



The Daily Dish

# The Feds Strike Back

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One of the not-quite-front-burner policy issues has been the increasingly aggressive tug of war between states and the federal government, which has an established precedent of pre-empting state actions to provide a uniform national policy. Some examples are states overriding the federal [Employee Retirement Income Security Act](#) to impose regulations on health insurance, and barring from their contracts those companies that have a political line on environment, social, and governance (ESG) policies.

The latest salvo occurred in June when Illinois enacted legislation, the Illinois Interchange Fee Prohibition Act (IFPA), that specifically prohibits financial institutions from charging a fee on the tip or sales tax portion of credit and debit card transactions. The law raises the specter of a state-by-state patchwork quilt of regulations on the financial payments networks. In response, the American Bankers Association and others challenged the law in the U.S. District Court for the Northern District of Illinois. They argue that the law would generate inefficiencies in the payments system and undermine the benefits of debit and credit cards. Perhaps more important, they argue that the new Illinois law violates multiple federal statutes, most notably the National Bank Act, and thus cannot apply to national or state-chartered banks, federal or state savings institutions, or federal or state-chartered credit unions.

Perhaps the most significant development, however, is that the federal government is striking back. Specifically, the [Office of the Comptroller of the Currency](#) (OCC) filed an amicus brief that argues:

Although the IFPA’s requirements are vague and ambiguous in many respects, this much is clear: the IFPA prevents or significantly interferes with federally-authorized banking powers that are fundamental to safe and sound banking and disrupts core functionalities that drive the Nation’s economy. In short, the IFPA constitutes both bad policy and an unlawful interference with federally granted powers.

This is the essence of the legal battle. The OCC weighed in on the economic policy stakes: “If the IFPA is not enjoined and invalidated, it may well trigger a domino effect of other states and localities enacting similar laws, thereby creating a fractured, highly inefficient, and unworkable payment system that would materially affect interstate commerce.”

So, the battle is joined – at least in banking – over the degree to which states can disregard or override the national policy frameworks enacted by Congress and signed into law. A resolution is overdue.