

## Second Circuit Upholds Credit Card Surcharges in New York State

By Taylor Arabian, J.D. Candidate 2016 | October 5, 2015

On September 29, 2015, the U.S. Court of Appeals for the Second Circuit [upheld New York General Business Law §518](#), effectively reviving a ban on retailer-imposed surcharges against credit card users. In a 3-0 decision, the appellate court judges overturned a [ruling](#) from the Southern District of New York that described the law as “incomprehensible,” determining that it violated neither the First Amendment nor the Due Process Clause of the Fourteenth Amendment. Barring an effective appeal to the U.S. Supreme Court, [retailers will now be subject to criminal penalties](#) if they attempt to impose surcharges on customers paying with plastic. The maximum penalties include up to one year in prison and a \$500 fine for merchants found to be in violation of the law.

The case [arose from a dispute](#) between Expressions Hair Design in Vestal, New York and a customer who decried the practice as illegal. The salon indicated to customers that it was charging a three percent surcharge to credit card users due to “swipe fees” imposed on it by credit card companies like Visa and MasterCard.

Confusingly, the law [will not prevent retailers from charging different prices](#) to customers paying with cards vis-à-vis those paying with cash—the law only prevents surcharges. Retailers will still be allowed to provide cash-paying customers with discounts off the full price. So, while a hair salon like the one in this case cannot advertise \$20 haircuts and charge credit card users \$22, it can advertise \$20 cuts and charge cash payers \$18.

The appellate court ruling [received praise](#) from a wide range of legal critics, including law enforcement officials such as New York Attorney General Eric Schneiderman and Manhattan District Attorney Cyrus Vance. The pair said that the ruling will prevent “bait-and-switch” tactics frequently used by statewide retailers, allowing consumers to trust posted prices. The case is *Expressions Hair Design et al v. Schneiderman et al*, Nos. 13-4533, 13-4537 (2d Cir. Sept. 29, 2015).