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May 19, 2010

Senator Amy J. Klobuchar
302 Hart Senate Office Building
Washington, DC 20510

Senator Al Franken
Warren E. Burger Federal Building
316 North Robert Street, Suite 615
St. Paul, MN 55101

Dear Senators,

I am writing to hopefully provide some guidance on the merits of the so-called Harkin Amendment #3812 to S.3217, the Restoring American Financial Stability Act of 2010.

The proposed ATM fee cap Amendment (Amendment #3812) has nothing to do with the purpose of the main bill, which is correctly designed to prevent financial crises in the future that could threaten our entire economic system. The Amendment, though well intended, instead of protecting consumers, actually will result in reduced consumer choice and could potentially do great damage to many small businesses in Minnesota and across the nation.

By way of background, the ATM industry is composed not only of banks which provide electronic remote access to their own customers and the customers of other banks through deployed bank ATMs but also hundreds of small businesses in Minnesota such as convenience stores, gas stations, bars, and restaurants, which generally own their own ATMs that they load with their own cash. For these small, nonbank merchants, the ATM is used as a business tool to respond to customer demand for convenience, put cash in the hands of customers to use in their establishments, as a way to avoid having to take checks which may be bad and to generate some additional revenue as part of their small business model. As you may be aware, since ATM owners have been permitted by law to charge for the convenience of a customer accessing cash at a nonbank location, the number of deployed ATMs has grown, due to customer demand for convenience, over roughly the past decade, from 150,000 to over 400,000 nationwide.

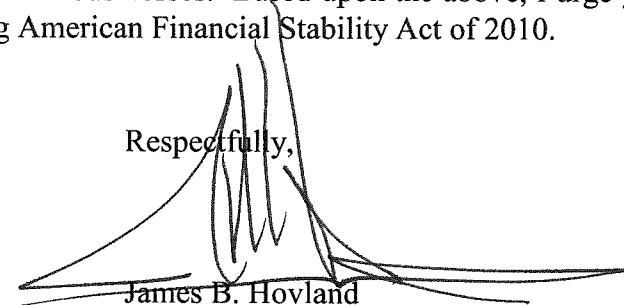
The original Harkin Amendment capped ATM fees at fifty cents (\$0.50) per transaction but there are no transaction fees paid if a customer takes money out of their own bank ATM. These types of transaction represent about half of the ATM transactions taking place daily in America. The other half of the transactions, taking place at nonbank ATMs, where a surcharge fee is assessed on

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cash withdrawal transactions, evidences a pure market function and freedom of choice by a consumer. Illustratively, a customer in a service station may decide to use that service station ATM to get cash. A credit card or debit card is inserted into the ATM and at the very beginning of that electronic process, the customer is advised of the surcharge amount to be charged for withdrawing the money owned by the convenience store from that merchant's ATM. Via electronic messaging, the customer is next requested to decide whether they still want to proceed with the transaction knowing it is subject to a surcharge fee. The person can then either elect to proceed or quit the transaction without any charge. If they proceed, there is a charge for the convenience of using the merchant's cash as opposed to going to the customer's own bank ATM to obtain cash. Despite the fees charged by small business ATM owners, the demand for choice and convenience by consumers has caused a four-fold exponential expansion of deployed ATMs. The message is clear: consumers are willing to pay for the convenience of using a nonbank ATM and Congress should not interfere in those market choices.

The ATM industry growth has spawned several U.S. based ATM manufacturing companies that employ hundreds of people and the processing companies, subject to federal oversight, which process millions of ATM transactions annually while maintaining security and privacy for card holders, employ hundreds if not thousands of personnel. All of these manufacturers and processors are at risk with the Harkin Amendment as are the jobs of many small business employees and, in some cases, the future existence of many small businesses. Based upon the above, I urge you to oppose Amendment #3812 to the Restoring American Financial Stability Act of 2010.

Respectfully,



James B. Hovland

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P.S. I understand the latest iteration of the Amendment would propose giving the FTC oversight on ATM fees and the amounts charged would need to be "fair and reasonable" as determined by the FTC. Any regulation of these fees, currently set by market conditions and paid by choice by millions of Americans annually, seems to be inappropriate and potentially damaging to small business as well. I urge opposition to the Amendment in any form.

