Banking and Finance Law Daily Wrap Up, STATE BANKING LAWS—N.D. Ill.: Illinois interchange fee prohibition upheld on Illinois Bankers' challenge, (Feb. 11, 2026)

Banking and Finance Law Daily Wrap Up

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By Justin Marcus Smith, J.D.

The fact that the state's interchange fee limitation does not directly regulate banks made upholding it complicated, but the court said it had an easier time permanently enjoining the data usage limitation.

The Illinois Bankers Association and other banking association plaintiffs did not make their case for a permanent injunction of the Illinois Interchange Fee Prohibition Act (IFPA) interchange fee limitation as violative of the rights of national banks and federal savings associations, held the federal district court in Chicago. The court said the record made it clear that the facts of this case were unlike any of the key United States Supreme Court precedents governing the interplay between state regulation and national financial entities because those cases broadly involve direct interventions into banking operations. The IFPA affected fess that banks benefit from, but do not set. The court said it was left with the conclusion that the IFPA interchange fee provision does not directly conflict with NBA powers. Inasmuch as Congress does not require express conflict for NBA preemption to apply, the court concluded at length that third-party payment card networks built the ecosystem and set the fees. The Illinois Bankers Association and co-plaintiffs the American Bankers Association, America's Credit Unions, and Illinois Credit Union League, issued a joint statement expressing disappointment with the court's decision. They maintained that they had shown, and that the Office of the Comptroller of the Currency had agreed, that IFPA is "clearly and fully preempted by federal law." They characterized the decision as one not to protect the payment system that will "unleash chaos and confusion" among Illinois consumers and businesses. They said they could not let the decision stand. The court otherwise permanently enjoined the IFPA data usage limitation with respect to national banks and others, as described at length (*Illinois Bankers Assoc. v. Raoul*, No. 1:24-cv-07307 (N.D. Ill. Feb. 10, 2026)).

Background. In 2024, a group of banking and credit union organizations filed a complaint challenging the validity of the Illinois Interchange Fee Prohibition Act (IFPA), 815 ILCS 151/150-1 *et seq*. The law prohibits banks, payment card networks, and other entities from charging or receiving interchange fees for the tax and gratuity portions of a transaction. The complaint alleged IFPA is unlawful because it violates several federal and state laws and usurps the federal government's sole regulatory authority over the covered financial institutions. Further, the complaint alleged the act would disrupt and harm the existing card payment system already operating. At the time, the law was set to take effect on July 1, 2025 (see *Banking and Finance Law Daily*, Aug. 16, 2024).

The Attorney General of Illinois (ILAG) contended the plaintiffs already force consumers to eat the costs of interchange fees through higher prices as a standard practice. The ILAG contended the marginal reduction in the baseline sum on which the fees are calculated would be a manageable hit to the plaintiffs' revenue that paled in comparison to the state's interest in enforcing the IFPA. The ILAG broadly rejected the plaintiffs' claims that financial institutions' IFPA compliance would force them out of the market, albeit some of the ILAG arguments were technical and based on Northern District of Illinois local rules for summary judgment statements of material fact.

Both parties admitted that, under the current system, if an issuer associated with a transaction is IFPA exempt on a transaction, other payment card participants would need relief from IFPA requirements for purposes of that transaction. The ILAG did note that might not be necessary if the global payment card ecosystem were structured differently. Accordingly, in addition to arguments about whether banks and credit unions are IFPA

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exempt, the parties also disputed whether a potential exemption would extend to the other entities as a matter of law, functionality, or equity.

The IFPA also contains a data usage limitation requiring all entities in the transaction, other than merchants, to not distribute or use the electronic payment transaction data except to facilitate or process the electronic payment transaction or as required by law. Violations are actionable under the Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA).

In two separate prior rulings, the court granted the IBA's request for a preliminary injunction as to national banks, federal savings institutions, and out-of-state state banks, while denying the request as to federal credit unions, affiliate actors like card networks, debit card transactions, and out-of-state state financial institutions generally. Specifically, in its merits analysis, the court found that the National Bank Act and the Home Owners' Loan Act likely preempted the IFPA's application to national banks and federal savings associations. The Illinois General Assembly accordingly extended the IFPA effective date to July 1, 2026.

At length, the parties cross-moved for summary judgment. The parties indicated no other state has an equivalent to the IFPA. There was no precedent directly on point, and court said the fact that the interchange fee provision does not directly regulate banks made the case complicated. In a close call, the court granted in part both cross motions for summary judgment. The question was whether or not federal law preempted IFPA, as to what entities, and to what extent.

Interchange fee. The court held that IFPA does not impact a customer's decision whether or not to use a bank's services because all financial entities are subject to the law. After the court's earlier order found express conflicts between IFPA and the National Banking Act (NBA), the ILAG pointed out the conflict was not so clear. The parties all agreed that payment networks, not the national banks, set interchange fees.

The court reasoned that the plaintiffs' best argument was that payment networks set rates so national banks can charge customers non-interest charges and fees. While it would be illogical for a national bank to lose its fee-related powers in any activity that inherently involves interaction with third-party payment card networks, it also would not make sense to let national banks shield a vast amount of activity a state could regulate by "hiding behind third-party entities like the credit card companies."

The court said it was left with the conclusion that the IFPA interchange fee provision does not directly conflict with NBA powers, but that was not the end of the road because Congress does not require express conflict for NBA preemption to apply. At length, the court concluded the payment card networks built the ecosystem and set the fees. To claim that the IFPA interchange fee provision impermissibly interferes with the national bank powers set forth in 12 C.F.R. § 7.4002, to set non-interest charges and fees, did not pertain because that regulation does not protect fees centrally established by a third-party company.

Although the OCC might be correct that IFPA is "bad policy," even the OCC did not contest that third parties set the fees. The court therefore denied the Illinois Bankers' request for a permanent injunction of the IFPA interchange fee limitation for violation of the rights of national banks and federal savings associations.

Data use limitation. In contrast, the court found the IFPA data usage limitation directly constrained national banks' broad power to process data and the role of data-processing in providing credit and debit card processing services under 12 C.F.R. §§ 7.5006; 7.1000(d)(1). The court found the federal power to use data is express and permissive whether or not data comes from particular transactions. The court said the scope of the conflict here was not a close call.

Out-of-state banks. As with the national banks, the court denied the Illinois Bankers' request for an injunction as to the IFPA's interchange fee provision with respect to out-of-state banks. Because the court found the NBA preempts the IFPA data usage limitation with respect to national banks, part of the Riegle-Neal Interstate Banking and Branching Efficiency Act, 12 U.S.C. § 1831a(j)(1), preempted the IFPA with respect to out-of-state banks to the same extent.

Federal credit unions. The court analyzed that Congress could have explicitly given federal credit unions comparable treatment to national banks and federal savings associations, but chose not to do so. The court

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stuck with its preliminary conflict preemption analysis that the IFPA interchange fee applies to federal credit unions. In contrast, the Federal Credit Union Act grant of incidental power to federal credit unions preempted the IFPA data usage limitation.

Debit card transactions. The court did not find any reason to stray from its earlier determination that IFPA does not conflict with the Dodd Frank Act Durbin Amendment and the Interchange Fee Prohibition because the federal regulation creates only a "maximum permissible" interchange fee.

Out-of-state financial institutions. The court noted that Illinois is one of the states that gives in-state state banks, savings and loan associations, and credit unions powers coterminous with the powers of their national counterparts. The parties agreed on this, but the Illinois Bankers contended the Illinois parity statutes amounted to a violation of the Dormant Commerce Clause when paired with IFPA. The ILAG, meanwhile, insisted that interpretation of the parity statutes involved state law claims the court previously dismissed on sovereign immunity grounds, barring adjudication now.

The court opined that the problem with the Dormant Commerce Clause argument was that the plaintiffs effectively alleged discrimination in state inability to legislate nationally, and that made "no sense." After lengthy analysis, the court said it was unpersuaded by the primary contentions of both parties. The court found the plain terms of the parity statutes would result in the preemption of the IFPA data use limitation as to Illinois -chartered financial institutions, but that was for Illinois state courts to decide. For now, the court acknowledged that left a confusing conundrum such that out-of-state state chartered institutions were left as the only relevant entities subject to the IFPA data use limitation. If IFPA is unconstitutional for some other reason, the parties did not raise an argument.

Other participants. On whether IFPA could not be applied to card networks or others involved in the payment process, the only question was whether the data use preemption extended to them. On the record, Illinois Bankers successfully demonstrated that the data use limitation is so tied up in the federal entities' powers that the preemptive effect must run to the payment networks and others involved in the payment process, at least so far as necessary for the preempted entities to experience complete relief.

Permanent injunction. The court concluded the Illinois Bankers satisfied all of the elements for a permanent injunction of the IFPA data use limitation against: (1) national banks; (2) banks chartered by states other than Illinois that are subject to Riegle–Neal, 12 U.S.C. § 1831a(j)(1); (3) federal savings associations; (4) federal credit unions; and (5) other entities participating in an electronic payment transaction, such as payment card networks and processors, to the extent they are carrying out functions that facilitate the powers of any of the foregoing entities implicated by the Data Usage Limitation.

The case is No. 1:24-cv-07307.

Judge: Kendall, V.

Attorneys: Amy Lynn Van Gelder (Skadden, Arps, Slate, Meagher & Flom LLP) for Illinois Bankers Association, American Bankers Association, America's Credit Unions and Illinois Credit Union League. Adam Owen Glist (Constantine Cannon LLP) for Illinois Retail Merchants Association. Darren Bernens Kinkead, Illinois Attorney General's Office, for Kwame Raoul.

Companies: Illinois Bankers Association; American Bankers Association; America's Credit Unions; Illinois Credit Union League; Illinois Retail Merchants Association

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