



The Debit Card Cap Goes Back to the Fed

The Eighth Circuit has set aside the Federal Reserve's 21-cent debit card fee cap and ordered a rewrite built on marginal cost, a conflict with the D.C. Circuit that a ruling for the Board in Linney's Pizza would sharpen.

21¢

BASE OF THE DEBIT FEE CAP THE
EIGHTH CIRCUIT SET ASIDE¹

100.7B

DEBIT AND PREPAID CARD
PAYMENTS IN 2023, COVERED AND
EXEMPT²

45 days

TIME THE BOARD HAS TO SEEK
REHEARING¹

THE ISSUE

On October 26, 2026, the Eighth Circuit affirmed the judgment vacating¹ the Federal Reserve Board's cap on debit card interchange fees, the charge a merchant's bank pays the cardholder's bank on each purchase. Interchange is one part of what a merchant pays to accept a card; network and processing fees are separate. Since 2011, Regulation II has held interchange to 21 cents per transaction plus 0.05% of its value, and a cent more for issuers that meet fraud-prevention standards. The cap applies to covered issuers; banks with less than \$10 billion in assets, counting affiliates, are exempt.³ In 2023, card networks processed 100.7 billion debit and prepaid transactions, covered and exempt, worth \$4.7 trillion.²

The case turned on one provision of the Durbin Amendment: the Board must consider an issuer's incremental cost of authorizing, clearing and settling "a particular electronic debit transaction," and must not consider costs not specific to one.³ The court read "incremental cost" as marginal cost, what one more

transaction adds to a bank's total cost. Costs that do not vary with volume are fixed and may not be counted. The same function can fall on either side: fraud-screening software bought outright is a fixed cost, while the same screening bought per transaction is incremental. The Board never defined incremental cost, the court found, and set one cap for all covered issuers where the statute calls for "standards," plural. With *Chevron* overruled, and the Durbin Amendment adding no deference of its own,⁴ the court gave the Board's reading none.¹

The ruling does not take effect at once. The Board has 45 days to seek rehearing, and absent a further order or stay the mandate issues seven days after that deadline or an order denying rehearing; a court may also stay the mandate⁵ while a party seeks Supreme Court review. Until then, Regulation II stands. After the mandate issues, the Board must write a new standard that sorts transaction-specific costs from the rest. It may use a

proxy, perhaps average variable cost, but may not, in the court's words, pick a number.¹

The consequences fall beyond the parties. The marginal cost of one more swipe does not capture what it costs to run a debit system: the networks, the fraud monitoring, the losses. Those costs do not disappear when the cap excludes them; banks recover them elsewhere. After the 2011 cap, a Federal Reserve staff study found, covered banks offered fewer free checking accounts and raised monthly fees and the balances needed to avoid them; the share offering free basic checking fell to 30.0%, against an estimated 65.2% without the cap.⁶ Merchants pursue a legitimate aim, lower acceptance costs, and the Board's own data show the cap exceeded average processing and fraud costs for 80.1% of covered issuers.² Neither point

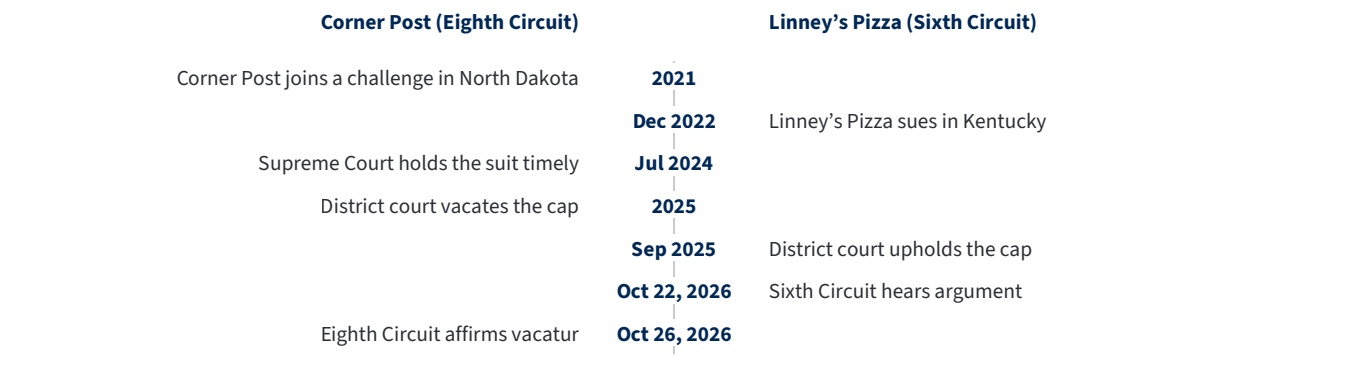
decides what the statute permits; both bear on what a rewrite will cost account holders.

A second challenge is pending (Figure 1). The Eastern District of Kentucky upheld Regulation II in *Linney's Pizza* in September 2025,⁷ and the Sixth Circuit heard argument on October 22.⁸ It has not ruled. The D.C. Circuit largely upheld the rule in 2014⁹ under *Chevron*; *Loper Bright* left such holdings in place under statutory stare decisis,¹⁰ so the Eighth Circuit's reading already conflicts with that decision. A Sixth Circuit ruling for the Board would sharpen the conflict with a decision reached without deference, and would strengthen the case for Supreme Court review. SPPI joined the James Madison Institute in an amicus brief supporting the Board¹ in the Eighth Circuit.

WHAT WE RECOMMEND

1. **The Board should seek rehearing en banc.** The full Eighth Circuit should weigh, before the mandate issues, a reading that makes marginal cost the statute's only measure.
2. **If the circuits remain divided, the Board and the Solicitor General should seek certiorari and a stay of the mandate.** A petition alone does not delay the mandate; the Board should move under Rule 41 so the Supreme Court can settle 15 U.S.C. § 1693o-2(a)(4)(B) before Regulation II is rebuilt on one circuit's reading.
3. **Any new standard should measure who pays.** The Board already publishes issuer costs and interchange revenue; before adopting a new standard it should estimate the effect on checking-account fees, minimum balances and access to free accounts, by income where the data allow.
4. **Congress should decide where the line belongs.** The court held the text clear: a bank that buys fraud tools outright and one that pays per transaction are treated differently, whatever the economic sense of that line, and only Congress can redraw it.¹

FIGURE 1 The two court challenges to Regulation II’s debit card fee cap



From *Corner Post, Inc. v. Board of Governors, No. 25-3000* (8th Cir. 2026); *Linney’s Pizza, LLC v. Board of Governors*, 804 F. Supp. 3d 717 (E.D. Ky. 2025); *CU Daily* (2026). Two trade associations filed the North Dakota suit in April 2021; Corner Post joined it later that year.

SOURCES

1. *Corner Post, Inc. v. Board of Governors of the Federal Reserve System, No. 25-3000* (8th Cir. Oct. 26, 2026), with the clerk’s notice of the same date.

2. *Board of Governors of the Federal Reserve System* (2025). 2023 Interchange Fee Revenue, Covered Issuer Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions. December.

3. *Electronic Fund Transfer Act § 920 (Durbin Amendment)*, 15 U.S.C. § 1693o-2.

4. *Electronic Fund Transfer Act § 904(e)*, 15 U.S.C. § 1693b(e).

5. *Federal Rule of Appellate Procedure 41* (mandate: issuance and stay).

6. Manuszak, Mark D., and Krzysztof Wozniak (2017). The Impact of Price Controls in Two-sided Markets: Evidence from US Debit Card Interchange Fee Regulation. *Finance and Economics Discussion Series 2017-074. Federal Reserve Board staff working paper.*

7. *Linney’s Pizza, LLC v. Board of Governors of the Federal Reserve System*, 804 F. Supp. 3d 717 (E.D. Ky. Sept. 15, 2025).

8. *Diekmann, Frank* (2026). Appeals Court Hears Arguments in Case With Big Potential Implications for Interchange. *CU Daily*, October 23.

9. *NACS v. Board of Governors of the Federal Reserve System*, 746 F.3d 474 (D.C. Cir. 2014).

10. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412 (2024).

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