



Client:  
CardX



## SECURING CONSTITUTIONAL VICTORIES TO EXPAND YOUR BUSINESS

Chicago-based CardX set out to disrupt the payments technology industry by offering its innovative payment processing services, including credit card surcharging, in all 50 states. However, as it sought to provide nationwide service for merchants, it knew it faced state-specific bans on credit card surcharges and rules governing how surcharges could be communicated to consumers.

For help executing its business strategy, CardX turned to Cozen O'Connor's State AG Group to work with state attorneys general, who are responsible in many states for enforcing such bans, and to litigate challenges to these state laws, if necessary.

After the Oklahoma AG issued an opinion stating that the no-surcharge statute was unconstitutional and could not be enforced in Oklahoma, the Cozen O'Connor team sued the State of Kansas in federal court. In February 2021, the court ruled that the Kansas law prohibiting credit card surcharges — which had been on the books since 1986 — is unconstitutional as applied to CardX's surcharging model because the statute unjustifiably controlled how prices are communicated to consumers in violation of CardX's First Amendment right to engage in truthful commercial speech. Our team convinced the court to reject the Kansas Attorney General's argument that the statute furthered a substantial state interest by encouraging businesses to charge lower prices to customers who pay with cash, among other economic benefits.

In July 2021, the team achieved a third victory, with a new law in Colorado that repealed the surcharge ban and authorized surcharging that harmonizes with industry rules and includes robust consumer protections. This new legislation opens the way for CardX to offer its payments solution to Colorado businesses and makes Colorado the 48th state open to CardX's business model.

With Connecticut and Massachusetts the only states remaining with similar no-surcharge rules on the books, we are continuing to work with CardX to evaluate options to remove regulatory obstacles and help fulfill CardX's goal of providing a truly national service.

### CASE STUDIES INDEX

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#### CAPABILITIES

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