UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

ILLINOIS BANKERS ASSOCIATION and AMERICAN BANKERS ASSOCIATION, Plaintiffs, v. KWAME RAOUL, in his official capacity as the Attorney General of Illinois, Defendant.	Case No. 1:24-cv-07307 Hon. Virginia M. Kendall

BRIEF OF THE ELECTRONIC PAYMENTS COALITION AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS

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INTEREST OF AMICUS CURIAE

The Electronic Payments Coalition is a coalition of payments industry stakeholders, such as credit unions, community banks, trade associations, payment card networks, and banks. Its members have an interest in protecting the value, innovation, convenience, security, and competition that exists in the modern electronic payments system from policies like the Illinois Interchange Fee Prohibition Act ("IFPA"), 815 ILCS 151/150-1 et seq., which would enable the State of Illinois to free-ride on and therefore undermine that system.

INTRODUCTION

The electronic payments system enables a vast portion of the modern economy. That system itself, however, is often taken for granted. Today an unknown consumer can simply tap a card at a merchant's sales terminal and in a matter of seconds the sale is complete and the merchant is guaranteed payment. But that seamless transaction is possible only because of entities working behind the scenes to encourage consumers and merchants to use the payment network, developing the funds-transfer infrastructure, and taking on the risk that a consumer will be unable to pay, among other roles. These services on which the entire system depend are not costless, and so the electronic payments system and federal law has developed a way to compensate these actors for their essential role: a small interchange fee.

In a first-of-its-kind law, the State of Illinois has unilaterally restructured interchange fees. Instead of assessing interchange fees based on all of the funds that reliably flow through the interchange infrastructure, card-issuing banks ("issuing banks") are now required in Illinois to exclude that portion of the transaction that will ultimately be paid as sales tax to the State (in addition to any gratuity portion of the transaction). Thus, while the State benefits from the reliability of ultimate payment of its tax when the interchange infrastructure is used, the IFPA mandates that issuing banks provide that value to the State at no cost.

The Electronic Payments Coalition, which represents a wide range of payment-industry stakeholders, agrees with plaintiffs that the IFPA is unlawful, will cause irreparable harm, and should be enjoined. *See* Dkt. 24. And the Electronic Payments Coalition agrees with plaintiffs that the IFPA is preempted by federal law which ensures that the national payment system is not subject to a balkanized regulatory regime. The Electronic Payments Coalition files this amicus brief to make the additional point that the IFPA is an example of troubling self-dealing by a state government. Illinois reaps enormous benefits from the electronic payments system, including higher revenues. There is no sound justification in law or policy why Illinois should be permitted to enjoy the benefits of the flow of funds to it over the interchange system without those funds being included within the base for calculating the fees that make those benefits possible. In addition to being preempted, the IFPA raises serious concerns under the Fifth and Fourteenth Amendments' requirement that states give just compensation for the benefits they receive from the infrastructure they access to increase revenue.

ARGUMENT

I. THE ELECTRONIC PAYMENTS SYSTEM IS ESSENTIAL TO THE ECONOMY OF THE STATE OF ILLINOIS.

A. The Electronic Payments System

The convenience and reliability of obtaining goods and services through electronic payments is taken for granted in our modern economy. A consumer selects an item in a physical store and swipes or taps a card, or chooses an item from a website and transmits payment card information through a secure web form or via application on her mobile device. Instantly, the transaction is complete. The merchant transfers the item to the customer confident that payment will follow. The thoughtless ease of such a commonplace transaction testifies to the success of electronic payments system that makes it possible.

But the electronic payments system did not just emerge into being. It is a vast, complex, and privately-created infrastructure that enables numerous strangers to quickly and seamlessly coordinate payment and shift the risk of nonpayment by the customer away from the seller and to a financial institution that can more efficiently bear that risk. This brief assumes familiarity with the details of the four-party-network[1] structure, and will only provide a quick overview for context.

To participate in a four-party-network electronic payments transaction, the consumer must first be issued a payment card by a bank. As relevant here, those payment cards can either be credit cards for which the bank extends the consumer a line of credit or debit cards that allow the electronic payments system to promptly deduct the funds from the consumer's bank account. Dkt. 24-2 ("Am. Bankers Ass'n Decl.") ¶ 13. The bank that issues the card is appropriately termed the "issuing bank." *Id.* ¶ 12. Merchants, too, must contract with banks known as acquiring banks that affiliate with the particular payment network. *Id.* The acquiring bank provides the merchant with connectivity to the electronic payment (the card readers familiar to consumers) which places the payment system right at the point of sale. *Id.* ¶ 14.

When consumers present their payment cards to a merchant, whether as a physical card, by providing the card information, or through a mobile payment app like Apple Pay or PayPal, the consumer sets the whole electronic-payments transaction process in motion. As an initial step, the merchant's terminal sends the card and transaction information to the acquiring bank, which then relays the information to the issuing bank via the payment network (e.g., Mastercard or Visa). *Id.*

[1] There are two types of electronic payments networks: the four-party networks operated by Mastercard and Visa (and several debit-only networks, such as STAR, NYCE and ACCEL) and the three-party networks operated by Discover and American Express. *See* Robin A. Prager et al., *Interchange Fees and Payment Card Networks: Economics, Industry Developments, and Policy Issues*, Federal Reserve Board 9–10 (2009) https://bit.ly/47tOuEr.

¶ 14. At this point, the acquiring bank requests the issuing bank's authorization of the transaction. *Id.*; *see also* Dkt. 24-12 ("Mastercard Decl.") ¶¶ 4–8; Dkt 24-13 ("Visa Decl.") ¶¶ 8–11. Once the transaction is authorized—usually in a matter of seconds—the transaction between the merchant and the consumer is complete. Mastercard Decl. ¶ 7; Visa Decl. ¶ 8.

The banks collect and transmit payments between themselves and their customers. The acquiring bank will deposit funds directly in the merchant's account. Am. Bankers Ass'n Decl. ¶ 15; Mastercard Decl. ¶ 8. The issuing bank in turn sends a payment to the acquiring bank. Visa Decl. ¶ 12. And the issuing bank will collect money from the buyer according to the terms of the card agreement.

The issuing bank and payment networks play vital roles in the operation of the electronic payments system. The network links together the issuing and acquiring banks. Beyond that, the issuing bank and the network each market their complementary payment services to large numbers of consumers and merchants. By increasing the ubiquity of offer and acceptance of a payment card, marketing increases the value of the payment network to both buyer and seller. And importantly, though less often appreciated, the payment network and issuing bank also play key roles in ensuring trust in the entire system. They effectively guarantee that reasonably vigilant consumers will not have to pay a penny of unauthorized or otherwise fraudulent transactions, and that merchants will not be left unpaid for their goods or serves. Building on federal regulations, both Visa and Mastercard have "zero liability policies," which require issuing banks to replace funds taken from a consumer's account as a result of an unauthorized credit or debit transaction processed by the network. Glenn Grossman, *True Impact of Interchange Regulation: How Government Price Controls Increase Consumer Costs and Reduce Security*, Cornerstone Advisors 26 https://bit.ly/4dRPW5U; *see also* 12 C.F.R. §§ 1005, 1026. As a complement to such a policy,

the networks and issuing banks have developed sophisticated data collection and analysis capacities that allow them to spot fraudulent transactions with a high degree of accuracy. *See* Grossman at 26. In 2021, the total volume of card transactions in the United States was $11 trillion, while fraud losses were barely 0.1% of that total. *Id.* at 24

B. Electronic Payments' Benefits to Consumers and Merchants

In the United States, fully two-thirds of payments are made using payment cards. *See* Federal Reserve Bank of Atlanta, 2023 Survey and Diary of Consumer Payment Choice 10-12. Electronic payments have become dominant in a remarkably short period of time. Just fifty years ago, most consumers used cash for small purchases and checks for larger transactions. Payment cards were initially offered only by particular retailers for use at the particular store, with Diners Club International famously pooling together a few such retailers for a "closed-loop" charge card popular in the 1950's. Tim Mead et al., *The Role of Interchange Fees on Debit and Credit Card Transactions In the Payments System*, Federal Reserve Bank of Richmond 2 (May 2011) https://bit.ly/3MG1Rru. Electronic payment network companies like Visa and Mastercard changed everything when they developed and expanded payment-card networks to the point where they now include nearly every retailer.

Payment cards have succeeded over other payment options (*e.g.*, cash, checks, and travelers' checks) because they provide unique benefits to consumers and merchants alike. The electronic payments system massively reduces friction in the economy "by providing consumers convenient and secure access to their funds, while reducing cash and check handling for merchants and expanding the pool of customers who are guaranteed to pay." Mark Zandi et al., *The Impact of Electronic Payments on Economic Growth*, Moody's Analytics A3 (Feb. 2013) https://vi.sa/3ToUnNc. Consumers can carry only limited cash. Checks present a risk of nonpayment to merchants. But cards "provide consumers with access to all available funds or lines

of credit for a given transaction, and they give merchants peace of mind about payment guarantees." Mark Zandi et al., *The Impact of Electronic Payments on Economic Growth*, Moody's Analytics 4 (Feb. 2016) https://bit.ly/3XGanvZ. Indeed, the whole e-commerce sector—a sector that itself reduces friction in the economy—"would be impossible without electronic payment networks." Zandi (2013) at A8; *see also* Todd J. Zywicki, *The Economics of Payment Card Interchange Fees and the Limits of Regulation*, International Center for Law & Economics 6 (Jun. 2, 2010) https://bit.ly/3XlBXyi ("Where it is essentially impossible to engage in electronic commerce using cash or checks, credit cards are responsible for the very creation of e-commerce.").

Card payments also reduce friction in the economy by providing consumers and merchants with recourse for fraudulent transactions. In effect, issuing banks take on the risk of fraud, while promising to make whole consumers and merchants who play by the rules. Compare cards to checks. With checks, merchants take on the risk that the consumer will default, but "card transactions guarantee payment to merchants." The Perryman Group, *The Electronic Payment System: An Assessment of Benefits for the US and State Economies* 10 (Oct. 2015). Thus, the electronic payments system uniquely enables merchants "to avoid the cost of processing transactions and offers them quick, guaranteed payment. This saves merchants the trouble and risk of extending credit to customers, and it increases the number and value of sales that they can make." *Ohio v. Am. Express Co.*, 585 U.S. 529, 534 (2018). The same goes for consumers. "Credit card companies will also often resolve disputes between customers and merchants, decreasing the consumers' perceived risk of purchasing." Perryman at 9–10.

Put another way, issuing banks take on the risk of fraudulent or unauthorized transactions that threaten to operate as a significant drag on transacting business. And they do it because the issuing banks can far more efficiently bear that risk. For example, they are far better positioned at

the point of sale to screen for and detect fraud. "[B]ecause they draw from a wider array of retailers, card-holders and locations, general credit card issuers can develop more-sophisticated (and less-costly) systems for anticipating and preventing fraudulent practices, reducing the risk of default by particular consumers, or protecting consumers against identity theft." Zywicki at 10. Along with payment networks, "[c]ard issuers deploy extraordinarily-complicated neural networks and intelligent computer systems to detect changing patterns of fraud in real-time. Very few of these protections would be cost-feasible for department store chains (much less supermarkets, small appliance, hardware, or convenience stores)." *Id.* Reducing the cost of both fraud and fraud prevention by placing those costs on parties better able to manage that risk benefits everyone. Sellers face less fraud, buyers are victims of less fraud, and buyers and sellers can more confidently and cheaply engage in commerce. "This trust in the payment system eases friction, bolstering consumption and GDP." Zandi (2013) at A7.

Credit cards also reduce cash-flow friction that might otherwise operate as a drag on economic activity. "Access to credit helps calibrate periodic income with continuous consumption." Id. That access in turn "encourage[s] private consumption." Perryman at 9; *see also id.* ("Credit cards also allow for smoother consumption patterns, as consumers are provided with flexible funding in between pay periods."). And the rise of payment cards have helped to democratize access to credit. Before cards, consumers seeking a way of smoothing consumption would need to negotiate individual bank loans or a line of store credit. Zywicki at 6.

Consumers recognize these benefits. When consumers who predominantly use cards are asked why they do so, they list "convenience" as the number-one factor. Javelin, *Small Merchants on Interchange* 9 (Mar. 2017). Merchants similarly profess a high degree of satisfaction with the

electronic payments system and recognize that, among other benefits, it has increased their sales. *Id.* at 10–13.

C. Electronic Payments' Benefits to the State of Illinois

In Illinois, as elsewhere, the electronic payments system has successfully lowered barriers that stand in the way of retail and other transactions, minimizing consumers' and merchants' fears and efficiently allocating risk. The result is a classic "virtuous economic cycle." Zandi (2013) at A7. In that virtuous economic cycle "increased consumption leads to increased production, more jobs[,] and greater income." *Id.*

Several economists have sought to measure the total benefit to the economy from the electronic payments system. According to one 2015 study, the electronic payments system has, since its inception, "led to gains in business activity in the United States for 2014 (compared to the results if no such system existed) totaling $1.760 trillion in gross product and almost 23.2 million permanent jobs." Perryman at 2. That is an increase in the size of the U.S. economy of 12%, an increase in personal consumption expenditures of 17%, and an increase in employment of 20%. *Id.* Those figures have only multiplied during the last decade. Other studies also show dramatic benefits to the U.S. economy as a whole. *See, e.g.*, Zandi (2013) at A5 (finding that the marginal shift to payment cards between the years 2008 and 2012 accounted for $190 billion in GDP growth (2024 dollars)).

As four percent of the nation's economy, the State of Illinois has similarly benefitted from the advance of electronic payments. Indeed, the Perryman study looked specifically at Illinois and found that, in 2014, the existence of the electronic payments system accounted for increases of $82.9 billion in additional Gross State Product (measured in 2009 dollars), $56 billion in additional retail sales, and over a million permanent jobs. Perryman at 49. The Illinois economy has grown

by 27% in the last decade, so the Perryman study surely understates the full impact of electronic payments.

As a now essential component of substantial economic activity, the electronic payments system is also a crucial contributor to the State's collection of tax revenues. The multi-billion-dollar increase in economic activity from electronic payments—including $56 billion in retail sales—flows directly to the Illinois Department of Revenue through the 6.25% State sales tax. 35 Ill. Comp. Stat. 105/3-10. And Perryman also found that the electronic payments system accounted for a $49.7 billion dollar increase in personal incomes, again in 2009 dollars. Perryman at 49. That too flows to the public fisc by virtue of the State's 4.95% income tax. 35 Ill. Comp. Stat. 5/201(b)(5.4). Last year Illinois likely enjoyed at least $10 billion in additional revenue that it never would have seen if not for the electronic payments system.

The impact on State revenues is likely even greater than those back-of-the-envelope calculations would indicate. The electronic payments system has had the additional public benefit of substantially reducing the so-called "gray economy" and of reducing tax evasion more generally. As economist Mark Zandi has explained, "[r]etailers who do not report some or all of their transactions to avoid paying sales tax prefer cash transactions. Card transactions, on the other hand, are 'above board' and create an audit trail that greatly reduces unreported transactions, thereby raising tax revenues." Zandi at A8. To further the virtuous cycle of electronic payments and the State's revenues, consumers are especially likely to use cards when making retail purchases subject to sales tax. *See* Kevin Foster et al., *2023 Survey and Diary of Consumer Payment Choice: Summary Results*, Federal Reserve Bank of Atlanta 12-13 (2024) https://bit.ly/3XCsG68 (three out of every four purchases were made with payment cards).

D. The Interchange Fee

The electronic payments system and its manifold benefits would not be possible without the interchange fee. Interchange fees are small fees, calculated as a percentage of the total transaction, that the acquiring bank "pays" to the issuing bank. The precise percentage varies depending on the payment network and whether the transaction used a debit or credit card, among other factors. *See* Am. Bankers Ass'n Decl. ¶ 16;

Interchange fees "help cover the costs and risks that Issuers incur, such as fraud and administrative costs associated with managing cardholders' accounts." *Id*. The issuing banks' costs are substantial, but they are crucial to the operation of the system. As Professor Todd Zywicki has observed, "card issuers must build (and seek to expand) a cardholder base, create and maintain sophisticated billing and collection systems and statement processing capabilities, establish a legal compliance program and continually monitor its implementation, and set up customer service programs." Zywicki at 29. Some of the interchange fee goes to cover anti-fraud programs housed at the payment networks themselves. Issuing banks pay for these programs through the fees that they pay to the payment networks. For instance, Visa prevented $27 billion in fraud in the year 2022 by using a variety of tools. Grossman at 28. And those tools were the result of significant investments in fraud prevention. For instance, in the last five years, Visa has 600 full-time cybersecurity specialists and has invested more than $10 billion in anti-fraud technology and infrastructure in the last five years. *Id.* Similarly, Mastercard has recently made multi-billion-dollar investments in cybersecurity, including developing a suite of fraud-spotting AI tools. *See* John Kell, *Inside Mastercard's multi-billion-dollar AI arms race against fraudsters*, Fortune (Mar. 6, 2024) https://bit.ly/3TnKv6o. The issuers and payment networks have also used interchange fees to develop other security measures, including the redesign and deployment of more-secure EMV-

compatible cards, the incorporation of biometric-based authentication mechanisms, and new data security standards.

That the issuing banks can most efficiently bear the various risks associated with payment card transactions does not make them insubstantial. Again, "it is the card issuer that assumes all of the credit risk so that merchants can make sales on credit without any credit losses and thus it is the issuer that incurs the costs of minimizing fraud and avoiding defaults." Zywicki at 29. Interchange fees may also be used to fund rewards programs to consumers, programs that ultimately also benefit the merchant by incentivizing consumer transactions through the payment network. Mead, *Role of Interchange Fees* at 4; *see also* Electronic Payments Coalition, *Financial Lifeline: The Value of Credit Card Rewards* 17 (May 2024) https://bit.ly/4gel4y2 ("[R]educ[ing] interchange fees … would … lead to a substantial reduction or outright elimination of rewards for many cardholders.").

The interchange fee ensures that *all* parties that benefit from the transaction-promoting efficiencies of the electronic payments system pay for the significant value it produces for the economy as a whole. Interchange fees are an important part of fairly spreading the costs of maintaining a system that promotes widespread trust in all consumer transactions. Without interchange fees, the costs of ensuring the breadth of the network and providing for its reliability and reducing the potentially significant risks and costs of fraud would be borne entirely or nearly entirely through interest payments paid by consumers in the case of credit cards. *See* Robert Adams et al., *Credit Card Profitability*, Federal Reserve Board (Sept. 9, 2022) https://bit.ly/4d12AhS. But such a system would allow all merchants and wealthier consumers who do not carry a balance (or carry no significant balance) to enjoy the system's benefits without paying for any of its costs. Whether the full costs could economically be borne on the backs of consumers who carry negative

credit card balances is doubtful. To undermine interchange fees is, therefore, to threaten to transform the system's "virtuous cycle" into a vicious one. Issuing banks unable to fund maximally effective fraud-detection could be led to rethink "zero liability," which could lead to consumers losing trust in the payment system and reducing their use of cards for transactions. Less use of cards would lead to fewer transactions, undermining the value of the network to merchants potentially leading them to stop accepting cards. As cards became less accepted, consumers would perceive less use for them, and so on.

All of this would potentially significantly reduce overall economic activity. And a reduction in overall economic activity would directly and potentially significantly impact tax revenues depending not only sales tax attached to transactions but also on the income taxes derived from jobs generated by all of the transaction promoting benefits of interchange.

II. THE ILLINOIS INTERCHANGE FEE PROHIBITION ACT UNCONSTITUTIONALLY REQUIRES THAT THE STATE BE PROVIDED ELECTRONIC PAYMENT SYSTEM SERVICES AT NO COST.

Plaintiffs challenge and seek an injunction against the enforcement of the recently-passed Illinois IFPA. 815 Ill. Comp. Stat. 151/150-1 *et seq.*. The Electronic Payments Coalition agrees with plaintiffs regarding the importance—indeed, necessity—of a uniform national rule for the electronic payments system. It would be hard to think of any component of commerce that is more interstate, and more in need of a uniform national rule, than the payment system. Its benefits are diffuse precisely because in our modern economy consumer commerce pays little attention to state boundaries. Every merchant who participates in the network benefits from it no matter where they are located. And every state's tax revenues benefit from how it promotes economic activity. This brief, however, will not burden this Court with a repetition of the plaintiff's well-presented preemption arguments.

Instead, the Electronic Payments Coalition focuses on the way the Illinois law makes Illinois a unique and troubling free-rider on the economy-wide benefits of interchange. The IFPA prohibits issuing banks, payment card networks, acquires, and processors from assessing an interchange fee on the portion of the transaction that goes to tax or gratuity. 815 Ill. Comp. Stat. 151/150-10(a). The prohibition on interchange fees on taxes extends not only to the State sales tax but also to local sales tax and to "any use and occupation tax … imposed by the State or a unit of the local government in the state." *Id.* 151/150-5. Notably, Illinois will continue to *benefit* from the interchange system's transaction-promoting effects. The sales tax revenue will continue to flow through the system. But it is the State's view that it should enjoy all the benefits of the highly reliable and safe transaction environment that increases the State's tax revenue even as the State uniquely exempts the portion of transaction that produces those revenues from *any* contribution to supporting the significant costs of the system.

Take a dinner at a Long Beach, California restaurant where the couple leaves a 20% tip and pays the 10.25% sales tax. If the total payment for the meal, tip, and tax is $100 and the couple pays with a credit card with an ordinary 1.8% interchange fee, the total amount paid to the issuing bank that facilitates the convenient transaction would be $1.80. Under the IFPA, if the exact same dinner occurred in Chicago, with the exact same 10.25% sales tax rate, the interchange fee would be merely $1.38. The issuing bank provides the same services to both couples and to both restaurants and promotes restaurant commerce that benefits state revenues equally in both states. The system in both places allows for the same ease and convenience, same guaranteed payment, same zero liability policy, same fraud detection software, same incentives to attract consumers and merchants to the network and generates the same amount of sales tax in both places that flows directly to the state. But the Illinois transaction will contribute 30% less in interchange fees to

support all of those benefits. Multiplied by the massive volume of transactions to which sales tax and gratuities applies, the impact will be substantial. Illinois has effectively awarded itself free access to the interchange system: it collects the full value of the electronic payment system's benefits while preventing the issuing banks from receiving compensation for the services they add and the risks they assume.

Notably, one of the benefits of preemption is how it can prevent a state-by-state "race to the bottom." Stephen F. Williams, *Preemption: First Principles* 103 Nw. L. Rev. 323, 329 (2009). This case presents precisely such a risk. If other states were to seek to extract their revenues from the widespread base of support for the electronic payments system, the cascading effects could eventually strip the entire system of the funds it needs to sustain itself.

Beyond that, the IFPA's free-rider goals creates significant concerns about regulatory taking. The State of Illinois has identified a service from which it benefits—namely, the issuing banks' many services that sustain the electronic payment system—recognizes that interchange fees support the issuing banks role in the system, and the State attaches itself to that system to generate its own revenue from it (sales tax). But now Illinois seeks to exempt the portion of funds it collects on transactions from the base used to fund the system.

This raises significant concerns under the Takings Clause of the Fifth Amendment. In simple terms, the Fifth Amendment stands for the proposition that "[t]he government must pay for what it takes." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 148 (2021). Here, the government (while not specifically the payer of interchange) has changed the law for the express purpose that or exempting the portion of payment issuing banks facilitate and guarantee that will go to the State (sales tax) is exempt from the compensation provided for those services.

A law that requires a private business to provide a particular good or service to certain consumers for a specified price is analyzed under the complex balancing test set forth in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978). *E.g.*, *Franklin Mem'l Hosp. v. Harvey*, 575 F.3d 121, 127 (1st Cir. 2009); *cf. Stone v. Farmers' Loan & Trust Co.*, 116 U.S. 307, 331 (1886) (Railroad Commission Cases) ("Under pretense of regulating fares and freights, the state cannot require a railroad corporation to carry persons or property without reward."). Here, however, the State is not merely setting a price for electronic payment services. It is appropriating them for itself. That is at least arguably a *per se* taking under *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). It is comparable to other laws that have been struck down as per se takings, like the federal law requiring raisin growers to provide the government with a portion of the crop or the Federal Communication Commission's order that cable providers each construct three public access channels. *See Horne v. Dep't of Agriculture*, 576 U.S. 350, 362 (2015) (The policy requiring growers to "turn over a percentage of their raisin crop without charge, for the Government's control and use, is 'of such a unique character that it is a taking without regard to other factors that a court might ordinarily examine.'") (quoting *Loretto*, 458 U.S. at 432); *Midwest Video Corp. v. FCC*, 571 F.2d 1025, 1058 (8th Cir. 1978), *aff'd*, 440 U.S. 689 (1979) ("[A] requirement that facilities be … dedicated without compensation to the … government (for public use) would be a deprivation forbidden by the Fifth Amendment.").

The IFPA prohibits just compensation of issuing banks for the services they provide the State in connection with the assessment of sales taxes. Thus, in addition to being preempted by various federal laws, the IFPA is unlawful under the Takings Clause of the Fifth Amendment. Its application should be enjoined.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for a preliminary injunction should be granted.

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Respectfully submitted,

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