

**TESTIMONY OF KATHY MILLER
OWNER, OPERATOR**

**THE ELMORE STORE
ELMORE, VERMONT**



HOUSE FINANCIAL SERVICES COMMITTEE

**THE CREDIT CARD INTERCHANGE FEES
ACT, H.R. 2382**

October 8, 2009

Mr. Chairman, Congressman Welch and Members of the House Financial Services Committee:

Good morning. I would like to say thank you for allowing me to testify today. My name is Kathy Miller and I, along with my husband Warren and daughter Kelly, am the owner of the Elmore Store in Elmore, VT. I am also here today as a past chair of the Vermont Grocers Association and on behalf of the Food Marketing Institute and National Grocers Association which represent our nation's supermarkets and grocery stores.

We appreciate you holding this hearing and for the opportunity to provide testimony on credit card interchange fees also know as swipe fees to merchants who have to pay a fee each time a card is swiped. Thank you to my Congressman, Peter Welch, for inviting me here today to testify. It has been three years since I last testified before the Senate Judiciary Committee at the invitation of Senator Leahy on the anti-competitive and anti-consumer practices of the credit card companies. Unfortunately, many of the same problems still exist today, and interchange fee costs have continued to rise at the expense of small businesses like ours.

This is the store that we have owned and operated now for 26 years. I am a 5th generation Vermonter with deep roots in Elmore, VT. I am the "Mom" part of the operation. My husband Warren "Pop" is minding the store so that I could be with you today. Warren has recently served 2 terms in the state legislature in Montpelier. We are not only committed to our store, but our community and the state of Vermont as well.

You may wonder why we do what we do – 7 days a week – 96 hours a week – 364 days a year – to be honest, some days we ask ourselves. But we believe that we can and do make a difference to the people and community that depend on us.

My concern as a small independent store may seem small to you, but it is a huge burden for us and very real.

Credit card fees are set by the card companies and we have no control over them. The same is true for the operating rules Visa and MasterCard include in the contract we must sign to accept their cards. However, unlike any other business contract we sign, we have no ability to negotiate the terms of card acceptance with Visa and MasterCard. Sometimes we don't even see the full terms of the 1000+ page contract before we sign. The fees keep increasing and there isn't anything we can do to stop them or even slow them down.

Congressman Welch listened to these concerns from Vermont store keepers like me and he wrote legislation to try to address several of them. Warren and I commend Congressman Welch for introducing this important legislation to protect small businesses like our store in Vermont and we look forward to consideration of the Credit Card Interchange Fees Act by this Committee.

Since I told my customers I was going to Washington, DC to testify on this issue – I can't even tell you how many of my customers were unaware of the hidden fees. They swipe their cards and think all is "free" because there is "no charge" to them at all. Obviously we lose money on many small transactions and too much on others – so we have to raise prices – because we can't absorb it all. In the grocery business, we compete by lowering prices, not raising them. I am not a lawyer, but I know this is a huge problem that retailers across the U.S. - large and small - are facing, so I ask that you look into this matter seriously. I have customers who apologize to me for using their cards. I keep telling them, PLEASE keep shopping with us we need and appreciate your business!

We have streamlined our business to reduce costs as best we can – maintenance doesn't get done as it should, less money goes out in payroll, but we just can't keep absorbing these fees and survive in these tough economic times. If interchange swipe fees were fair and reasonable, Warren and I would have more money to invest back into our business. An example is we have only one phone line to help save money. I cannot take deli or grocery orders with my only line tied up to swipe cards.

What happens in a small country store when a customer swipes their card: a pack of 35 cent gum costs us 21 cents. The swipe fee on that sale costs us 21 cents, so I just lost money. I should just let them take it. A 99 cent bag of chips cost us 74 cents and the fees are 23 cents so I can only make 2 cents on that sale. What is wrong with this picture?

It doesn't take a P.H.D. to figure out that this is a quick way to go bankrupt. Congressman Welch's bill would allow us to set reasonable minimum purchase requirements.

Visa and MasterCard require us to accept all of their cards if we take any. And then they market a whole host of affinity cards with so called "free" features like airline miles. What they don't tell you is they charge merchants higher interchange rates for accepting those cards. Warren and I have not gone away on vacation in 10 years, yet every day we are paying for our customer's trips when we take their credit cards.

The Visa and MasterCard contract rules are not law so why do we comply with them? Well, this hasn't happened to us yet, but we've heard stories of other small businesses be threatened with excessive fines for breaking the rules, even for something as minor as requiring a \$5 minimum to use a credit card. A \$5,000 a day fine, which I hear is the Visa and MasterCard going rate these days, would simply put us out of business. I had a store owner call me to say they are going to get fined \$25,000, what should we do? I said take your signs down - we are not allowed to set minimums.

Last year in our store, 2008, we processed \$87,000 worth of plastic transactions. The credit card fees to us (out-of-pocket) were \$3,500 up from \$3,200 last year.

In our store, we have 2 gas pumps that we own – not subsidized by any big petroleum company. When the price of gas goes up, so does the amount of interchange we pay. Because the fee is a percentage rate plus a flat fee, the banks make more and I must pay more, even though their costs for processing the transaction are still the same.

Last year alone, American consumers paid Visa and MasterCard around \$48 billion in interchange fees. These fees are set by Visa and MasterCard and all the banks who issue their cards charge the same rates even though we would expect them to compete for our business. These fees and rules of card acceptance are not negotiable leaving a retailer in a take-it-or-leave-it situation. Of course, consumers don't realize they are paying the fee because merchants are effectively prohibited from informing their customers about them. These fees are reflected in the price of every product purchased at the front end of our store whether or not the customer pays with a credit card.

The rules of competition don't seem to apply to VISA and MasterCard and to the banks that issue cards. One reason is that, MasterCard and VISA have undisputed market power, with over eighty-five percent of the card marketplace. To the extent they compete with each other, it is a perverse competition. They compete to get banks to issue their cards. The way they do that is by providing them with higher interchange fees, by *raising prices*. Since merchants and ultimately consumers have no choice but to pay the fees, there is no constraint on this cycle of increasing fees.

The average supermarket industry profit margin last year was 1.43%. That means a profit of \$1.43 on a \$100 transaction. The interchange paid to the bank that issued the card on that same transaction is more than that! And when the price of food or gas goes up, so does interchange. Because the fee is a percentage rate + a flat amount, the banks make more, even though their costs are still the same. There is something wrong with this picture.

The reality is that interchange is used to subsidize VISA and MasterCard's expensive marketing programs and promotional schemes that benefit only the most privileged few. These include gold-plated reward programs that only the elite consumers qualify for, a blizzard of direct mail offers pushing cards on those who already have them or those who do not want them, and multi-million dollar event sponsorships designed to push consumers into using the most expensive forms of plastic payment. *Every* consumer, including those paying with cash, pay for these programs without knowing it.

In conclusion, interchange fees in this country reflect a market in which the normal, competitive forces are not working. This flawed market results in interchange fees that are not cost related, and which are intentionally kept hidden from consumers. As a result, consumers do not have the information they need to make sound economic decisions about their payment choices.

I would like to ask you on your next ride home to look and see how many vacant store fronts there are in your small downtowns. Just this last winter alone six stores closed within a 50 mile radius of us.

Some days I feel like I should just turn in my keys – but too many people count on us. Elmore is a town of 850 people. We are the hub of the community – when someone needs something, who do you call? “Mom” or “Pop” at the Elmore Store. We are just trying to keep our doors open.

I thank this Committee for shining some light on these fees and the impact they have on our business and on consumer prices. I would be pleased to answer your questions.

Thank you.