

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
WESTERN DIVISION**

CORNER POST, INC.,

Plaintiff,

v.

BOARD OF GOVERNORS OF THE  
FEDERAL RESERVE SYSTEM,

Defendant.

Case No. 1:21-cv-95-DMT-CRH

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**MOTION OF AMICI CURIAE THE BANK POLICY INSTITUTE AND  
THE CLEARING HOUSE ASSOCIATION L.L.C. FOR LEAVE  
TO PARTICIPATE IN ORAL ARGUMENT**

Amici The Bank Policy Institute (“BPI”) and The Clearing House Association L.L.C. (“TCH”) (collectively “Bank Amici”) move for leave to participate in the oral argument that this Court scheduled for July 23, 2025, on the Parties’ cross motions for summary judgment. Dkt. 71. Defendant takes no position on Bank Amici’s motion. Plaintiff opposes.

BPI is a nonpartisan public policy, research, and advocacy group that represents the policy interests of the nation’s leading banks. TCH is the nation’s oldest banking association and represents the interests of its members by developing and promoting policies to support a safe, sound, and competitive banking system that serves customers, communities, and economic growth. Earlier in this case, the Court allowed BPI and TCH to participate as amici by filing a brief in support of Defendant Board of Governors of the Federal Reserve System (“Board”). *See* Dkt. 64, at 12 (Order). In that brief (Dkt. 65), Bank Amici explained that they represent a substantial coalition of major nationwide banks and have a direct interest here. This case concerns Regulation II, which the Board promulgated over a decade ago pursuant to the Durbin Amendment to regulate interchange fees received by debit-card issuing banks. Bank Amici’s members include issuers of

debit cards who receive those debit-card interchange fees, and bank holding companies whose banks are such issuers. These issuers have collectively invested (and continue to invest) billions of dollars to develop and maintain an efficient, convenient, and secure debit card payments system.

Regulation II slashed the interchange fees debit-card issuers may receive for debit-card transactions. Plaintiff's lawsuit now seeks a ruling that would require the Board to slash interchange fees even further. As Bank Amici explained in their amicus brief, Plaintiff's position would have a direct, significant impact on Bank Amici's members—the parties actually regulated by Regulation II. Yet Bank Amici are not represented by either of the Parties to this lawsuit. The Durbin Amendment required the Board to issue an interchange-fee regulation affecting the economic interests of debit-card issuers and merchants. Of those three affected constituencies—the Board, the banks that issue debit cards, and merchants—only two are Parties here.

Bank Amici therefore request leave to participate in oral argument so that this Court can also hear the position of the directly regulated parties. There are at least two reasons to allow this participation.

*First*, while Bank Amici are aligned with the Board on the ultimate conclusion that Plaintiff's challenge to Regulation II should be rejected, Bank Amici are differently situated from the Board and have advanced additional arguments concerning the interpretation of the statute at issue. The Board's interest concerns purely its authority to issue regulations under the Durbin Amendment; the Board has no direct financial interest. Bank Amici, in contrast, are differently situated. Bank Amici have a substantial and direct financial interest because Plaintiff's position would deny Bank Amici's members fees they receive to cover the extensive costs they incur in providing electronic debit-card services as well as a reasonable return on those services. That

financial interest, one directly regulated by the Durbin Amendment, should be represented at oral argument.

As to the parties' positions, Bank Amici have advanced important statutory-interpretation arguments beyond those on which the Parties primarily focus. For example, Plaintiff's primary argument is that one subsection of the Durbin Amendment—subsection (a)(4), *see* 15 U.S.C. § 1693o-2(a)(4)—prohibits the Board from considering any cost other than a debit-card issuer's incremental costs of authorizing, clearing, and settling debit-card transactions (“incremental ACS costs”). *See* Dkt. 51, at 14-16; Dkt. 62, at 5-7. The Board responds primarily by focusing on that same subsection (a)(4). *See* Dkt. 58, at 17-21; Dkt. 70, at 4-7. As Bank Amici argue, though, there is a straightforward reason, as a matter of statutory interpretation, why the statute explicitly rejects Plaintiff's position. *See* Dkt. 65, at 2-3, 15-20. That reason is found in subsections (a)(2) and (a)(3), which set forth the Durbin Amendment's overarching mandate that an interchange fee “shall be reasonable and proportional to the cost incurred by the issuer with respect to the transaction”—*i.e.*, to transaction costs, not to incremental ACS costs alone—and require the Board to issue regulations consistent with that mandate. *See* 15 U.S.C. § 1693o-2(a)(2), (a)(3)(A). The Court should hear, and Bank Amici should be permitted to present, this argument, as well as others that vary from the focus of the Parties' arguments, at the scheduled July 23 oral argument. That presentation is especially important considering the Supreme Court's admonition that in cases like these, courts should “use every tool at their disposal to determine the best reading of the statute.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). Fulfilling that role requires hearing all arguments about the meaning of the governing statute.

*Second*, permitting Bank Amici to participate at the July 23 oral argument would follow from this Court's earlier ruling allowing Bank Amici to file their written views in the form of an

amicus brief. While this Court denied Bank Amici’s motion to intervene as parties, the Court allowed Bank Amici to participate as amici. In doing so, the Court relied on the way the proceedings in the previous, nearly identical challenge to Regulation II in *NACS v. Board of Governors of the Federal Reserve System* had been conducted: “Corner Post’s challenge[s] are strikingly similar to those asserted in *NACS*, where the Proposed Intervenors filed an amicus brief. The Proposed Intervenors can do so here as well.” Dkt. 64, at 12. In *NACS*, counsel for the bank amicus group, which encompassed TCH and other bank trade associations, participated not just on the briefs, but at oral argument too—in both the district court and the D.C. Circuit. *See* 958 F.Supp.2d 85, 97 (D.D.C. 2013); 746 F.3d 474, 476 (D.C. Cir. 2014). Bank Amici respectfully request leave to do the same here.

In short, Bank Amici’s members have a vital financial and regulatory interest in this litigation that is not fully represented by either side, and precedent from the management of earlier, nearly identical Regulation II litigation supports the participation of Bank Amici in oral argument here.

### CONCLUSION

For the foregoing reasons, Bank Amici’s motion for leave to participate in oral argument should be granted.

Dated: June 13, 2025

Respectfully submitted,

By: /s/ Noah A. Levine

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 13, 2025, I filed the foregoing using the Court's CM/ECF system, which will send a notice of the filing to counsel for all parties.

*/s/ Noah A. Levine*

Noah A. Levine