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' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND A PERMANENT INJUNCTION

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INTRODUCTION

The Illinois Interchange Fee Prohibition Act ("IFPA") threatens to upend the nationally integrated card payment system by imposing drastic restrictions and draconian penalties on its participants. Its Interchange Fee Prohibition would force Issuers to forgo a portion of the revenue that compensates them for taking on credit risk, monitoring for fraud, providing benefits to cardholders, and otherwise greasing the wheels of the state and national economy. It threatens penalties of $1,000 *per transaction*, a staggering sum that could expose even small institutions with only a few thousand debit-card holders to ruinous liability. *See, e.g.*, Plaintiffs' Rule 56.1 Statement ("SOUF"), ¶ 17 (3,800 cardholders of one Issuer engage in approximately 900,000 transactions per year). And its Data Usage Limitation's near-total ban on using transaction data would make fraud prevention and other critical operations far more difficult and less effective. But the IFPA is not only bad policy, it is also preempted by federal law. The Court should grant Plaintiffs summary judgment and permanently enjoin Attorney General enforcement of the IFPA.

Indeed, the Court has already concluded that Plaintiffs are likely to succeed on most of their preemption claims. As to the national banks that serve as both Issuers and Acquirers for most Illinois (and national) card transactions, the Court has already explained that both IFPA provisions prevent or significantly interfere with their exercise of powers the National Bank Act ("NBA") grants. For example, federal law gives national banks the power to process card transactions and charge fees for doing so, and to use and process data—the very things that the IFPA expressly curtails or prohibits. The Court was likewise correct that 12 U.S.C. § 1831a(j) extends the effect of NBA preemption to out-of-state banks, and that the Home Owner's Loan Act ("HOLA") preempts the IFPA as to Federal savings associations. For substantially the reasons underpinning its preliminary injunction orders on these statutes, the Court should now enter summary judgment that each of these provisions preempts the IFPA and a corresponding permanent injunction.

At the same time, Plaintiffs respectfully request that the Court revisit the question of preemption under the Federal Credit Union Act ("FCUA"). Federal credit unions, like national banks and Federal savings associations, are federal instrumentalities to which the same *Barnett Bank* standard for assessing preemption applies. Under that standard, the IFPA prevents or significantly interferes with the exercise of FCUA powers in the same ways it does the exercise of NBA and HOLA powers. Even if *Barnett Bank* did not apply, the IFPA would still stand as an obstacle to the FCUA's purpose of ensuring that credit unions can serve their members. As undisputed evidence demonstrates, application of the IFPA—especially only to credit unions and not also their competitors—will increase costs to members or force credit unions to stop offering valuable services altogether, as the costs of compliance could exceed their *total* net income. *See* SOUF ¶ 49. Moreover, as the Court expressly recognized, if "interchange fees are directly tied to loan interest or repayment terms," that "would implicate [a] regulation" that expressly preempts contrary state law. Dkt. 115 at 6. That is what will happen here, because credit unions' members will necessarily be charged higher interest or fees once the IFPA deprives credit unions of interchange revenue, which the IFPA expressly forbids credit unions from recovering from merchants in any other way. The Data Usage Limitation's near total ban on processing data likewise facially conflicts with credit unions' acknowledged incidental power to do precisely that.

The Court should also revisit Plaintiffs' dormant Commerce Clause arguments. The Court's decision not to grant preliminary injunctive relief on this issue turned on its conclusion, based in part on its understanding of the Attorney General's briefing, that Illinois' wildcard statutes apply to all entities, not just those that Illinois charters. That briefing, however, made that point only about the IFPA, not about the wildcard statutes. The dormant Commerce Clause thus requires extending the wildcard statutes' effect to out-of-state state institutions too.

Finally—and crucially—the Court should enter a permanent injunction that covers not only federal and out-of-state banks, savings banks, and credit unions, but also other participants in the tightly intertwined payment system when they perform functions necessary to those institutions' federally protected payment businesses. As the more developed—and undisputed—record shows, absent this relief, the IFPA would continue to indirectly (and improperly) restrict federally protected institutions in ways the Court has already determined the State cannot do directly.

The Court declined to enter a broader *preliminary* injunction based on the Dodd-Frank Act's provision respecting "subsidiar[ies], affiliate[s], and agent[s]." Dkt. 104 at 27-28 (citing 12 U.S.C. § 25b(h)(2)). But Plaintiffs are not seeking preemption for any such entities in their own right—which is all that the provision forbids. Illinois may not use the regulation of other entities to indirectly accomplish what it could not do directly: forbid the exercise of federally guaranteed powers. And in any event, many of the participants in the payment system fall outside any of the categories that provision of Dodd-Frank addresses, including Card Networks such as Visa and Mastercard (which are service providers under applicable federal law).

Bedrock equitable principles also compel a broader injunction. An "injunction must … be broad enough to be effective." *Russian Media Grp., LLC v. Cable Am., Inc.*, 598 F.3d 302, 307 (7th Cir. 2010). And a court can "impose the equitable relief necessary to render complete relief to the plaintiff, even if that relief extends incidentally to non-parties." *City of Chi. v. Barr*, 961 F.3d 882, 920-21 (7th Cir. 2020). Here, federally protected financial institutions depend on others to carry out their business. Unless those others are covered by a permanent injunction to the extent they are integral to collection of interchange and processing of debit, credit, and prepaid card transactions, Issuers and Acquirers will be denied the federal-law protection to which this Court has held they are likely entitled. Equity does not demand, or even permit, this inequitable result.

BACKGROUND

A. The United States' Financial System Protects Federally Chartered Institutions from State Interference.

1. Federal law grants national banks and other federally chartered institutions federally guaranteed powers.

As "instrumentalities of the federal government," national banks are "subject to the paramount authority of the United States." *Davis v. Elmira Sav. Bank*, 161 U.S. 275, 283 (1896). The Office of the Comptroller of the Currency ("OCC") "oversees the operations of national banks." *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 6 (2007). "When a bank obtains a federal charter under the National Bank Act, [it] gains various enumerated and incidental powers" pursuant to federal law. *Cantero v. Bank of Am., N.A.*, 144 S. Ct. 1290, 1295 (2024). For example, national banks may "receiv[e] deposits" and "loan[] money on personal security." 12 U.S.C. § 24 (Seventh). More broadly, the NBA empowers national banks "[t]o exercise … all such incidental powers as shall be necessary to carry on the business of banking." *Id.*

To protect against a patchwork of laws and regulations from states and other jurisdictions, the NBA preempts any state law that would "prevent or significantly interfere with [a] national bank's exercise of its powers," whether "enumerated" or "incidental." *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25, 32-33 (1996); *see also Cantero*, 144 S. Ct. at 1300 (reiterating *Barnett Bank* standard); 12 U.S.C. § 25b(b)(1)(B) (codifying *Barnett Bank* standard in some contexts). In this way, the NBA gives national banks, which serve customers across the country, "needed protection from possible unfriendly state legislation." *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 10 (2003) (internal quotation marks omitted). As the Comptroller of the Currency explained in this case, preemption protects an "intricately-designed Nation-wide payments system" from an "unmanageable patchwork of state laws that undermine the uniformity necessary for the smooth and effective functioning of the national payment system." Dkt. 61-1 at 1-2.

Congress has likewise granted federal powers to other financial institutions and protected them against state intrusion. Thus, Federal savings associations derive their powers from the HOLA, which the OCC also administers. 12 U.S.C. § 1464; *see, e.g.*, *id.* § 1464(b)(1)(A)(i)-(ii) (power to "raise funds through … deposit[s]" and "issue … evidence of accounts" like debit cards). The HOLA directs courts to apply "the laws and legal standard applicable to national banks" in assessing federal preemption of state regulation of Federal savings associations. *Id.* § 1465(a).

The story is much the same for federal credit unions. During the Great Depression, Congress enacted the FCUA "to make more available to people of small means credit … , thereby helping to stabilize the credit structure of the United States." *T I Fed. Credit Union v. DelBonis*, 72 F.3d 921, 931 (1st Cir. 1995). The FCUA grants federal credit unions powers including "to make loans … and extend lines of credit to [] members," as well as "such incidental powers as shall be necessary or requisite to enable [them] to carry on effectively the business for which [they are] incorporated." 12 U.S.C. § 1757(5), (17). The National Credit Union Administration ("NCUA") oversees federal credit unions and "prescribe[s] rules and regulations for the administration" of the FCUA. *Id.* § 1766(a). Federal law also guards against duplicative or inconsistent state regulation by "preempt[ing] any state law purporting to limit or affect" "the rates, terms of repayment and other conditions of Federal credit union loans and lines of credit (including credit cards) to members." 12 C.F.R. § 701.21(b)(1) (citing 12 U.S.C. § 1757(5)).

2. The Durbin Amendment and its implementing Regulation II exclusively define permissible debit card interchange fee amounts.

As part of the federal system of financial regulation, Congress enacted the "Durbin Amendment" to the EFTA, directing the Federal Reserve to "prescribe regulations … regarding any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction." 15 U.S.C. § 1693o-2(a). The Federal Reserve then promulgated Regulation II,

which limits debit card interchange fees to a fixed rate of "21 cents" plus an *ad valorem* component of 0.05% "multiplied by the value of the transaction." 12 C.F.R. § 235.3(b); *see also id.* § 235.4(a) (permitting Issuers that meet certain fraud-prevention standards to charge an additional $0.01 per transaction). This "Uniform Interchange Fee Standard" "applies to *all* electronic debit transactions not otherwise exempt." 76 Fed. Reg. 43394, 43434 (July 20, 2011) (emphasis added); *see also* 12 C.F.R. § 235.5 (noting exemptions from Regulation II's coverage).

B. State and Federal Law Ensures That State-Chartered Financial Institutions Are Not Unfairly Disadvantaged by Preemption of State Regulation.

In the United States' dual financial system of parallel federal and state banking regimes, parity principles ensure a level playing field for state-chartered banks. The Illinois Legislature has granted Illinois-chartered banks the power, "[n]otwithstanding any other provisions of [the Illinois Banking Act] or any other law, to do any act … that is at the time authorized or permitted to national banks by an Act of Congress." 205 ILCS 5/5(11). It has enacted similar "wildcard" statutes for the savings banks and credit unions it charters. *See* 205 ILCS 205/6002(a)(11) (Illinois savings banks); 205 ILCS 305/65 (Illinois credit unions). These statutes effectively extend federal preemption under the NBA, HOLA, and FCUA to corresponding Illinois-chartered institutions, in order to prevent them from being disadvantaged relative to their federal competitors. And the federal dormant Commerce Clause's prohibition on "regulatory measures" that "benefit in-state economic interests by burdening out-of-state competitors," *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 369 (2023), requires that out-of-state financial institutions enjoy the same follow-on preemption as in-state institutions. Indeed, 12 U.S.C. § 1831a(j)(1), often called "Riegle-Neal," also protects out-of-state state banks by providing that "[t]he laws of a host State … shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank."

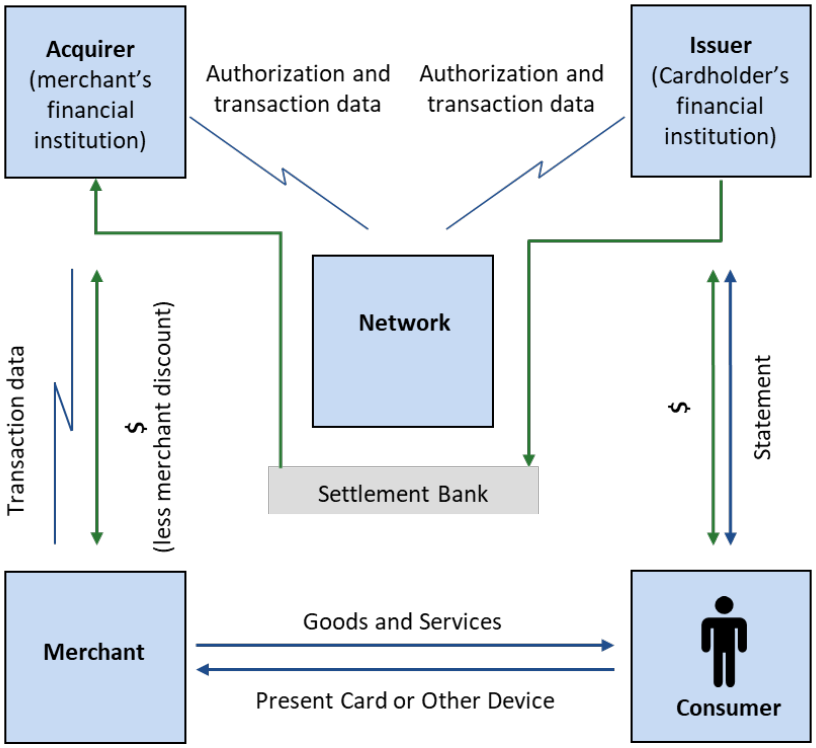
C. Plaintiffs' Members Exercise Their Federal Powers Through the Nation's Credit and Debit Card Payment Systems.

Among the financial services Plaintiffs' members offer pursuant to their federal powers are the processing of credit and debit card transactions. These services are ubiquitous; in 2023, "99 percent of U.S. consumers had a credit card and/or a debit card and/or a prepaid card." SOUF ¶ 19. Consumers use these cards to make purchases "for a wide range of activities." *Id.* (listing examples including "buying goods in stores," "shopping online," "paying bills," and "ordering through different apps" like Uber or DoorDash). These functions depend on an intricate, nationwide system designed to facilitate commerce while protecting participants.

To begin, a consumer is evaluated and approved for a credit card or deposit account by an Issuer, which is "responsible for cardholder functions such as assessing cardholder risk (e.g., know-your-customer and underwriting), as well as transaction processing and cardholding services." *Id.* ¶ 32. Issuers administer reward programs, monitor the cardholder's account for suspicious or fraudulent activity, and handle fraud and other transaction-related disputes, including by absorbing the costs of fraudulent charges. *Id.* ¶ 33. On the merchant side, to accept cards for payment, merchants typically establish a relationship with an Acquirer that is a licensed member of at least one of the Card Networks. *Id.* ¶ 34.

Relying on these relationships, cardholders use credit or debit cards to purchase goods or services from restaurants, stores, gas stations, and other merchants. The steps and information flow for authorizing and approving a transaction are depicted in Figure 1 on the following page[1]:

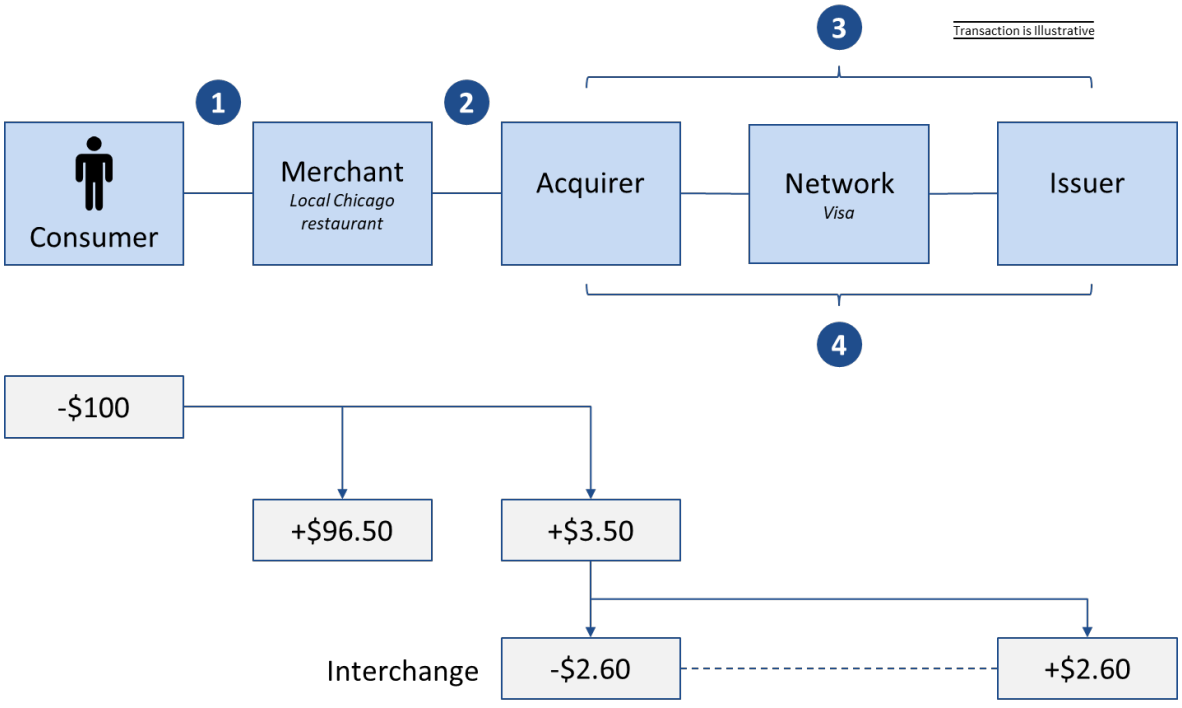
[1] *See* SOUF ¶ 36. For simplicity, this diagram does not separately illustrate the role of merchant processors and issuer processors, but processors also play important roles in the payment system. *See id.* ¶¶ 22, 24-25, 27, 31.



When a cardholder purchases goods or services, the merchant sends information about the card, the merchant, and the total purchase amount to the merchant's Acquirer. *Id.* ¶ 35. The Acquirer routes that information through the proper Card Network, requesting authorization of the transaction from the Issuer (e.g., to determine whether a cardholder has enough money or credit available to cover the purchase, and if there are any indicia of fraud). *Id.* ¶ 36. The Issuer then applies its policies to determine whether to authorize the transaction. *Id.* That determination flows back through the Card Network, to the Acquirer, and then to the Merchant. *Id.* If the transaction is authorized, the merchant completes it, and the cardholder receives the goods or services. *Id.* ¶ 37. The banks and Card Networks facilitate this entire process in seconds, using their sophisticated technology and infrastructure to create a seamless experience for both merchant and consumer. *Id.*

After transactions are authorized, approved, and posted, the Card Networks facilitate the flow of funds between cardholders (via Issuers) and merchants (via Acquirers) to settle the

transactions. *Id.* ¶ 38. The Acquirer receives a fee from the Merchant and transmits an interchange fee through the Card Network to the Issuer. *Id.* ¶ 42. The amount of the interchange fee varies based on different aspects of the transaction, such as whether or not the card is present, and typically consists of both a fixed amount and a percentage of the overall transaction. *Id.* ¶ 40. Interchange fees compensate the Issuer for its role in the transaction and for the costs and risk of providing and maintaining the cardholder's account and extending credit. *Id.* ¶ 43. They also fund core programs that benefit consumers, such as fraud protection and card rewards. *Id.*[2] As Figure 2 demonstrates, the interchange fee is passed through the system; the interchange fee paid by the Acquirer, transmitted through the Network, and received by the Issuer are all necessarily the same. *Id.* ¶ 46. Issuers exempt from the IFPA thus cannot receive the interchange they are entitled to unless all upstream parties are allowed to play their necessary roles in the system. *Id.* ¶¶ 45-46.



[2] The Acquirer and Issuer each also pay a separate fee in connection with each transaction to compensate the Card Network for its role in facilitating the payment process. SOUF ¶ 44.

D. The IFPA Threatens to Upend this Intricate Interchange System by Limiting Interchange Fees and Data Usage.

Enacted as part of an omnibus budget bill, H.B. 4951, the IFPA forbids banks and other institutions from charging or receiving interchange fees—which it defines 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"—on the Illinois state or local tax or gratuity portion of any credit or debit card transaction. 815 ILCS 151/150-5, 150-10.[3] "[I]f the merchant informs the acquirer bank or its designee of the tax or gratuity amount as part of the authorization or settlement process for [an] electronic payment transaction," then the law forbids entities including "[a]n issuer, a payment card network, [and] an acquirer bank" from "receiv[ing] or charg[ing] a merchant any interchange fee" on any gratuities or any "use and occupation tax or excise tax imposed by" Illinois or by a "local government" in Illinois. *Id.* §§ 150-5, 150-10(a). If a merchant "does not transmit the tax or gratuity amount data" with the transaction, but instead sends that information to the Acquirer within 180 days, "the issuer must credit to the merchant the amount of interchange fees charged on the tax or gratuity amount" within 30 days. *Id.* § 150-10(b). (Notably, the Act imposes this 30-day refund obligation on *Issuers*, yet directs merchants to submit tax and gratuity data to their *Acquirers*, without any provision for how the data is to be passed along.) The Act also makes it "unlawful" to "alter or manipulate the computation and imposition of interchange fees by increasing the rate or amount of the fees applicable to or imposed upon the portion of a … transaction not attributable to taxes or other fees charged to the retailer to circumvent the effect of [the IFPA]." *Id.* § 150-10(d). A bank or other entity that violates these provisions "is subject to a civil penalty of $1,000 per electronic payment transaction, and the issuer

[3] The IFPA defines "debit card" to include "general use prepaid cards." 815 ILCS 151/150-5. As relevant here, there is no material distinction between prepaid debit cards and other debit cards.

must refund the merchant the interchange fee calculated on the tax or gratuity amount." *Id.* § 150-15(a). As the Court has held, the Attorney General may enforce this section. Dkt. 104 at 8-9.

The IFPA's Data Usage Limitation also makes it unlawful for any "entity, other than the merchant, involved in facilitating or processing an electronic payment transaction" to "distribute, exchange, transfer, disseminate, or use the electronic payment transaction data except to facilitate or process the … transaction or as required by law." 815 ILCS 151/150-15(b). "A violation of this subsection constitutes a violation of the [Illinois] Consumer Fraud and Deceptive Business Practices Act," *id.*, which the Attorney General may enforce. *See, e.g.*, 815 ILCS 505/7.

The IFPA will "take[] effect July 1, 2025." Ill. P.A. 103-592 (H.B. 4951), § 999-99.

E. The Court Preliminarily Enjoins the IFPA in Part.

Faced with this threat to the payment ecosystem, Plaintiffs sought a preliminary injunction prohibiting the Attorney General from enforcing the IFPA. *See* Dkt. 15. In a pair of orders issued on December 20, 2024 and February 6, 2025, the Court granted that request in part. First, the Court denied in substantial part the Attorney General's simultaneously briefed motion to dismiss. The Court agreed with both parties that it lacked jurisdiction over Plaintiffs' claims that Illinois law prevented IFPA enforcement against Illinois-chartered institutions, but rejected the Attorney General's arguments that sovereign immunity or a lack of standing barred any of Plaintiffs' other claims, which argue that various sources of federal law preempt the IFPA. Dkt. 104 at 7-14.

The Court then found that Plaintiffs demonstrated a likelihood of success on the merits of their argument that both aspects of the IFPA—the Interchange Fee Prohibition and the Data Usage Limitation—significantly interfered with powers granted by the NBA and are thus preempted as to national banks. *Id.* at 16-24. The Court noted that both IFPA restrictions "directly constrain" such banking powers and, further, that the Supreme Court precedent that *Cantero* instructed courts to examine "further illuminates" and "instructs" that preemption exists here. *Id.* at 18-19, 23. The

Court also found a likelihood of success for Federal savings associations as to HOLA preemption of the IFPA, *id.* at 24, and for out-of-state state-chartered banks as to protection against IFPA enforcement under 12 U.S.C. § 1831a(j)(1), Dkt. 115 at 7-8.

For reasons discussed below, however, the Court did not grant preliminary injunctive relief based on Plaintiffs' arguments (1) that the FCUA preempts the IFPA, *see id.* at 3-7; (2) that the dormant Commerce Clause protects out-of-state state financial institutions, *see* Dkt. 104 at 30-31; (3) that "in order to effectuate federal preemption, the IFPA cannot be applied to Card Networks or others involved in the payment process," *see id.* at 27-28; *see id.* (concluding that Plaintiffs had provided "insufficient support" for this argument); and (4) that the Durbin Amendment preempts the IFPA as applied to debit card transactions, *see id.* at 28-30.

As to the aspects of Plaintiffs' claims for which it found a likelihood of success on the merits, the Court also found that (1) Plaintiffs would suffer irreparable harm absent an injunction; and (2) the balance of equities and public interest favored an injunction. *Id.* at 33-36.

ARGUMENT

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). "Once the moving party puts forth evidence showing the absence of a genuine dispute of material fact, the burden shifts to the non-moving party to provide evidence of specific facts creating a genuine dispute." *Carroll v. Lynch*, 698 F.3d 561, 564 (7th Cir. 2012). "[Q]uestions of preemption are often resolved at the summary judgment stage since legal questions generally predominate." *Nat'l Aluminum Co. v. Peak Chem. Corp., Inc.*, 132 F. Supp. 3d 990, 993 (N.D. Ill. 2015).

The requirements for a permanent injunction largely track those of a preliminary injunction. The party seeking the injunction must show "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury;

(3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006). The primary difference between the two is that a permanent injunction requires "not just a probability of success on the merits but actual success." *Vaughn v. Walthall*, 968 F.3d 814, 824-25 (7th Cir. 2020).

I. FEDERAL LAW PREEMPTS THE IFPA.

The IFPA is preempted by federal law as applied to federally chartered financial institutions and invalid as applied to financial institutions chartered by states other than Illinois under federal parity principles that undergird the nation's dual banking system.

A. The IFPA Is Preempted by the National Bank Act.

As the Court recognized in preliminarily enjoining IFPA enforcement against national banks, the NBA preempts the IFPA because both the Interchange Fee Prohibition and the Data Usage Limitation significantly interfere with national banks' exercise of multiple federal powers. *See* Dkt. 104 at 16-24. The Court had good company in reaching that conclusion, as the OCC's amicus brief explained that "this much is clear: the IFPA prevents or significantly interferes with federally-authorized banking powers …." Dkt. 61-1 at 1.

As noted above, the NBA preempts any state law that "prevents or significantly interferes with [a] national bank's exercise of its powers." *Cantero*, 144 S. Ct. at 1300; *see also Barnett Bank*, 517 U.S. at 32-33 (same). Whether a state law significantly interferes with national banking powers should be assessed "based on the text and structure of the [state law], comparison to other precedents, and common sense." *Cantero*, 144 S. Ct. at 1301 n.3. Under that test, the Interchange Fee Prohibition and the Data Usage Limitation both plainly "prevent[] or significantly interfere[] with" powers the NBA grants national banks. They are both thus preempted.

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

The NBA grants national banks the powers to "carry on the business of banking" by, among other things, "receiving deposits" and "loaning money on personal security," as well as by exercising "all such incidental powers as shall be necessary." 12 U.S.C. § 24 (Seventh). "An activity is authorized for a national bank as incidental to the business of banking if it is convenient or useful to an activity that is specifically authorized for national banks or to an activity that is otherwise part of the business of banking." 12 C.F.R. § 7.1000(d)(1). As the OCC has long recognized, "[t]he processing of credit card transactions for merchants is a part of or incidental to the business of banking within the meaning of [the NBA]." OCC Inter. Ltr. 689, 1995 WL 604271, at *1 (Aug. 9, 1995). Likewise, the NBA gives national banks the power to process debit card transactions. *See* *Gutierrez v. Wells Fargo Bank, NA*, 704 F.3d 712, 723 (9th Cir. 2012). In short, as the OCC itself has explained in this case, it "has interpreted § 24(Seventh) to authorize national banks to engage in merchant processing activities, which are defined as 'the settlement of credit and debit card payment transactions by banks for merchants through various card associations.'" Dkt. 61-1 at 7 (quoting OCC Comptroller's Handbook, Merchant Processing, at 1 (Aug. 2014)[4]; *see also, e.g.*, OCC, Activities Permissible for National Banks and Federal Savings Associations, Cumulative, at 75 (Oct. 2017) (national banks "can provide authorization and processing services necessary for the merchants to accept online credit and debit card payments in a secure environment").[5]

[4] https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/merchant-processing/pub-ch-merchant-processing.pdf.

[5] https://www.occ.gov/publications-and-resources/publications/banker-education/files/activities-permissible-nat-banks-fed-savings-associations.html.

The NBA also gives national banks the power to receive fees for their services. For example, one non-exhaustive OCC regulation authorizes any national bank to "charge its customers non-interest charges and fees." 12 C.F.R. § 7.4002(a). Thus, the powers to participate in processing card transactions, make loans through credit cards, and administer deposit accounts and their accompanying debit cards carry with them the power to receive fees for those services.

The IFPA's Interchange Fee Prohibition "prevents or significantly interferes" with the exercise of national banks' powers in multiple ways. It significantly interferes with the power to charge and receive fees by forbidding national banks from collecting, directly or through critical network participants, a portion of the fees that the NBA permits for performing services. It also significantly interferes with national banks' power to engage in merchant acquiring activities and processing services, all while imposing burdensome requirements on those underlying services.

a. The Interchange Fee Prohibition prevents or significantly interferes with national banks' power to receive fees for the services they provide.

The NBA authorizes national banks to receive fees for the services they provide. *See, e.g.*, 12 C.F.R. § 7.4002(a). And courts—including the Supreme Court in cases cited by *Cantero* as emblematic of preemption—routinely recognize that the NBA preempts state law that limits when or how national banks may take an action the NBA permits. In *Fidelity Federal Savings & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 155 (1982), for example, federal law allowed, but did "not compel, federal savings and loans to include due-on-sale clauses in their [mortgage] contracts." California sought to "limit[]" that right by allowing enforcement of such clauses only when "reasonably necessary" to protect a security interest. *Id.* at 149, 154-55. The Court, however, held that that state law was preempted because it impinged on "the 'flexibility' given" by federal law. *Id.* at 155; *see also Barnett Bank*, 517 U.S. at 33 ("normally Congress would not want States to forbid, or to impair significantly, the exercise of a power that Congress explicitly granted"). So

too here. The IFPA "deprive[s] the [banks] of the 'flexibility'" the NBA and its implementing regulations offer by barring national banks from receiving a portion of the fees that the NBA authorizes in connection with virtually every Illinois credit and debit card transaction. *See* 12 C.F.R. § 7.4002(a). By contrast, as this Court has recognized, the IFPA looks nothing like statutes upheld against preemption challenges in the cases *Cantero* cited. Dkt. 104 at 21 (discussing *First Nat'l Bank v. Commonwealth of Kentucky*, 76 U.S. (9 Wall.) 353 (1870), and *McClellan v. Chipman*, 164 U.S. 347 (1896)).

Unsurprisingly, circuit courts confronted with examples of explicit limitations on national banks' fee-related powers akin to the Interchange Fee Prohibition have held them preempted. For example, *Bank of America v. City and County of San Francisco* held that municipal ordinances prohibiting ATM fees on non-depositors were preempted, because federal law permitted national banks to charge such fees without reference to whether they were charged to depositors or non-depositors. 309 F.3d 551, 562-64 (9th Cir. 2002). Likewise, *Baptista v. JPMorgan Chase Bank, N.A.*, held that the NBA preempted a state law barring banks from imposing check cashing fees on those without accounts at the bank because OCC's regulations had "the significant objective of … allow[ing] national banks to charge fees and [allowing] banks latitude to decide how to charge them." 640 F.3d 1194, 1198 n.2 (11th Cir. 2011) (citing 12 C.F.R. § 7.4002); *see also Wells Fargo Bank of Tx. NA v. James*, 321 F.3d 488, 495 (5th Cir. 2003).

The same principles govern here. Federal law gives national banks the power to charge and receive fees—including interchange fees paid to Issuers—to process payment card transactions. The IFPA's diktat that banks may not receive such fees on the portion of a transaction attributable to tax or gratuity thus denies national banks a power that the NBA accords them. It is therefore preempted.

b. The Interchange Fee Prohibition prevents or significantly interferes with the powers to process card transactions, receive deposits, and make loans through credit cards.

The IFPA's Interchange Fee Prohibition also "significantly interferes with" national banks' powers to process credit and debit card transactions and, by extension, their powers to make loans and receive deposits. Here, *Franklin National Bank of Franklin Square v. New York*, 347 U.S. 373 (1954)—which the Supreme Court described in *Cantero* as "[t]he paradigmatic example of significant interference," *Cantero*, 144 S. Ct. at 1298—governs. In *Franklin National Bank*, the Supreme Court held that, because national banks had express authority to receive savings deposits, federal law protected their "incidental power[]" to engage in "advertising" for such accounts. 347 U.S. at 377. The NBA thus preempted a New York law that created a "clear conflict" with this incidental power by precluding the use of the word "savings" in national banks' advertisements. *Id.* at 374, 378. "Importantly," *Cantero* emphasized, that was so even though "the New York law did not bar national banks from receiving savings deposits, 'or even' from 'advertising that fact'" using different words. *Cantero*, 144 S. Ct. at 1298 (quoting *Franklin Nat'l Bank*, 347 U.S. at 378). "Federal law gave national banks the power not only 'to engage in a business,' but also 'to let the public know about it,'—and state law could not interfere with the national bank's ability to do so efficiently." *Id.* (quoting *Franklin Nat'l Bank*, 347 U.S. at 377-78).

The IFPA's Interchange Fee Prohibition interferes with the "efficient" exercise of national bank powers far more significantly than the New York law at issue in *Franklin National Bank* did. Instead of merely limiting the form that advertising for a particular service may take, it targets the service itself. State limitations on national banks' federal authority to charge interchange fees will compromise banks' ability to offer debit and credit card processing services—as well as to hold deposits and extend credit—in the manner that best advances their business goals while deterring and detecting fraud. That is precisely the type of result that the NBA's preemption rule forecloses.

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

The IFPA's Data Usage Limitation is similarly preempted. That provision makes it unlawful for banks and any other entities "involved in facilitating or processing an electronic payment transaction"—except for merchants—to "distribute, exchange, transfer, disseminate, or use the electronic payment transaction data except to facilitate or process the electronic payment transaction or as required by law." 815 ILCS 151/150-15(b). That cannot be squared with national banks' broad power under the NBA to process data. 12 C.F.R. § 7.5006(a). Nor can it be squared with national banks' need—and, therefore, incidental power, *see* 12 C.F.R. § 7.1000(d)(1)—to process, use, or otherwise employ electronic payment transaction data in various ways to "efficiently" provide credit and debit card processing services, make loans, and receive deposits.

a. The Data Usage Limitation prevents or significantly interferes with the power to process data.

Just as the IFPA's Interchange Fee Prohibition impermissibly limits national banks' power to receive fees in their discretion, the IFPA's Data Usage Limitation impermissibly limits their power to process data in their discretion. A national bank has the express federal power to "provide data processing, and data transmission services … and access to such services … for itself and for others" with respect to "banking, financial, or economic data," which "includes anything of value in banking and financial decisions." 12 C.F.R. § 7.5006(a); *see also id.* (describing these "activities" as "part of the business of banking"). Because federal law permits the processing and use of data whether or not it comes from particular transactions, Illinois' attempt to impose limits based on that characteristic of the data is preempted. *See Bank of Am.*, 309 F.3d at 562-64. In other words, by unlawfully "depriv[ing]" national banks of the "flexibility" federal law accords them to process and otherwise employ data, the IFPA's Data Usage Limitation conflicts with that law and is preempted. *See Fidelity Fed. Sav. & Loan*, 458 U.S. at 155.

b. The Data Usage Limitation prevents or significantly interferes with the power to process credit and debit card transactions, receive deposits, and make loans.

By making it impossible to "efficiently" process credit and debit card transactions, and by extension to make loans and receive deposits, the IFPA's Data Usage Limitation also significantly interferes with those underlying federal powers. The Illinois law's sweeping scope could outlaw a broad range of data uses that, as common sense indicates, are critical for these services' operational success or economic viability. For example, financial institutions commonly use transaction data to build predictive models that detect and combat fraud, which poses a continuing and substantial problem. SOUF ¶¶ 52-55 ("[T]he IFPA would render our account data virtually useless for fraud prevention, essentially guaranteeing real dollar losses by customers, the bank or both."). As is the case for its Interchange Fee Prohibition, the IFPA's Data Usage Limitation works a far more significant interference with national banks' ability to "efficiently" provide credit and debit card processing services than did the New York advertising limit from *Franklin National Bank* that the Supreme Court recently called the "paradigmatic example of significant interference." *See* *Cantero*, 144 S. Ct. at 1298 (citing *Franklin Nat'l Bank*, 347 U.S. at 377-78). Just as the Court recognized Plaintiffs would likely be able to show, the Data Usage Limitation is thus preempted as well. *See* Dkt. 104 at 24.

3. Federal law preempts the IFPA as to out-of-state state banks.

Multiple sources of federal law extend the effect of NBA preemption to out-of-state state banks. Indeed, this Court has already recognized as much in finding that Plaintiffs will likely succeed on their claims under 12 U.S.C. § 1831a(j). *See* Dkt. 115 at 7-8. The Court's conclusion was correct. That statute provides that "[t]he laws of a host State … shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank." As prior state and federal authority—and now

this Court—have all recognized, § 1831a(j)(1) gives "an out-of-state, state bank … the same power and authority as a national bank," and interference with those powers is likewise "preempted." *Johnson v. First Banks, Inc.*, 889 N.E.2d 233, 238 (Ill. App. Ct. 2008); *see also Pereira v. Regions Bank*, 752 F.3d 1354, 1356-57 (11th Cir. 2014) (per curiam) (similar); Dkt 115 at 7-8 ("Like in *Pereira*, here the Court previously concluded that the NBA likely preempts a state statute, and therefore, it follows that § 1831a(j) preempts the law as to out-of-state state banks." (internal citation omitted)).

Moreover, even aside from § 1831a(j), the dormant Commerce Clause protects out-of-state state banks from the discriminatory reach of the IFPA. The Illinois Banking Act grants banks with Illinois charters the power, "*[n]otwithstanding any other provisions of [the Illinois Banking Act] or any other law*, to do any act … that is at the time authorized or permitted to national banks by an Act of Congress." 205 ILCS 5/5(11) (emphasis added). Under this provision, "Illinois state banks for [decades] have enjoyed parity with national banks." Ill. Dep't of Financial & Professional Regulation, Interpretive Ltr. 2000-02, at 1 (Jan. 12, 2000)[6]; *see also Johnson*, 889 N.E.2d at 238 (citing 205 ILCS 5/5(11)). That means that when the NBA gives a national bank authority to carry out an action notwithstanding contrary state law, the Illinois Banking Act gives banks that Illinois itself charters the same protection.[7] Illinois law, however, provides no comparable protection to banks chartered by *other* states.

[6] https://idfpr.illinois.gov/content/dam/soi/en/web/idfpr/banks/cbt/legal/intrltr/btil0002.pdf.

[7] Although Plaintiffs' state-law claims under the Illinois wildcard statutes are no longer before the Court due to the State's continuing assertion of sovereign immunity against them, these state laws remain relevant to Plaintiffs' live *federal* claims under the Dormant Commerce Clause. *See, e.g.*, *Williams ex rel. J.E. v. Reeves*, 954 F.3d 729, 739-40 (5th Cir. 2020) (seeking interpretation of state law "does not run afoul of *Pennhurst*" when it "does not ask the court to compel compliance with 'state law qua state law'"); *Everett v. Schramm*, 772 F.2d 1114, 1119 (3d Cir. 1985).

That blatant discrimination flagrantly violates the dormant Commerce Clause, which forbids "regulatory measures" that "benefit in-state economic interests by burdening out-of-state competitors." *Ross*, 598 U.S. at 369; *see also Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 352-53 (1977) (discriminatory statutes forbidden even if they are enacted for non-discriminatory purposes, such as "protecting consumers"). Because the wildcard provision of the Illinois Bank Act essentially extends NBA preemption to in-state state banks, the dormant Commerce Clause requires equivalent treatment for out-of-state state banks. Otherwise, Illinois law would violate the "cardinal principle that a State may not benefit in-state economic interests by burdening out-of-state competitors." *W. Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 199 (1994) (internal quotation marks omitted); *see also id.* at 194 (collecting a "legion" of cases).

The Court previously found this argument unlikely to succeed based on the following reasoning: "As the State points out, the wildcard laws apply to all entities doing business [in] Illinois. (Dkt. 76 at 35). This makes it difficult to find that the wildcard statute advantages in-state firms or disadvantages out-of-state rivals." Dkt. 104 at 31 (brackets and internal quotation marks omitted). If the wildcard statutes applied to *all* state-chartered entities, Plaintiffs' dormant Commerce Clause argument would indeed fail. Respectfully, however, the statutes do not say that, nor did the Attorney General argue that they do. By their plain terms, the statutes themselves apply only to financial institutions *chartered by Illinois*. 205 ILCS 5/5 (applying only to banks "organized under this Act or subject hereto"); 205 ILCS 205/1001 *et seq.* (distinguishing between "savings banks" and "out-of-state savings banks"); 205 ILCS 205/6002(a)(11) (applying only to savings banks); 205 ILCS 305/65 (applying only to credit unions "incorporated under the laws of this State"). And when the Attorney General asserted that "the Act applies to all entities doing business in Illinois," he was referring to *the IFPA*, not to the wildcard statutes. *See* Dkt. 76 at 35.

In short, because the Illinois Banking Act protects Illinois-chartered banks from the IFPA, the dormant Commerce Clause requires that out-of-state state banks receive the same protection.

B. The IFPA Is Preempted by the Home Owners' Loan Act.

As this Court has recognized, "the preemption standard governing the NBA and HOLA is the same," and the "HOLA gives federal savings associations comparable powers to those that the NBA grants national banks." Dkt. 104 at 24 (citing 12 U.S.C. § 1465(a)). It follows that the HOLA preempts the IFPA as applied to Federal savings associations for materially the same reasons that the NBA preempts the IFPA as applied to national banks.

1. The HOLA preempts the Interchange Fee Prohibition.

Under the HOLA and its implementing regulations, Federal savings associations enjoy the powers to offer credit cards, 12 U.S.C. § 1464(c)(1)(T), to "raise funds through … deposit[s]" and "issue … evidence of accounts" such as debit cards, *id.* § 1464(b)(1)(A)(i)-(ii), and to charge fees, including "to transfer … its customers' funds," *see, e.g.*, 12 C.F.R. § 145.17. For all the same reasons that the IFPA's Interchange Fee Prohibition "prevents or significantly interferes with" national banks' exercise of their federally granted powers, that provision does the same with respect to the corresponding powers of Federal savings associations. *See supra* Section I.A.1.

2. The HOLA preempts the Data Usage Limitation.

The IFPA's Data Usage Limitation is also preempted under the HOLA just as it is under the NBA. Federal savings associations have the federal power, operating through a service corporation, to engage in "data processing" that is "generally finance-related." 12 C.F.R. § 5.59(f)(2)(vi). Moreover, that power is necessary to efficiently carry out its underlying credit card and deposit operations. Accordingly, the Data Usage Limitation "prevents or significantly interferes with" Federal savings associations' exercise of their federal powers for the same reasons it interferes with national banks' corresponding federal powers. *See supra* Section I.A.2.

3. Federal law preempts the IFPA as to out-of-state state savings banks.

Just as with state-chartered banks, Illinois has opted to give the savings banks it charters the same powers their federal equivalents enjoy. Specifically, with exceptions not relevant here, Illinois permits savings banks it charters to "make any loan or investment or engage in any activity that it could make or engage in if it were organized … under federal law as a federal savings and loan association or federal savings bank." 205 ILCS 205/6002(a)(11); *see also* 205 ILCS 205/1001 *et seq.* (distinguishing between "savings banks" and "out-of-state savings banks"). The dormant Commerce Clause ensures as a matter of *federal* law that out-of-state savings banks and savings associations receive this same protection. *See Ross*, 598 U.S. at 369. As was the case with respect to the dormant Commerce Clause argument regarding out-of-state state banks, the Court's contrary conclusion rested solely on a misapprehension that the Illinois wildcard statutes protect, on their own terms, both in-state and out-of-state entities. *See supra* at 21.

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

The FCUA preempts the IFPA's application to federal credit unions for multiple reasons. First, because federal credit unions are federal instrumentalities just like national banks and Federal savings associations are, the *Barnett Bank* significant interference standard applies to them as well. Under that test, the IFPA is preempted just as it is for the other federally chartered financial institutions. Moreover, even if the *Barnett Bank* standard did not apply, the IFPA would be preempted by the FCUA because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of that federal enactment. *See Petr ex rel. BWGS, LLC v. BMO Harris Bank N.A.*, 95 F.4th 1090, 1102 (7th Cir. 2024) (internal quotation marks omitted).

1. The FCUA preempts the IFPA under the *Barnett Bank* standard.

The *Barnett Bank* standard developed from the recognition that national banks are instrumentalities of the federal government, and that "grants of authority" to them are "not

normally limited by, but rather ordinarily preempting, contrary state law." *Barnett Bank*, 517 U.S. at 32 (citing preemption cases from the late nineteenth and early twentieth centuries). Although a presumption against preemption makes sense in some other contexts, it has no place "when the State regulates in an area where there has been a history of significant federal presence." *United States v. Locke*, 529 U.S. 89, 108 (2000); *see also Bank of Am.*, 309 F.3d at 559 ("[B]ecause there has been a 'history of significant federal presence' in national banking, the presumption against preemption of state law is inapplicable." (quoting *Locke*, 529 U.S. at 108)).

Courts, including the Supreme Court, routinely extend this approach to other federal instrumentalities too. Perhaps most notably, as its caption suggests, *Fidelity Federal Savings & Loan Ass'n v. de la Cuesta* involved preemption in favor not of a national bank, but of a federal savings and loan association (the predecessor of the modern Federal savings association). 458 U.S. 141 (1982). Courts look to case law involving national bank preemption in the context of other federal instrumentalities because "[d]esignating an entity a federal instrumentality colors the typical preemption analysis by requiring the court to presume, in the absence of clear and unambiguous congressional authorization to the contrary, that Congress intended to preempt state or local regulation of the federal instrumentality." *Mount Olivet Cemetery Ass'n v. Salt Lake City*, 164 F.3d 480, 486 (10th Cir. 1998); *see, e.g.*, *Fed. Nat. Mortg. Ass'n v. Lefkowitz*, 390 F. Supp. 1364, 1371 (S.D.N.Y. 1975) (applying standard from national bank case to Fannie Mae).

That logic applies fully to federal credit unions. Congress enacted the FCUA over 90 years ago "to make more available to people of small means credit … , thereby helping to stabilize the credit structure of the United States." *DelBonis*, 72 F.3d at 931. Federal credit unions "were intended to perform a variety of governmental functions," and "still do." *Id.* at 932. Among these are "provid[ing] credit at reasonable rates to millions of individuals who—because they lack

security, or … reside in low income areas … , would otherwise be unable to acquire it." *Id.* Indeed, the Seventh Circuit has observed that "the history of the [FCUA] reveals that the uniform administration of federal credit unions, which can be achieved only by application of federal law, was of paramount importance to Congress when it enacted [it]." *Barany v. Buller*, 670 F.2d 726, 731 (7th Cir. 1982). And "[l]egislative developments after passage of the initial federal law have increasingly federalized the governance of federal credit unions." *Id.* at 734. As federal instrumentalities with a long history of federal involvement, federal credit unions are just like national banks and Federal savings associations with respect to triggering *Barnett Bank*'s standard.

It makes no difference that the FCUA does not expressly adopt the *Barnett Bank* standard for preemption. Although Dodd-Frank codified that standard for some cases involving national banks and Federal savings associations, the Supreme Court has already recognized that that creates no negative implication for other contexts. *See Cantero*, 602 U.S. at 214 n.2 (*Barnett Bank* standard applies equally to conduct occurring before and after Dodd-Frank's effective date). Thus, no express reference to the *Barnett Bank* standard in the FCUA is needed for it to apply.[8]

a. The Interchange Fee Prohibition prevents or significantly interferes with powers federally guaranteed by the FCUA.

The FCUA and its implementing regulations grant federal credit unions extensive powers, the exercise of which the Interchange Fee Prohibition would prevent or significantly interfere with. Among these are "power … to make loans … and extend lines of credit to its members," 12 U.S.C. § 1757(5), which expressly "includ[es] credit cards," 12 C.F.R. § 701.21(a), and the "incidental

[8] At the preliminary injunction stage, Plaintiffs did not argue for the *Barnett Bank* standard with respect to FCUA preemption. *See* Dkt. 115 at 4. That in no way precludes the argument for this proper standard, or the Court's application of it, at the present merits stage. *See, e.g.*, *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) ("A party … is not required to prove his case in full at a preliminary-injunction hearing, and the findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits." (internal citation omitted)).

power[]" to issue "debit cards," 12 C.F.R. § 721.3(k). As the Court has recognized in the context of national banks, the "authority to provide a banking service necessarily carries with it the authority to charge for that service." Dkt. 104 at 19-20. That principle applies equally to federal credit unions, particularly where FCUA regulations expressly permit federal credit unions to "earn income from those activities determined to be incidental to [their] business." 12 C.F.R. § 721.6.

The Interchange Fee Prohibition thus prevents or significantly interferes with federal credit unions' federally guaranteed "power … to make loans … and extend lines of credit to its members," and to charge fees for those services, in the same way it prevents or significantly interferes with the NBA's and HOLA's grants of similar powers to national banks and Federal savings associations. *See supra* Sections I.A.1, I.B.1. The FCUA thus preempts it too.

b. The Data Usage Limitation prevents or significantly interferes with powers federally guaranteed by the FCUA.

Federal credit unions' incidental powers also include the power to engage in "[e]lectronic financial services," including "data processing." *See, e.g.*, 12 C.F.R. § 721.3(d), (e) (listing "data processing" as an example of an activity that "serv[es] … members" and "support[s] … business operations"). And just like national banks, federal credit unions may use transaction data to prevent fraud and offer benefits to their customers. SOUF ¶¶ 52-55. As for the corresponding NBA and HOLA powers, the Data Usage Limitation's near-total ban thus prevents or significantly interferes with the exercise of both the specific FCUA power to process data and the underlying powers to provide financial services like loans and lines of credit. *See supra* Sections I.A.2, I.B.2. This aspect of the IFPA is thus preempted as to federal credit unions as well.

2. The FCUA preempts the IFPA independent of *Barnett Bank*.

Even if *Barnett Bank* did not apply, the FCUA would still preempt the IFPA because the IFPA would "stand[] as an obstacle" to services Congress intended federal credit unions to offer.

That result is only highlighted by the fact that NCUA regulations promulgated under the FCUA expressly make clear "the NCUA Board's exclusive authority as set forth in 107(5) of the Federal Credit Union Act (12 U.S.C. § 1757(5)) to regulate the rates, terms of repayment and other conditions of Federal credit union loans and lines of credit (including credit cards) to members." 12 C.F.R. § 701.21(b)(1). Among the state laws that this regulation specifically preempts are "any state law purporting to limit or affect" a variety of aspects of these loans, including "[r]ates of interest and amounts of finance charges," "[c]losing costs, application, origination, or other fees," and "[c]onditions related to … [t]he amount of the loan or line of credit." *Id.* § 701.21(b)(1)(i)(A), (i)(C), (iii)(A). The NCUA has thus "exercise[d]" its "authority" under the FCUA to preempt state laws that regulate the lending and depository activities of Federal credit unions—especially laws that regulate the manner and amount that Federal credit unions charge for their services. *Id.* Conversely, the NCUA leaves untouched regulations incidental to credit unions' core functions of lending and taking deposits, such as attorney's fees shifting statutes. *Id.* § 701.21(b)(2).

In other words, even apart from *Barnett Bank*, the NCUA preempts state efforts to regulate Federal credit unions' core lending and depository function: who they lend to, on what conditions, and how much they charge. *Id.* § 701.21(b)(1). Conversely, the NCUA leaves undisturbed "state laws that *do not affect* rates, terms of repayments, and other conditions … concerning loans and lines of credit." *Id.* § 701.21(b)(2) (emphasis added). Thus, courts have recognized that the FCUA preempts state laws that purport to regulate the act of lending itself—such as the fees associated with borrowing or the rate of repayment—either because they stand as an obstacle to the FCUA's purpose or because they conflict with the FCUA directly. *E.g.*, *Am. Bankers Ass'n v. Lockyer*, 239 F. Supp. 2d 1000, 1018-19 (E.D. Cal. 2002) (state law attempting to coerce federal credit unions to require certain monthly minimum payments preempted under 12 C.F.R. § 701.21(b)); *Crissey*

v. Alaska USA Fed. Credit Union, 811 P.2d 1057, 1060 (Alaska 1991) (state law governing late fees preempted under 12 C.F.R. § 701.21(b)); *Neal v. Redstone Fed. Credit Union*, 447 So. 2d 805, 807 (Ala. Ct. of Civ. Apps. 1984) (state law capping interest rates preempted because it conflicted with the FCUA). By contrast, courts have let stand state laws that seek to regulate activities that are mere adjuncts to the lending process, or completely unrelated to it. *See, e.g.*, *Peterson v. Kitsap Cmty. Fed. Credit Union*, 287 P.3d 27, 35 (Wash. Ct. App. 2012) (land conveyances).

Under this framework, this is an easy case for FCUA preemption of both IFPA provisions.

a. The Interchange Fee Prohibition stands as an obstacle to the FCUA's purpose and falls within 12 C.F.R. § 701.21's express preemptive scope.

To begin, the Interchange Fee Prohibition "stands as an obstacle" to federal law. *Petr ex rel. BWGS, LLC*, 95 F.4th at 1102. To see why, consider the role interchange fees play. Just like interest payments or mortgage origination fees, interchange fees help cover the costs of lending and taking deposits. SOUF ¶ 43. They compensate credit unions—like other institutions that receive them—for taking on risk in card transactions and administering credit and deposit accounts. *Id.* As the undisputed record reflects, the loss of these fees, together with the costs of attempting to comply with the IFPA, may well drive credit unions out of the card services market, frustrating the FCUA's purpose to make credit "available to people of small means." *DelBonis*, 72 F.3d at 938; *see* SOUF ¶¶ 48-49. The IFPA's regulation of these critical fees would do "major damage to the clear and substantial federal interests" of the FCUA, and is thus preempted. *See C.Y. Wholesale, Inc. v. Holcomb*, 965 F.3d 541, 547 (7th Cir. 2020) (internal quotation marks omitted).

Moreover, aside from triggering this straightforward obstacle preemption, the Interchange Fee Prohibition falls within the scope of state law that 12 C.F.R. § 701.21(b) expressly preempts because it "purport[s] to limit or affect … *fees*" that Federal credit unions collect. 12 C.F.R. § 701.21(b)(1)(i) (emphasis added). To be sure, at the preliminary injunction stage, the Court

found that Plaintiffs had not demonstrated a likelihood of success on this regulation-based argument on the ground that interchange fees are not paid by consumers or credit union members. Dkt. 115 at 5-6. In doing so, however, the Court expressly recognized that if "interchange fees are directly tied to loan interest or repayment terms," that "would implicate the regulation," and thus result in preemption. *Id.* at 6. Lost revenue from interchange would readily meet that test. The Interchange Fee Prohibition *directly* reduces the revenue federal credit unions can collect, and simultaneously imposes an anti-circumvention mandate that precludes them from recouping that lost revenue from merchants in any way. *See* 815 ILCS 151/150-10(d). The only remaining options would be to raise fees on members, *see* SOUF ¶ 49 (costs of IFPA could force credit union to halt program to eliminate overdraft fees), adjust credit terms to increase interest rates, or abandon card services altogether, *see id.*, any of which would impermissibly "affect" the terms, rates, or fees paid by credit union members, *see* 12 C.F.R. § 701.21(b).

In short, even if the *Barnett Bank* standard did not apply, the Interchange Fee Prohibition would "stand as an obstacle" to the FCUA's purpose to promote cheap, affordable credit "to people of small means" that other financial institutions may be less eager to serve. *DelBonis*, 72 F.3d at 931. And it would directly affect interest rates and fees to members—just as the Court recognized would trigger FCUA preemption, *see* Dkt. 115 at 5-6. Either way, it is preempted.

b. The Data Usage Limitation stands as an obstacle to the FCUA's purpose and conflicts with federal credit unions' express incidental power to process data.

As noted, federal credit unions' incidental powers expressly include the power to engage in "[e]lectronic financial services," including "account aggregation services" and "data processing." 12 C.F.R. § 721.3(d), (e); *see, e.g.*, SOUF ¶ 52-53 (describing data use for fraud detection and reward programs). The Data Usage Limitation conflicts with those powers and is thus preempted.

In declining to grant preliminary injunctive relief on this issue, the Court acknowledged that "federal credit unions are granted incidental powers to engage in electronic financial services and data processing," but concluded that "there is no indication that [the] IFPA's data provision would sufficiently undermine this power to warrant a conclusion of preemption." Dkt. 115 at 6. The undisputed record, however, demonstrates (for example) that for one credit union, the IFPA's Data Usage Limitation would make it impossible to maintain its fraud prevention system, because it has no "system for segregating electronic payment transaction data based on the location of the cardholder's transaction or for providing fraud protection without using historical electronic payment transaction data." SOUF ¶¶ 54-55. As a result, the Data Usage Limitation would prevent it from using its fraud prevention system, which prevents roughly $1.3 million in fraud annually. *Id.* By subjecting it to those losses, "the IFPA's data processing restrictions, in conjunction with the other burdensome provisions of the IFPA … would likely cause [this credit union] to exit the market and cease offering card services to members." *Id.*

3. Federal law preempts the FCUA as to out-of-state state credit unions.

Similar to the wildcard statute it has enacted for Illinois banks, the Illinois Legislature has granted credit unions it charters "all of the rights, privileges and benefits which may be exercised by a federal credit union." 205 ILCS 305/65. Indeed, the state must, "where necessary, promulgate rules and regulations in substantial conformity with those promulgated by the NCUA under the Federal Credit Union Act." *Id.* Illinois credit unions thus enjoy parity with federal credit unions. *See* 5 Ill. Law & Prac. Banks § 193 (citing 205 ILCS 305/65). Here too, then, the dormant Commerce Clause ensures that out-of-state credit unions receive the same preemption benefits as in-state ones. *See Ross*, 598 U.S. at 369. And here too, the Court's contrary conclusion at the preliminary injunction stage rested solely on its misapprehension that the wildcard statute applicable to credit unions also protected credit unions chartered by other states. *See supra* at 21.

4. In any case, the IFPA cannot properly be applied to credit unions alone.

Even if this Court continued to disagree with Plaintiffs' FCUA preemption arguments, severability principles would preclude application of the IFPA to credit unions alone. *See Whole Woman's Health v. Hellerstedt*, 579 U.S. 582, 625-26 (2016) (invalidating entire Texas law rather than severing because, among other reasons, even the broadly worded severability clause did not actually support severance), *abrogated on other grounds by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). Under Illinois law, a partially invalid act will not be enforced if "the part that remains does not reflect the legislature's purpose in enacting the law." *In re Pension Reform Litig.*, 32 N.E.3d 1, 30 (Ill. 2015). That is so even if the remaining portions "are complete and capable of being executed." *Id.* In such cases, even an express severability clause will not save the remainder of the act, because such clauses are "merely viewed as reflecting a rebuttable presumption of legislative intent." *Id.* at 29. Such presumptions are routinely overcome. *E.g.*, *id.* at 30; *Rivera v. Bank of N.Y Mellon*, 198 N.E.3d 1055, 1061-62 (Ill. Ct. App. 2021).

The IFPA cannot be applied against credit unions because "the part" of the IFPA "that remains" after preemption analysis "does not reflect the legislature's purpose in enacting" the IFPA. *In re Pension Reform Litig.*, 32 N.E.3d at 30. Under the NBA, the HOLA, and 12 U.S.C. § 1831a(j), national banks, Federal savings associations, and out-of-state state banks may operate free from the IFPA's severe regulatory burdens. There is no indication that the Illinois Legislature meant for, or would have wanted, these extraordinary burdens to fall on credit unions alone. *Cf. Lockyer*, 239 F. Supp. 2d at 1020-21 (under California law, preemption of state law by HOLA precluded same law's application to other financial institutions because "such severability may impose a competitive advantage of one federally chartered lender over another," which "would be an intrusion upon the legislative and executive branches of government, both federal and state").

To the contrary, the IFPA never even mentions credit unions. Instead, it purports to regulate "bank[s]" and "card network[s]." 815 ILCS 151/150. This textual clue confirms that the Legislature did not mean to target credit unions, a type of small financial institution created specifically to "make more available to people of small means credit for provident purposes." *DelBonis*, 72 F.3d at 938. When federal law prevents the law from applying to the larger institutions the Legislature evidently had in mind, the result cannot be that those institutions are *advantaged* relative to their unmentioned credit union competitors. *See, e.g.*, *Rivera*, 198 N.E.3d at 1062 (finding practical effects decisive in severability analysis).

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

Finally, to effectuate federal preemption, the IFPA cannot be applied to Card Networks or others involved in the payment process, either, when they are performing services that are integral to processing transactions that involve national banks or other beneficiaries of federal preemption.

At the preliminary injunction stage, this Court emphasized 12 U.S.C. § 25b(h)(2), a section added to the NBA by the Dodd-Frank Act that states that "[n]o provision of [the NBA] shall be construed as "preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national bank." *See* Dkt. 104 at 27-28. The Court held that Plaintiffs had "provide[d] insufficient support to resolve their arguments with the amendments Congress made to Dodd-Frank," *id.* at 27, and declined to extend the injunction to participants in the payment system other than national banks, out-of-state state banks, and Federal savings associations, including the Card Networks. *See id.* at 27-28 (citing 12 U.S.C. § 25b(h)(2)).

This Court should now revisit that determination based on the fuller record at this stage, for multiple independent reasons. *First*, as a statutory matter, Dodd-Frank does not preclude broader relief. The NBA preempts all state laws that "significantly interfere" with a national

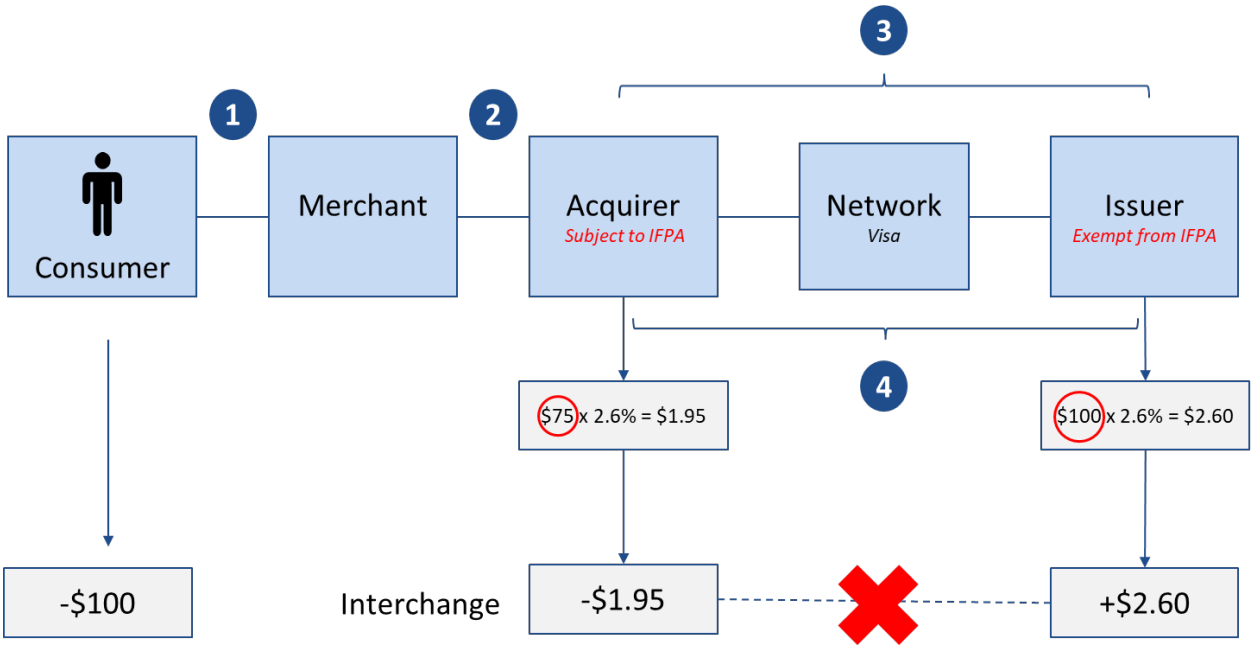
bank's exercise of its federally granted powers. That includes laws that cause significant interference by regulating *other participants* as they do business with national banks. *Second*, equitable principles compel the same result. In light of the intertwined functions of all participants in the payment system, a broader injunction is necessary to afford complete relief to institutions protected by the NBA and other applicable federal law.[9]

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 shown above, the NBA preempts all state laws that prevent or significantly interfere with a national bank's power to engage in the business of banking. Here, that means that the IFPA is preempted as applied to national banks. *See supra* Section I.A; *see also* Dkt. 104 at 16-24. It also means that Illinois cannot employ the IFPA to prevent *other* participants in the intricately interconnected payment system from performing functions that are necessary to national banks' exercise of their federally granted powers—because that would itself be a significant interference. As the record establishes, non-exempt Card Networks, Acquirers, processors and other entities involved with facilitating card transactions must also be protected from the IFPA in order to allow exempt parties to charge or receive interchange on the full transaction, as federal law entitles them to do. SOUF ¶¶ 45-46. "Given the pass-through nature of interchange," it would be impossible for federally protected entities like national banks to have the benefit of federal law if this Court enters a narrow permanent injunction (and declaratory judgment) that covers only *them* and not the actions of other entities, like Card Networks and processors, that facilitate the transmission of

[9] Because the HOLA and 12 U.S.C. § 1831a(j) track NBA preemption, the injunction must also extend to other participants in the payment system to the extent necessary to allow the entities they protect to carry out their federally protected business. And if this Court agrees with Plaintiffs at the summary judgment stage that federal-law protections extend to federally chartered credit unions and out-of-state-chartered non-bank institutions, the same is true for them.

interchange to them. *Id.* ¶ 45. For example, as Figure 3 reflects, *see id.* ¶ 46, if a Card Network were allowed to apply interchange on only $75 of a $100 transaction, the Issuer could not receive the full amount to which it is entitled:



Section 25b(h)(2) does not compel such a limited injunction. "Statutes must be read as a whole," *Territory of Guam v. United States*, 593 U.S. 310, 316 (2021) (alterations omitted), and Dodd-Frank also codified the *Barnett Bank* standard, reflecting Congress' intent that NBA preemption would remain a real guarantee against unwarranted state interference with national banks. *See* 12 U.S.C. § 25b(b)(1)(B). Reading § 25b(h)(2) to permit states to circumvent the NBA by regulating national banks' contractual counterparties would contravene *Barnett Bank* and eviscerate NBA preemption. For example, in *Franklin National Bank*, the state could simply have banned billboard companies from displaying certain advertisements. Or here, Illinois could simply prohibit providing electric service to any national bank Issuer that collected interchange fees on tax and gratuity. That is not how preemption works—a state may not do indirectly what it may not do directly. *See, e.g.*, *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 541 U.S. 246,

255 (2004) ("treating sales restrictions and purchase restrictions differently for pre-emption purposes would make no sense" because a "manufacturer's right to sell federally approved vehicles is meaningless in the absence of a purchaser's right to buy them"); *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").

Instead, § 25b(h)(2) is best read as narrowly overruling the categorical approach to preemption espoused in *Watters v. Wachovia Bank, N.A.*, which had held that operating subsidiaries of national banks enjoyed NBA preemption *in their own right*. *See* 550 U.S. at 18 ("[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."). Section 25b(h)(2) prevents third parties from claiming NBA preemption for their own activities merely by virtue of being "subsidiar[ies], affiliate[s], or agent[s]" of a national bank. But that provision did not purport to alter the scope of NBA preemption *for national banks*, which remain protected against state laws that "significantly impair" *their own* activities by targeting third parties. Any other reading would create a gaping loophole in the very NBA preemption regime that Dodd-Frank reaffirmed.

That is likely why, even after Dodd-Frank's enactment, courts have rejected state laws that significantly interfere with NBA powers—even when they directly regulate other parties. The "focus" remains "whether the regulation at issue prevents or significantly impairs [a national bank's] ability to exercise a federally granted power, not whether the regulation is enforceable directly against [the national bank]." *U.S. Bank Nat'l Ass'n v. Schipper*, 812 F. Supp. 2d 963, 971 (S.D. Iowa 2011); *see also Cohen v. Capital One Funding, LLC*, 489 F. Supp. 3d 33, 48 (E.D.N.Y.

2020) ("subjecting [non-national-bank] Defendants to interest rate limits imposed by New York law would significantly interfere with [national bank's] exercise of its powers as a national bank").

Moreover, federal banking law treats payment card networks and processors as "service providers" to national banks subject to applicable provisions of the Bank Service Company Act. 12 U.S.C. § 1867(c) (subjecting services performed for banks to examination and regulation by a bank's appropriate federal banking agency). If Congress had wanted § 25b(h)(2) to cover "service providers," it would have said so; yet the statute does not use that term. Nor are Card Networks such as Visa and Mastercard *agents* of national banks. "An 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). The Card Networks are the ones that establish rules for their payments systems; they do not carry out the directives of national banks. SOUF ¶¶ 29-30. Accordingly, § 25b(h)(2) has no bearing on whether the injunction should extend to Card Networks and payment system participants not addressed by 25b(h)(2)—regardless of whether that provision narrowly overturned *Watters* or more broadly addressed the entities it describes.

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

Even if this Court were to conclude that the NBA, as a statutory preemption matter, does not directly cover other participants in the payment system performing critical functions for national banks, equitable principles would compel such a broader injunction. "It is widely accepted—even by self-professed opponents of universal injunctions—that a court may impose the equitable relief necessary to render complete relief to the plaintiff, even if that relief extends incidentally to non-parties." *City of Chi.*, 961 F.3d at 920-21; *see also Bresgal v. Brock*, 843 F.2d 1163, 1170-71 (9th Cir. 1987) (court may "extend [the] benefit or protection" of an injunction "to persons other than prevailing parties in the lawsuit—even if it is not a class action—*if such breadth*

is necessary to give prevailing parties the relief to which they are entitled"). Here, the Attorney General's position is that "[a] preliminary injunction preventing enforcement of the Fee Prohibition against everyone except payment card networks will not do anyone any good," because "[t]hose networks are essential to the process." Dkt. 76 at 39. From the perspective of equity, that is precisely the point—without the Card Networks and other participants (for example, payment processors), national banks cannot carry out their business. *See* SOUF ¶¶ 45-46.[10]

Under such circumstances, the propriety of extending an injunction to third parties is "widely accepted." *City of Chi.*, 961 F.3d at 920; *see id.* at 921 (collecting cases); *Bresgal*, 843 F.2d at 1170-71; *e.g.*, *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 400 (1982) (extending injunction to union that did not violate law, because doing so was needed to provide plaintiffs with relief). An "injunction … must be broad enough to be effective." *Russian Media Grp.*, 598 F.3d at 307. A narrow injunction that fails to effectuate federal preemption would flunk this standard.

Nor does anything in 12 U.S.C. § 25b(h)(2) alter generally applicable equitable principles. It states only that *"[n]o provision of title 62 of the Revised Statutes or section 371 of this title* shall be construed as preempting … State law to any subsidiary, affiliate, or agent of a national bank." (emphasis added). Even if this Court disagrees that § 25b(h)(2) was intended to narrowly overrule *Watters*, it expressly addresses the application *only* of the NBA itself. It has nothing to say about the equitable scope of an injunction needed to ensure that national banks (and Federal savings associations and out-of-state banks) themselves enjoy the benefits of preemption.

[10] To be clear, these same principles apply whether or not a particular network is a party or member of a party here.

In keeping with longstanding principles of equity, this Court should enter permanent relief that extends not only to national banks, but also to other participants in the payment system when they perform functions essential to national banks gaining the actual benefit of NBA preemption.

E. The EFTA Preempts the IFPA's Regulation of Debit Card Interchange Fees.

As applied to debit card transactions, the IFPA's Interchange Fee Prohibition also conflicts with, and is thus preempted by, the Durbin Amendment to the EFTA and its implementing regulation. As noted above, Congress directed the Federal Reserve to "prescribe regulations … regarding any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction." 15 U.S.C. § 1693o-2(a). The Federal Reserve then promulgated Regulation II, which limits debit card interchange fees to the sum of a fixed rate of "21 cents" and an *ad valorem* component of 0.05% "multiplied by the value of the transaction." 12 C.F.R. § 235.3(b). In setting a "Uniform Interchange Fee Standard," the Federal Reserve's final rule stated that it would "appl[y] to *all* electronic debit transactions not otherwise exempt." 76 Fed. Reg. at 43434 (emphasis added). By setting a different standard, the IFPA disrupts this uniformity and conflicts with both Regulation II and the Durbin Amendment itself.[11]

II. AN INJUNCTION IS NEEDED TO AVOID IRREPARABLE HARM.

Plaintiffs' members face irreparable harm if the IFPA is not enjoined. Where, as here, "a constitutional violation is established," *see supra* Section I, "usually no further showing of irreparable injury is necessary." 11A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 2944 (3d ed. June 2024 update). Indeed, "[d]eprivations of constitutional rights often … amount to 'irreparable harm.'" *Bevis v. City of Naperville*, 657 F. Supp. 3d 1052, 1076

[11] Plaintiffs acknowledge that the Court reached a contrary conclusion at the preliminary injunction stage. Dkt. 104 at 28-30. Plaintiffs respectfully preserve for potential appeal their arguments set out here and in prior briefing for preemption under the Durbin Amendment and Regulation II.

(N.D. Ill. 2023). And while—at least for preliminary injunctions—that is "not always" the case, *see id.*, there is no reason to doubt the presumption's applicability here. *See, e.g.*, *Trans World Airlines, Inc. v. Mattox*, 897 F.2d 773, 784 (5th Cir. 1990) ("permitting" federally preempted state regulation "would violate the Supremacy Clause, causing irreparable injury"), *abrogated on other grounds as recognized by Johnson v. Baylor Univ.*, 214 F.3d 630, 633 (5th Cir. 2000). Indeed "when the Seventh Circuit has concluded that a constitutional violation does not cause irreparable harm, it is because the violation can be rectified by an award of damages," for example, "Fourth Amendment violations that are akin to personal injury claims." *Exodus Refugee Immigration, Inc. v. Pence*, 165 F. Supp. 3d 718, 739 (S.D. Ind. 2016). That is not the case here.

Moreover, irreparable harm is plain even absent the presumption. Most obviously, any revenue Plaintiffs' members do not collect because of the IFPA can never be recovered due to sovereign immunity and a lack of a cause of action against anyone but the State. *See, e.g.*, *Cal. Pharmacists Ass'n v. Maxwell-Jolly*, 596 F.3d 1098, 1114 (9th Cir. 2010) (irreparable harm shown where plaintiffs "will lose considerable revenue through the reduction in payments that they will be unable to recover due to the State's Eleventh Amendment sovereign immunity"), *vacated on other grounds sub nom. Douglas v. Independent Living Ctr. of S. Cal., Inc.*, 565 U.S. 606 (2012).

Irreparable harm will flow from implementation of the Data Usage Limitation as well. Plaintiffs' members currently lack any mechanism to prevent data from transactions subject to the IFPA from being used in their numerous operationally, reputationally, or economically critical functions that use transaction data. SOUF ¶¶ 54-55. Absent an injunction, Plaintiffs' members face the potential need to design and implement new systems to ensure that IFPA-covered transaction information is not used, for example, to build or refine fraud prevention models, offer cardholder rewards, or determine credit limits. *Id.* In addition to the direct, unrecoverable costs

of designing and implementing such systems on a compressed time scale, this result imposes the irreparable harm of making these key functions less effective or even impossible to carry out. *See id.* The result would be increased losses due to fraud, which, as with the forgone revenue, could not be recouped from the State or other sources.

III. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST SUPPORT PERMANENT INJUNCTIVE RELIEF.

The balance of equities and public interest factors—which "merge" in this case against the Government, *see Stevens v. U.S. Dep't of Health & Human Servs.*, 666 F. Supp. 3d 734, 748 (N.D. Ill. 2023)—weigh strongly in Plaintiffs' favor as well. If the IFPA goes into effect, then banks, Card Networks, consumers, small business owners, and others would all suffer as the industry scrambled to try to separate the tax and gratuity portions from the rest of each of the millions of credit and debit card transactions that occur daily in Illinois. Some Issuers and Acquirers may exit the market entirely. *See, e.g.*, SOUF ¶ 48. Allowing the IFPA to stand would also impede fraud protection, cardholder rewards, and other benefits to consumers, which rely on information obtained from transactions to function. *See id.* ¶ 55 ("Because the vast majority of First Federal Savings Bank of Champaign-Urbana's cardholders' debit transactions are within the state of Illinois, the IFPA would render our account data virtually useless for fraud prevention, essentially guaranteeing real dollar losses by customers, the bank or both."). On the flip side, of course, "[t]he public 'does not have an interest in the enforcement of state laws that conflict with federal laws.'" *Staffing Servs. Ass'n of Ill. v. Flanagan*, 720 F. Supp. 3d 627, 642 (N.D. Ill. 2024) (internal quotation marks omitted).

CONCLUSION

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

Dated: March 17, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on March 17, 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*

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