

Nos. 26-1354, 26-1371, 26-1440, 26-1441

In the
United States Court of Appeals
for the **Seventh Circuit**

ILLINOIS BANKERS ASSOCIATION, AMERICAN BANKERS ASSOCIATION,
AMERICA'S CREDIT UNIONS & ILLINOIS CREDIT UNION LEAGUE,
Plaintiffs-Appellants-Cross-Appellees,

v.

KWAME RAOUL, in his official capacity as Illinois Attorney General,
Defendant-Appellee-Cross-Appellant.

On Appeal from the United States District Court
For the Northern District of Illinois, Case No. 24-cv-7307
Honorable Virginia M. Kendall, *Chief United States District Judge*

**PLAINTIFFS-APPELLANTS-CROSS-APPELLEES' MOTION FOR
LEAVE TO FILE SUPPLEMENTAL BRIEFING**

Boris Bershteyn
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
One Manhattan West
New York, NY 10001
Telephone: 212-735-3000
boris.bershteyn@skadden.com

Charlotte H. Taylor
Counsel of Record
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001
Telephone: 202-879-3939
ctaylor@jonesday.com

Counsel for Plaintiffs-Appellants-Cross-Appellees
Additional Counsel listed in signature blocks at end of Brief

Pursuant to Federal Rule of Appellate Procedure 27, Plaintiffs respectfully move this Court for leave to file a supplemental brief addressing the Office of the Comptroller of the Currency (OCC)'s recent interim final rule and interim final order. Plaintiffs believe that supplemental briefs of no more than 3,900 words, filed by the parties simultaneously on May 4, 2026, will aid the Court's consideration of this case. The Attorney General does not believe that supplemental briefing before oral argument is necessary, but to the extent that the court finds it necessary requests that any deadline for supplemental briefs be no earlier than May 6, 2026, due to the May 1, 2026 deadline for filing the Attorney General's cross-reply brief in this appeal and the assigned attorney's obligations to other matters.

BACKGROUND

This case is a challenge to Illinois's Interchange Fee Prohibition Act. The IFPA has two relevant components: (1) the Interchange Fee Prohibition, which prohibits national banks from receiving interchange fees on the tax or gratuity portion of any card transaction, 815 ILCS 151/150-10; and (2) the Data Usage Limitation, which forbids participants in the payment system

from using electronic payment data from a transaction for any purpose other than facilitating or processing transactions. 815 ILCS 151/150-15(b).

Plaintiffs are trade associations that represent banks, credit unions, and savings associations. They filed this lawsuit challenging both parts of the IFPA. Plaintiffs argue, as relevant here, that the National Bank Act (NBA) and the Home Owners' Loan Act (HOLA) preempt the IFPA.

The District Court rejected those arguments as to the Interchange Fee Prohibition. Its analysis of NBA and HOLA preemption for the Interchange Fee Prohibition focused principally on a single regulation, 12 C.F.R. § 7.4002. RSA.21-28. Because the District Court concluded that the Interchange Fee Prohibition did not conflict with § 7.4002, it rejected Plaintiffs' NBA- and HOLA-preemption arguments and denied their motion for a permanent injunction and declaratory judgment with respect to that provision. RSA.28.

In contrast, the District Court held that the NBA and HOLA preempt the Data Usage Limitation because it significantly interferes with national banks' and Federal savings associations' powers to process data and provide credit- and debit-card processing services. RSA.28-29. It granted Plaintiffs' motion for declaratory and injunctive relief with respect to that provision.

The parties cross-appealed, and this Court granted Plaintiffs' request for expedited briefing. The first three briefs have been filed, up to and including Plaintiffs' Response and Reply Brief filed on April 17, 2026. The Attorney General's last brief will be filed May 1, and oral argument is scheduled for May 13.

The OCC is the agency responsible for administering the NBA and HOLA. 12 U.S.C. § 1(b). On April 24, the OCC took two actions to address the "ambiguity" the District Court created regarding national banks' power to receive interchange fees and the "destabilizing effect on the nation's payment card systems" that the IFPA threatens. National Bank Non-Interest Charges and Fees, 91 Fed. Reg. 22,989, 22,990 (Apr. 29, 2026); Order Preempting the Illinois Interchange Fee Prohibition Act, 91 Fed. Reg. 23,150, 23,151 (Apr. 29, 2026). First, the OCC issued an interim final rule amending 12 C.F.R. § 7.4002, the regulation on which the District Court's analysis turned. 91 Fed. Reg. 22,989. The rule amended § 7.4002 to "resolve any ambiguity about the scope of" national banks' powers. *Id.* at 22,991. Second, the OCC issued an interim final order determining that the NBA and HOLA preempt the IFPA. 91 Fed. Reg. 23,150. The order declares that "[n]ational banks and Federal savings associations are neither subject to nor required to

comply with” the IFPA. *Id.* at 23,154. Both actions will take effect on June 30, 2026, the day before the IFPA is set to take effect. 91 Fed. Reg. 22,991; 91 Fed. Reg. 23,150; 2025 Ill. Leg. Serv. 104-4.

On April 28, 2026, the OCC filed a 28(j) letter in this Court notifying the Court of the interim final rule and interim final order and stating the OCC’s view that “these interim final measures, which themselves have the force and effect of law, have significant effects on the questions presented in this matter.” No. 26-1354, Doc. 84.

DISCUSSION

Plaintiffs believe that supplemental briefs addressing the import of the OCC’s actions will aid the Court’s consideration of this case.

First, 12 C.F.R. § 7.4002 was central to the District Court’s analysis, RSA.21-28, is a focus of the Attorney General’s briefs on appeal defending the District Court’s ruling, AG Br. 26-32, and has also been addressed at length by the Attorney General’s *amici*, *see, e.g.*, Illinois Retail Merchants Association Br. 4-5, 8-14; Durbin Br. 2-3, 14-22; Ten Nonprofits Br. 21. In particular, the Attorney General and his *amici* have argued that because § 7.4002 references fees set by banks themselves, federal law does not grant them the power to receive or charge interchange fees by choosing to accept

default rates set by Card Networks. *See* AG Br.26-32; Illinois Retail Merchants Association Br. 4-5, 9-10; Durbin Br. 14-22. The OCC's interim final rule amends § 7.4002 to "clarify that ... national banks may charge non-interest charges or fees, even when such charges and fees are set by or in consultation with third parties." 91 Fed. Reg. 22,995. Affording both parties the opportunity to address OCC's clarification to § 7.4002 will assist the Court with resolving this central disputed issue on appeal.

Second, supplemental briefing will also allow the parties to address the legal effect of the OCC's separate interim final order concluding that the IFPA is preempted as to national banks and Federal savings associations. The supplemental briefs can also address the interplay between this order and other legal issues presented to this Court, such as the applicability of the dormant Commerce Clause.

These important issues concerning the significance of two new, directly relevant actions by the federal regulator for national banks and Federal savings associations warrant more extensive analysis than 350 words would permit. *See* Fed. R. App. P. 28(j).

Plaintiffs also believe that filing the briefs by May 4, nine days before argument, will best assist this Court by providing sufficient time to analyze

the new issues that the OCC's actions present, and the parties' positions on them, prior to argument. That will allow the parties and the Court to use oral argument effectively.

Finally, Plaintiffs believe that 3,900 words is an appropriate length for the supplemental briefs. *Cf.* Fed. R. App. P. 35(d)(3)(A).

CONCLUSION

For those reasons, Plaintiffs ask this Court to direct that the parties may file supplemental briefs of 3,900 words each addressing the OCC's actions on or before May 4, 2026.

Dated: April 29, 2026

Boris Bershteyn
Kamali P. Willett
Sam Auld
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
One Manhattan West
New York, NY 10001
Telephone: 212-735-3000
boris.bershteyn@skadden.com
kamali.willett@skadden.com
sam.auld@skadden.com

Respectfully submitted,

/s/ Charlotte H. Taylor

Charlotte H. Taylor
Counsel of Record
Anthony J. Jeffries
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001
Telephone: 202-879-3939
ctaylor@jonesday.com
ajjeffries@jonesday.com

Matthew J. Rubenstein
JONES DAY
90 S. Seventh St., Suite 4950
Minneapolis, MN 55402
Telephone: 612-217-8846
mrubenstein@jonesday.com

Attorneys for Plaintiffs-Appellants-Cross-Appellees

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with (1) the type-volume limitation of Federal Rule of Appellate Procedure 27 because, as calculated by Word for Microsoft 365, it contains 1,099 words, excluding the items exempted by Federal Rule of Appellate Procedure 32(f); and (2) the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in a proportionally spaced typeface using Word for Microsoft 365 in a 14-point Book Antiqua font.

Dated: April 29, 2026

/s/ Charlotte H. Taylor
Charlotte H. Taylor

CERTIFICATE OF SERVICE

In accordance with Circuit Rule 25(a), I hereby certify that on April 29, 2026, I electronically filed Plaintiffs-Appellants-Cross-Appellees' Motion for Leave to File Supplemental Briefing with the Clerk of Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: April 29, 2026

/s/ Charlotte H. Taylor
Charlotte H. Taylor