

June 4, 2013 / FOR IMMEDIATE RELEASE

**In Battle Over Swipe Fees, A New Front Opens:
Merchants File Constitutional Challenge to New York's Credit-Card Surcharge Law**

(NEW YORK, NY) – A lawsuit filed today challenges the constitutionality of a New York state law forbidding merchants from imposing a “surcharge” on any customer who pays with a credit card. The lawsuit, brought by five New York merchants, was filed in federal district court in Manhattan and assigned to Judge Jed Rakoff.

Whenever consumers use credit cards, merchants pay swipe fees—which are typically passed along to all consumers in the form of higher prices. Merchants are allowed to charge different prices to consumers who pay with credit versus cash. But under laws in effect in New York and nine other states, the price difference must be described as a “discount” for cash, not a “surcharge” for credit—even though they are mathematically identical. In New York, a merchant who uses the wrong word could face criminal prosecution.

The plaintiffs in the new lawsuit—a hair salon, an ice-cream parlor, a liquor store, a martial-arts academy, and an outdoor furniture store—claim that New York’s law violates their constitutional right to free speech. “The state is seeking to enforce the credit-card industry’s preferred speech code,” says Deepak Gupta, a Washington lawyer and consumer advocate serving as lead counsel for the plaintiffs. “Merchants should be able to use whatever words are most effective to inform their customers about the high cost of using credit cards.”

“Swipe fees are a huge expense for us,” says plaintiff Peter Freeman of Brooklyn Farmacy & Soda Fountain, a neighborhood ice-cream parlor in Carroll Gardens, Brooklyn. “We just want to let our customers know about these fees in a way that will make them pay attention. But we can’t afford the risk that the state will prosecute us for using the wrong words.”

“A ‘surcharge’ and a ‘discount’ are just two ways of framing the same price information,” says Adam Levitin, a Georgetown law professor who has studied no-surcharge rules. “But consumers have a much stronger reaction to ‘surcharges,’ and are less likely to use credit cards if they understand that they will have to pay more. Credit card companies know this, which is why they insist that any price difference be labeled as a ‘discount.’”

“Swipe fees harm consumers and merchants alike,” says Ira Rheingold, Executive Director of the National Association of Consumer Advocates. “They’re like an invisible tax, funneling vast amounts of money from consumers to large banks and credit-card companies. And, worst of all, low-income consumers who pay in cash end up subsidizing rewards for high-income credit users.” Americans pay the highest swipe fees in the world—eight or nine times those paid by Europeans. The fees amount to about \$50 billion annually.

Nine other states (California, Colorado, Connecticut, Florida, Kansas, Maine, Maine, Oklahoma, and Texas) have laws similar to New York’s, and challenges to those laws are expected to follow today’s action. The laws have taken on new life since this February when Visa and Mastercard, under a national class-action settlement, dropped contractual provisions prohibiting merchants from imposing surcharges. The battle is also playing out in statehouses across the country, with credit-card company lobbyists now urging more states to pass no-surcharge laws.

The lawsuit can be viewed at the following link: <http://guptabeck.com/swipe-fee-surcharge-lawsuit/>

Gupta Beck PLLC

1625 Massachusetts Ave, NW, Suite 500, Washington, DC 20036

P 202 470 3826 F 202 328 7030

guptabeck.com