

**TESTIMONY OF KATHY MILLER
OWNER, OPERATOR**

**THE ELMORE STORE
ELMORE, VERMONT**

SENATE JUDICIARY COMMITTEE

**‘CREDIT CARD INTERCHANGE RATES;
ANTITRUST CONCERNS?’**

July 19, 2006

Mr. Chairman, Senator Leahy and Members of the Senate Judiciary 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 which represents 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 and the antitrust issues they raise. We are pleased that light is finally being shed on the anti-competitive and anti-consumer practices of the credit card companies.

This is the store that we have owned and operated now for 24 years. I am a 5th generation Vermonter with deep roots in Elmore, VT. I am the "Mom" part of the operation. Warren, sitting behind me, is "Pop." Warren was elected to the state legislature in Montpelier 4 years ago. 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 collectively set by the card associations and we have no control over them. They are not negotiable and cannot be added on to the consumer's bill. We cannot set minimum amounts to swipe credit and debit cards, that is against the

Visa and MasterCard operating rules, I am told. The fees keep increasing to us and our profit margin sinks down even lower.

Last year in our store, 2005, we did \$58,500 worth of plastic transactions. The credit card fees to us (out-of-pocket) were \$4,400. Each time a customer swipes their card it costs us, 2.65% + 20 cents per sale. For example, if we sell \$10 worth of gas, we make 49 cents and pay credit card fees of 26.5 cents + 20 cents. Or if a bicyclist stops for a bottle of water, it costs 23 cents to swipe the card. You do the math – it hurts.

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 \$30 billion in interchange fees. These fees are set collectively, in secret, by VISA and MasterCard member banks, who then charge them to merchants. These fees are not negotiable. It doesn't matter which bank issues the card, the fee is the same and the retailer has no choice but to pay it. 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. FMI members have seen their costs for these fees rise on average 700% in the past 10 years. These increases have occurred despite the fact that the technology infrastructure is already in place and the volume of transactions has grown exponentially, providing economies of scale. In other areas of my business or any business, as technology advances and volume increases, prices go down, or at least remain stable. But that is not the case with interchange fees because there is no competition.

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. 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.

But those rules 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 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*. In fact, the member banks get to decide collectively on the level of the interchange fee. Since merchants and ultimately consumers have no choice but to pay the fees, there is no constraint on this cycle of increasing fees.

As a result, in the plastic card world, the normal competitive model does not exist. In the plastic card world, as costs go down, fees are driven continually upward without explanation. Interchange fees in this country are among the highest in the developed world. You will hear from other witnesses about what antitrust authorities elsewhere have concluded about interchange. But we don’t need someone in the European Union or the United Kingdom or Australia to tell us that something is clearly wrong with the functioning of this market and it needs to be corrected.

Plastic has become the predominant currency in the U.S. economy. More than half the transactions in U.S. stores are paid with a credit or debit card and card companies have positioned themselves to get a percentage of every one of these transactions.

The average supermarket industry profit margin last year was 1.16%. That means a profit of \$1.16 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 four 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 anti-competitive interchange fees and the impact they have on our business and on consumer prices. I would be pleased to answer your questions.

Thank you.