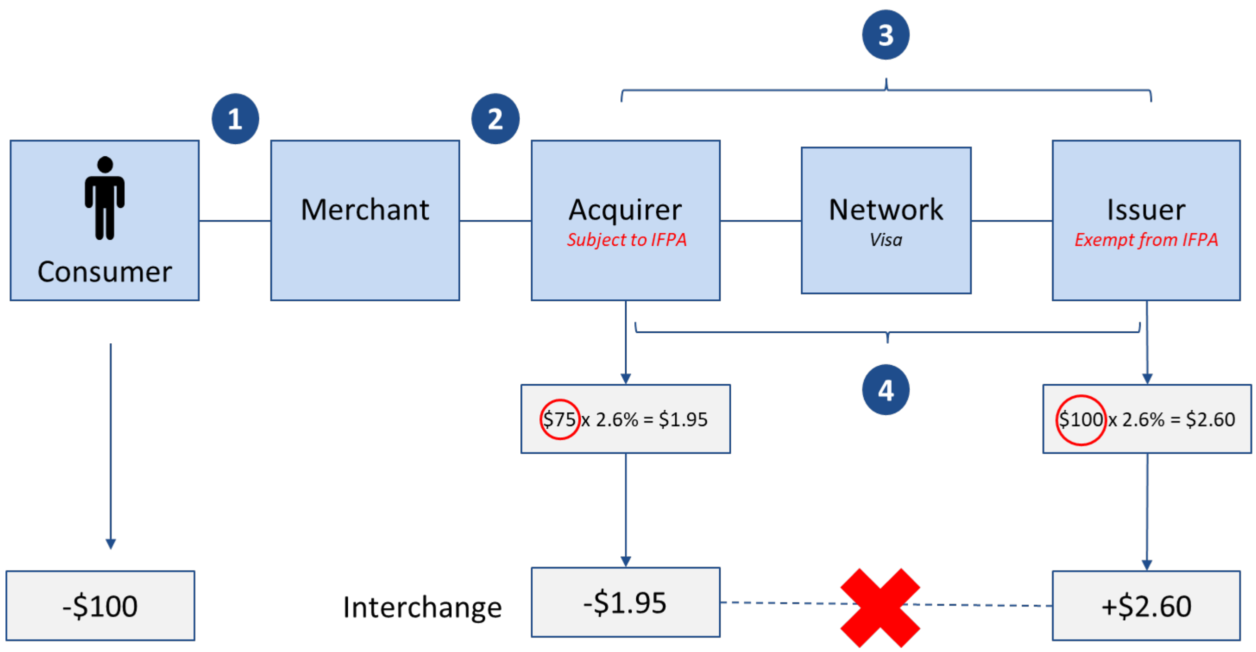
A federal statute, 12 U.S.C. § 1831a(j), separately ensures the same result for non-Illinois banks. As this Court has already recognized, that statute "is meant to ensure that out-of-state banks can compete with nationally chartered banks." ECF 115 at 7; *see, e.g.*, 143 Cong. Rec. 9063 (1997) (statement of Rep. Roukema) ("The essence of this legislation is to provide parity between State-chartered banks and national banks."). The Attorney General does not dispute that § 1831a(j) extends the NBA's protective preemptive effect to out-of-state banks' activities conducted at branches in Illinois. And while he argues that § 1831a(j)'s parity principle does not apply to out-of-state banks more broadly, that reading would turn that clear legislative purpose on its head and violate the "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. 435, 441 (2019). Context makes clear that § 1831a(j) is a straightforward "parity provision" of the type that characterize our dual banking system. *Hawthorne v. Umpqua Bank*, No. 11-cv-6700, 2013 WL 5781608, at *9 (N.D. Cal. Oct. 25, 2013). That is likely why the Attorney General can cite no case that reads the provision to impose the "in-state-branch" limit he asserts exists. And likewise why the cases of which Plaintiffs are aware applying § 1831a(j) speak in terms of the law "treating [out-of-state state banks] as out-of-state national banks are treated"—with no discussion of any branching limitations. *Pereira v. Regions Bank*, 752 F.3d 1354, 1357 (11th Cir. 2014). When the NBA preempts state law, it does so regardless of whether a national bank is operating through a branch in a particular state. To ensure the parity § 1831a(j) was designed to provide, the same must hold for out-of-state banks.

Indeed, to accept the Attorney General's reading, the Court would have to conclude that Congress stripped Illinois of the right to regulate banking activities occurring within its borders, while leaving it free to regulate those activities occurring in other states. *See* AG Br. 35 (explaining its reading of § 1831a(j) as protecting an Iowa state bank from Illinois law, but only as to activities carried out in Illinois). The Attorney General minimizes the incongruence as a "odd result." AG Br. 35. It is that and more—it produces such "an absurd, and perhaps unconstitutional, result" that the Court should be wary of adopting it. *See* *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 527 (1989) (Scalia, J., concurring in the judgment). After all, the Attorney General's reading would transform a provision designed to promote parity into a mandate for states to discriminate against banks' out-of-state operations. *Cf.* *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 39 (1980) (holding unconstitutional a statute that regulated based on "the out-of-state location of a bank holding company's principal operations").

D. The State Cannot Undermine the Rights of National Banks and Other Federally Protected Institutions by Targeting Their Service Providers.

In sum, the IFPA is preempted as applied to national banks, Federal savings associations, and federal credit unions; and based on the dormant Commerce Clause as well as (for out-of-state banks) 12 U.S.C. § 1831a(j)(1), it also cannot be applied to out-of-state financial institutions. That means that while the IFPA purports to prohibit these institutions from "receiv[ing] or charg[ing] any interchange fee" or using data outside of two narrow exceptions, it would violate the Supremacy Clause to subject them to these strictures.

The Attorney General's arguments would render much of the protection afforded by the NBA and other statutes meaningless. As Plaintiffs have shown, there is simply no way for an exempt bank *issuer* to receive the full amount of interchange if another participant in the payment ecosystem, including the *acquirer, processor or network*—all of which generally precede the issuer in the payment chain—are barred from conveying the full amount to the issuer. The following diagram illustrates the point, positing an acquiring bank that is excluded from protection (although the point holds if *any* participant in the transaction, such as the card network, is subject to the IFPA).[5]



See generally ECF 124 ¶¶ 35-39, 42, 45-47. The Attorney General does not dispute any of this as a factual matter.[6] But he insists that there is no federal-law problem with imposing staggering

[5] Many acquirers, such as national banks, will themselves enjoy direct protection from the IFPA. The example assumes an acquirer outside one of those protected classes. The result is the same regardless of the status of the acquirer, however, because the network will still need to be able to play its role for the system to function.

[6] The Attorney General's *amici* seek to submit an "expert report" containing factual assertions about the payment ecosystem and the supposed feasibility of compliance for card networks such as Visa and Mastercard. ECF 135-2. This Court should decline to consider a factual submission from a non-party's putative expert. *See, e.g.*, *McCarthy v. Fuller*, No. 08-cv-994, 2012 WL 1067863, at *1-2 (S.D. Ind. Mar. 29, 2012) (rejecting *amicus* filing offering to "aid the court by providing facts, insights, and explanations" because "that description suggests the type of contribution a fact or expert witness would offer, and witnesses must be subject to discovery"); *Kitzmiller v. Dover Area Sch. Dist.*, No. 04-cv-2688, 2005 WL 2736500, at *1-2 (M.D. Pa. Oct. 24, 2005) (striking amicus brief of former expert witnesses of defendants where "inclusion of such information in an ad hoc unsolicited fashion, when Plaintiffs have not had the opportunity to cross-examine such expert witness is clearly inappropriate under the circumstances"); *State of N.Y. v. Microsoft Corp.*, No. 98-cv-1233, 2002 WL 31628215, at *1 (D.D.C. Nov. 14, 2002) (denying motions to participate as amicus curiae where "the information contained in the proposed amicus briefs is akin to 'unsworn expert testimony'"). But it does not matter if this Court chooses to weigh

liability—including civil penalties of $1,000 *per transaction* for violations of the Fee Prohibition—on any party such as a processor or network that does not fit in a protected category if it "receive[s] or charge[s] any interchange fee" on tax and tip as transactions are processed through the payment system, even where federal law entitles the issuer at the end of the chain to *receive* interchange on tax and tip. To state the obvious, subjecting these intermediary entities to the IFPA's massive state-law liability would prevent issuers that are national banks, Federal savings associations, federal credit unions, and their out-of-state peers from receiving interchange on tax and tip. That is not consistent with either federal preemption or equity.

1. The NBA preempts the IFPA's application to services necessary to national banks' carrying out their federally authorized banking business, even if performed by other entities.

As set forth above and as this Court already held, the NBA preempts the IFPA to the extent it "significantly impairs" the exercise of national banks' federally granted powers.[7] It does not matter whether the state law achieves this "significant impairment" by regulating national banks directly or by regulating some other party whose cooperation is essential for a national bank to exercise its NBA powers. *See, e.g.*, *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 255 (2004) (preemption applies to restrictions on *purchasers* even where manufacturer selling the vehicle was the party subject to federal standards); *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452, 464 (2012) (allowing a "State [to] impose any regulation on slaughterhouses just by framing it as a ban on the sale of meat … would make a mockery of … preemption"). No state could forbid consumers from obtaining a credit card from national banks, then protest that the law did not

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the assertions of *amici*'s "expert," because he does not even claim to rebut the key factual point that an issuer cannot receive full interchange if other system participants cannot convey it.

[7] For simplicity, this section discusses NBA preemption only; for the reasons already stated, HOLA and FCUA preemption as well as the protection of the dormant Commerce Clause and 12 U.S.C. § 1831a(j)(1) track NBA preemption.

"significantly impair" the banks' exercise of their powers because it regulated only the bank's customers. Federal preemption is not so easily circumvented.

Indeed, in *First National Bank of San Jose v. California*, the state escheat scheme found invalid "direct[ed] the Attorney General to institute actions against banks *and depositors* to recover all such amounts." 262 U.S. at 367 (emphasis added). The California Attorney General had done just that, bringing the case against both national banks "and a large number of persons alleged to be depositors in said banks." *State v. Anglo & London Paris Nat'l Bank of S.F.*, 200 P. 612, 612 (Cal. 1921). Yet the Supreme Court's opinion invalidating the statute did not distinguish between the bank and depositor defendants. Indeed, the statute's chilling effect on depositors doing business with national banks was a key reason the Court held it invalid. *See First Nat'l Bank of San Jose*, 262 U.S. at 370 ("The success of almost all commercial banks depends upon their ability to obtain loans from depositors, and these might well hesitate to subject their funds to possible confiscation."). *First National Bank of San Jose*, of course, was cited with approval in *Barnett Bank*, *see* 517 U.S. at 26, 32, 37; and in turn it is one of the key precedents endorsed in *Cantero* as supplying the standard for NBA preemption, *see* 602 U.S. at 218, 220. Its logic governs here: Just as there it "significantly impaired" national banks' business to deter depositors from placing funds in their custody with the threat of having to defend escheat actions (brought by a state Attorney General) if they let their accounts lie dormant, here it "significantly impairs" national banks' business to deter processors, networks, and other non-exempt entities in the payment ecosystem from *conveying* funds to national banks with the threat of enforcement actions (brought by a state Attorney General) if they perform their customary functions in the payment process.

The Attorney General is therefore wrong to repeatedly suggest that Plaintiffs are seeking to "extend" NBA preemption or to "apply" it to "entities that are not themselves national banks."

See, e.g., AG Br. 14, 16, 19. Plaintiffs are simply asking this Court to effectuate the long-standing NBA preemption standard *with respect to national banks*.

The Attorney General also claims that Congress effectively gutted NBA preemption when it passed the Dodd-Frank Act. He cites 12 U.S.C. § 25b(h)(2), which provides that the NBA "shall [not] be construed as preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national bank." But the Attorney General greatly overreads this statutory language.

At the outset, he cannot explain why the payment card networks fit any of these statutory terms. He has no response at all to Plaintiffs' point that the networks are "service providers" under applicable federal law, a term that Dodd-Frank conspicuously does not use. *See* Pl. Br. 36. Nor does he offer any plausible argument that card networks such as Visa and Mastercard are "agents" of national banks. As he effectively concedes, AG Br. 17, "[a]n agent is a person authorized by another, the principal, to act for him or in his place." *Lady Di's, Inc. v. Enhanced Servs. Billing, Inc.*, 654 F.3d 728, 735 (7th Cir. 2011). As Plaintiffs' evidence shows in detail and the Attorney General has not attempted to dispute, the card networks have no such relationship with national banks—rather, they are contractual counterparties that "provide a legal framework [for clearing payments] through network rules," "balance the often-competing interests of network participants," "develop fee schedules," and accomplish other independent functions. ECF 124-1 at 12-14, ¶¶ 30-33; *see* ECF 124 ¶¶ 39-41.[8]

But even if the Attorney General were right that the "subsidiary, affiliate, or agent" terms in 12 U.S.C. § 25b(h)(2) encompassed any relevant entities, that would still not defeat Plaintiffs'

[8] Notably, the Attorney General's *amici* take the position that the Interchange Fee Prohibition does not apply to three-party networks such as American Express and Discover at all. ECF 135-1 at 6.

argument about the contours of NBA preemption. Section 25b(h) was intended to abrogate the holding of *Watters v. Wachovia Bank, N.A.*: that a national bank's mortgage-lending subsidiary gets the benefit of NBA preemption solely by virtue of its subsidiary status. *See* 550 U.S. 1, 17-18 (2007) ("[J]ust as duplicative state examination, supervision, and regulation would significantly burden mortgage lending when engaged in by national banks, … so too would those state controls interfere with that same activity when engaged in by an operating subsidiary"; "we have treated operating subsidiaries as equivalent to national banks with respect to powers exercised under federal law"). But contrary to the Attorney General's claims, that abrogation is immaterial to this case. Unlike the *Watters* plaintiffs, Plaintiffs are not claiming that any non-national-bank affiliate, subsidiary, or agent of a national bank gets the benefit of preemption *by virtue of that relationship*. Plaintiffs instead have shown that *national banks* get the benefit of NBA preemption—and that a state cannot nullify that preemption by regulating other payment system participants that are necessary for the national bank to obtain the full benefits of the powers the NBA grants it. To borrow the Attorney General's term (at 17-18), "the object" of the state-law interference here is national-bank *issuers*, which are precluded by the IFPA from getting paid for services they provide. *See* 815 ILCS 151/150-5 (defining "Interchange fee" as "a fee established, charged, or received by a payment card network *for the purpose of compensating the issuer* for its involvement in an electronic payment transaction" (emphasis added)). And NBA preemption must reach as far as needed to prevent the IFPA's "significant interference" with those national-banks—specifically, to other entities in the payment ecosystem to the extent they are carrying out functions necessary for national banks to collect interchange on the full transaction amount.

Nor does the statute's reference to *Barnett Bank* bolster the Attorney General's reading. As already demonstrated, *Barnett Bank* itself *endorses* giving full effect to NBA preemption of state law even where that state law—as in *First National Bank of San Jose*—accomplishes its "significant interference" by threatening penalties against both national banks and non-national-bank parties. The Attorney General's reading of "*Barnett Bank*" as a "national banks only" precedent that applies only when national banks are the direct "object" of regulation is strained and incorrect. Moreover, "it is usually prudent to assume that Congress does not 'alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions.'" *Owner-Operator Indep. Drivers Ass'n, Inc. v. United States Dep't of Transportation*, 840 F.3d 879, 889 (7th Cir. 2016) (quoting *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001)). If Congress wanted to adopt a rule that NBA preemption can be circumvented just by aiming penalties at national-bank subsidiaries, affiliates, or agents that are indispensable to the national bank carrying out its federally granted powers, referencing *Barnett Bank* would have been an exceedingly odd way to do it.

Finally, the snippets of legislative history cited by the Attorney General hardly support his interpretation of 12 U.S.C. § 25b(h)(2). Some are simply off-topic, such as passages irrelevantly addressing "abusive mortgage lending." AG Br. 20. Other passages consist merely of general statements that Congress believed OCC regulations and some court decisions had strayed too far beyond *Barnett Bank*'s limits. It is not even clear whether these statements are talking about 12 U.S.C. § 25b(h)(2) at all. Indeed, the Attorney General's excursion into legislative history—if this Court wishes to consult that source—simply underscores that he is extrapolating far too much from the overruling of *Watters*. This history does not suggest that Congress envisioned a total overhaul of NBA preemption in unrelated contexts—and its reaffirmation of *Barnett Bank*'s strong preemption standard suggests quite the opposite.

2. Equitable principles entitle federally protected financial institutions to a sufficiently broad injunction to afford them complete relief.

The Attorney General fares no better when it comes to Plaintiffs' alternative argument that equity requires a sufficiently broad injunction. He does not contest that it is a bedrock principle of equity that a court should "impose the equitable relief necessary to render complete relief to the plaintiff." *City of Chi. v Barr*, 961 F.3d 882, 920-21 (7th Cir. 2020). And he has no response whatsoever to the central practical problem that activates this equitable principle: Plaintiffs' national-bank members are entitled by federal law to collect the full amount of interchange on a given transaction, but absent a broader injunction, they will be unable to collect interchange on tax and tip. The Attorney General invites the Court to endorse this inequitable result. It should not.

The Attorney General claims that this Court's hands are tied because it supposedly *lacks the authority* to render complete relief. But this Court has the power "to do equity and to mould each decree to the necessities of the particular case." *Porter v. Warner Holding Co*., 328 U.S. 395, 398 (1946). "Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied." *Bedrossian v. Nw. Mem. Hosp.*, 409 F.3d 840, 842-43 (7th Cir. 2005); *see also Ctr. for Biological Diversity v. EPA*, 56 F.4th 55, 71 (D.C. Cir. 2022) ("If Congress does seek to restrict courts' equitable powers, it must do so by 'the clearest command.'" (quoting *McQuiggin v. Perkins*, 569 U.S. 383, 397 (2013), and collecting cases)).[9]

[9] The Attorney General's reliance on *Armstrong v. Exceptional Child Center*'s standard for determining whether Congress implicitly displaced the availability of an action in equity is misplaced. AG Br. 38. There is no question here that Plaintiffs may seek equitable relief; the only question is the scope of the relief the Court may grant. On that question, the clear-statement rule governs. In any event, even under *Armstrong*, a key sign that Congress intended to limit equitable actions is that a statute supplies *other* remedies. *See Armstrong*, 575 U.S. 320, 328 (2015); *see also, e.g.*, *Verizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635, 647 (2002)

The Attorney General identifies no statute that provides such a clear command or inescapable inference. Instead, his only argument is that if NBA preemption does not apply as a statutory matter to entitle Plaintiffs to a broader injunction, then it follows that Plaintiffs cannot obtain broader relief as an equitable matter. But that syllogism has no basis in any applicable caselaw. "The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction." *Porter*, 328 U.S. at 398 (citation omitted). Even as a matter of pure statutory interpretation, Attorney General's narrow "construction" of the NBA is indeed "doubtful." *See supra* Part II.D.1. But as cases such as *Porter* and *Bedrossian* demonstrate, far more than that is required before equity yields; courts look for specific indicia of Congressional intent to limit equitable power, and the Attorney General has identified none.[10]

To the extent this Court considers "statutory purposes" in deciding whether to exercise its equitable power, the "central aim" of the NBA favors providing complete relief. *Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 292 (1960). It has been settled for more than a century that the NBA "has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable,

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(noting that a "detailed remedial scheme" can foreclose equitable relief). The Attorney General does not even suggest that condition is present here.

[10] The Attorney General concludes his argument against equitable relief with a nonsensical gambit: he claims that because national banks will not obtain relief without a broader injunction, they cannot show redressability and so lack standing to seek an injunction. This Court already rejected a similar argument he made at the preliminary-injunction stage, and it should do so again. ECF 104 at 34-35. At a minimum, it is undisputed that this Court can enter a permanent injunction that protects Plaintiffs' national-bank members from the Data Usage Limitation as well as from substantial civil penalties if they receive interchange and also from the burden of having to implement a manual process to refund interchange fees. That would not be *complete* relief, of course, because national banks would still be unable to charge or receive a fee to which they are entitled. But a plaintiff "need not show that a favorable decision will relieve his *every* injury" to satisfy redressability; it is enough if the plaintiff will obtain "substantial and meaningful relief." *Larson v. Valente*, 456 U.S. 228, 243 & n.15 (1982).

might impose limitations and restrictions as various and as numerous as the states." *Easton*, 188 U.S. at 229; *see also Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 10 (2003) ("Uniform rules" governing national banks "are an integral part of a banking system that needed protection from possible unfriendly State legislation." (internal quotation marks omitted)). Ensuring that state laws targeting those with whom national banks deal cannot interfere with the uniformity of that national system furthers both the NBA's statutory purposes and settled principles of equity.

III. AN INJUNCTION IS NEEDED TO AVOID IRREPARABLE HARM.

The Attorney General addresses irreparable harm only in a footnote, and even then, only to challenge the presumption of irreparable harm. *See* AG Br. 40 n.21. The Attorney General is wrong that the presumption of irreparable harm does not apply when a state attempts to regulate a private party in violation of the Supremacy Clause. *See, e.g.*, *Air Evac EMS, Inc. v. McVey*, 37 F.4th 89, 103 (4th Cir. 2022) (citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381-82 (1992)). In any event, as Plaintiffs explained, and the Attorney General never disputes, irreparable harm also exists here independent of any presumption. *See* Pl. Br. 39-40.

IV. THE ATTORNEY GENERAL DOES NOT DISPUTE THAT BALANCE OF EQUITIES AND PUBLIC INTEREST SUPPORT AN INJUNCTION.

Plaintiffs also explained how both the balance of equites and public interest, which merge in this case, support entry of a permanent injunction. Pl. Br. 40. The Attorney General does not address these matters at all, and thus concedes the point.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant summary judgment in their favor, enter a permanent injunction as indicated in Plaintiffs' proposed order, and deny the Attorney General's motion for summary judgment.

Dated: May 7, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on May 7, 2025, a copy of the foregoing was filed using the CM/ECF system, which will effectuate service on all counsel of record.

/s/ *Bethany K. Biesenthal*

Attorney for Illinois Bankers Association, American Bankers Association, America's Credit Unions, and Illinois Credit Union League