



## **ISSUE ANALYSIS**



### **Government Barriers to Georgia's Growth: How Dodd-Frank Price Controls Poach the Peach State's Prosperity**

**By John Berlau**

#### **Introduction: The Peach State Climbing Out of the Pits**

Few states have been hit as hard by the financial crisis as Georgia. With her economic engine humming along and unemployment hovering around 5 percent for several years until 2008, Georgia suddenly saw thousands of mortgages sour and dozens of banks fail in a slide that continues to this day.

The Federal Deposit Insurance Corporation has closed at least 80 banks in Georgia since 2008, more bank failures than in any other state in the union.<sup>1</sup> Even the largest banks in the Peach State are facing a struggle. In March, Atlanta-based SunTrust Banks Inc. failed a "stress test" administered by the U.S. Treasury Department to large banks. Although the bank appears to be in no immediate danger,<sup>2</sup> this failure means at the very least that SunTrust may have to curb some lending to local businesses until it has the balance sheet strength to withstand a future "stress test."

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Dismal economic statistics for the state at large match the disappointing bank figures, indicating that Georgia's businesses are still heavily impacted by the fortunes of local banks. After years of being below the national average, unemployment rates shot up to a high of 10.5 percent in late 2009. The

<sup>1</sup> Federal Deposit Insurance Corporation, "Failed Bank List,"

<http://www.fdic.gov/bank/individual/failed/banklist.html>

<sup>2</sup> SunTrust Banks Inc., "SunTrust Announces Stress Test Results and Provides Earnings Update," News Release, June 17, 2012, <http://www.reuters.com/article/2012/03/13/idUS242585+13-Mar-2012+PRN20120313>

unemployment rate has decreased recently, but is still around 9 percent. According to the U.S. Department of Labor's Bureau of Labor Statistics, only six states and the District of Columbia have higher unemployment rates than Georgia.<sup>3</sup>

There are, however, signs that Georgia's climate is improving for its workers and entrepreneurs. In 2011, Georgia's GDP grew at 1.7 percent, beating the national average of 1.5 percent. The 1.7 percent growth rate is the 16th-highest among the states. This is a significant change from 2008-2010, when Georgia underperformed the national average each year.<sup>4</sup>

And when it comes to economic growth, Georgia has long gotten many of the public policy fundamentals right. Georgia is a right-to work, relatively low-tax state. Government spending is under control in comparison to other states, and Georgia has maintained AAA rating from Standard & Poor's even after the United States was downgraded. The state ranks 14<sup>th</sup> on the Competitive Enterprise Institute's "Big Labor v. Taxpayer Index," scoring high because of right-to-work laws, low union membership in the private and public sectors, and one of the smallest state pension liabilities.<sup>5</sup> Similarly, Georgia ranks 10th in economic outlook in "Rich States, Poor States: ALEC-Laffer State Economic Competitiveness Index," which measures tax and regulatory burdens among the states.<sup>6</sup>

### **Georgia's Financial Sector Faces Headwinds and New Threats**

But Georgia's financial sector still faces severe headwinds – some from flawed state policies, but most from the disastrous interventions of the federal government. It was the federal government that primarily caused the housing crisis through subsidies and regulations that focused myopically on increasing home ownership.

The government-sponsored housing enterprises Fannie Mae and Freddie Mac led the way in lowering standards for the mortgages they purchased. Although a few die-hard defenders of the GSEs still sometimes argue that the housing entities were "late" to the subprime party, mounting evidence – now supported by a lawsuit from the Securities and Exchange Commission – shows that Fannie and Freddie led, rather than followed, the private sector into the subprime market, hiding their footprints from investors and regulators. Beginning in the mid-1990s, Fannie and Freddie misclassified millions of subprime loans as "prime." Mortgages with no down-payment requirements, credit scores below 660 and/or lack of income verification were all tossed into the GSEs' "prime" mortgage basket.<sup>7</sup>

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<sup>3</sup> U.S. Department of Labor, Bureau of Labor Statistics, "Local Area Unemployment Statistics," June 19, 2012 [http://data.bls.gov/timeseries/LASST13000003?data\\_tool=XGtable](http://data.bls.gov/timeseries/LASST13000003?data_tool=XGtable)

<sup>4</sup> U.S. Department of Commerce, Bureau of Economic Analysis, News Release, "Widespread Economic Growth Across States in 2011,"

[http://www.bea.gov/newsreleases/regional/gdp\\_state/gsp\\_newsrelease.htm](http://www.bea.gov/newsreleases/regional/gdp_state/gsp_newsrelease.htm)

<sup>5</sup> Competitive Enterprise Institute, "Big Labor v. Taxpayer Index," <http://workplacechoice.org/state-map/states-georgia/>

<sup>6</sup> Arthur B. Laffer, Stephen Moore and Jonathan Williams, *Rich States, Poor States: ALEC-Laffer State Economic Competitiveness Index*, 5th edition, p.80, [http://www.alec.org/docs/RSPS\\_5th\\_Edition.pdf](http://www.alec.org/docs/RSPS_5th_Edition.pdf).

<sup>7</sup> Peter Wallison, "The Financial Crisis On Trial, *Wall Street Journal*, December 21, 2011, <http://online.wsj.com/article/SB10001424052970204791104577108183677635076.html?KEYWORDS=Wallison>.

Mandates on banks such as the Community Reinvestment Act (CRA) to increase home lending to underserved areas also played a significant role. Economic commentator John Carney, initially a supporter of the CRA, became convinced after looking at the data that it bore responsibility as a factor in the housing meltdown. “The regulators charged with enforcing the CRA praised the lowering of down payments and even their elimination. They told banks that lending standards that exceeded that of regulators would be considered evidence of unfair lending. This effectively meant that no money down mortgages were required.”<sup>8</sup>

Adding to this toxic brew of federal government policies was their interaction with Georgia’s longstanding rules barring bank branching. From the 1920s to the 1990s, Georgia banking regulators had restricted banks from expanding outside the towns and/or counties of their original location. Several studies have documented how this held back economic growth in many regions of the state.<sup>9</sup> But these rules, though repealed by the late 1990s, would have an especially pernicious effect on the mortgage crisis because they left Georgia with an excess of weaker, stand-alone banks. USA Today cited experts as saying the branching restrictions “became a liability when the bottom fell out of the housing market and smaller banks had less capital to weather the crisis.”<sup>10</sup>

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### **Dodd-Frank Crushing Impact on Banks and All Businesses**

Georgia has fixed its bank branching law restrictions, but the federal government has yet to fix its disastrous housing policies. And unfortunately, in 2010 the federal government produced a 2,600-page law called the Dodd-Frank Wall Street Reform and Consumer Protection Act that not only does nothing to rein in Fannie and Freddie but adds hundreds of costly new regulations that had nothing to do with the crisis.

Most of these regulations are to satisfy politicians’ insatiable appetite to say they have “done something” about the crisis. However, one especially destructive amendment – for Georgia banks and credit unions in particular – comes at the behest of some powerful players in the business community. Some of the nation’s largest retailers – including some based in Georgia – lobbied successfully for the Durbin

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See also John Berlau, “SEC Lawsuit Against Fannie and Freddie Ruins Liberals’ Holiday,” *Daily Caller*, January 2, 2012, <http://dailycaller.com/2012/01/02/sec-lawsuit-against-fannie-and-freddie-ruins-liberals-holidays/#ixzz1yK9aQv1Y>

<sup>8</sup> John Carney, “Here’s How The Community Reinvestment Act Led To The Housing Bubble’s Lax Lending,” *Business Insider*, June 27, 2009, [http://articles.businessinsider.com/2009-06-27/wall\\_street/30009234\\_1\\_mortgage-standards-lending-standards-mortgage-rates](http://articles.businessinsider.com/2009-06-27/wall_street/30009234_1_mortgage-standards-lending-standards-mortgage-rates)

<sup>9</sup> See, for instance, Thomas D. Hills, “The Recent Rise of Southern Banking” (2006), *History Theses*, Paper 9, [http://digitalarchive.gsu.edu/history\\_theses/9/](http://digitalarchive.gsu.edu/history_theses/9/)

<sup>10</sup> Russ Bynum, “Georgia Leads the Nation in Bank Failures,” *USA Today*, May 4, 2009, [http://www.usatoday.com/money/industries/banking/2009-05-04-georgia-banks\\_N.htm](http://www.usatoday.com/money/industries/banking/2009-05-04-georgia-banks_N.htm)

Amendment, which places price controls on interchange fees that merchants pay for debit card transactions.

In terms of sheer cost and intrusiveness, the Durbin Amendment threatens to eclipse most other Dodd-Frank provisions combined. The American Action Forum estimates that direct compliance costs of all the regulations so far pushed through from the law as a whole to be \$7 billion a year.<sup>11</sup> Yet, on top of this, the price controls from the Durbin Amendment impose on banks a loss of revenue of at least \$8 billion a year.

### **How interchange fees support the payment card network – and how Dodd-Frank’s Durbin Amendment undermines banks and credit unions providing this innovation**

Interchange fees are the fees that credit- and debit card-issuing banks charge retailers for the services they provide. These costs are often derided as “swipe fees” by merchants who resent paying them, but the swipe of the card is just one small part of the processing of millions of large and small purchases in milliseconds. In the “good old days” of cash and paper, retailers would be on the hook for storing and transporting cash at risk of theft and accepting checks at the risk of an overdrawn account. Through the sophisticated technology infrastructure that banks, credit unions and card networks have built, merchants no longer face these risks. Unlike a bounced check, an overdrawn debit card puts no risk on the merchant that payment will not come through. The bank or credit union issuing the card guarantees payment.<sup>12</sup>

Dodd-Frank’s Durbin Amendment, named after its sponsor, Senate Majority Whip Dick Durbin (D-Ill.), threatens the efficiency of this payment system as well as the health of the banks and credit unions that are its backbone. Through its implementation by the Federal Reserve Board, the amendment limits the amount bank and credit unions can charge to no more than 21 to 26 cents per transaction, no matter how large or risky that transaction is.

Before the Durbin Amendment, by contrast, these fees averaged 1 percent per transaction. A retailer selling a \$500 TV, for instance, would pay a \$5 interchange fee, reflecting the higher risks of fraud or overdraft that come with large purchases. The average debit processing fee was 44 cents per transaction, meaning that since its initial implementation in October 2011, the Durbin Amendment has cut revenues in half.

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<sup>11</sup> Sam Batkins, “The Week in Regulation: June 11-15,” American Action Forum, June 18, 2012

<http://americanactionforum.org/topic/week-regulation-june-11-15>

<sup>12</sup> Government Accountability Office (GAO), “Credit Cards: Rising Interchange Fees Have Increased Costs for Merchants, but Options for Reducing Fees Pose Challenges,” November 2009.

<http://www.gao.gov/new.items/d1045.pdf>; See also John Berlau and Ryan Radia, “Payment Card Networks Under Assault,” Competitive Enterprise Institute paper, December 2009,

<http://cei.org/sites/default/files/John%20Berlau%20and%20Ryan%20Radia%20-%20Payment%20Card%20Networks%20Under%20Assault.pdf>

For banks and credit unions already struggling with souring loans in some of the worst economic times since the Great Depression, this blow to a stable source of revenue may be more than they can handle. To economic observers, one of the most disturbing aspects of the Durbin Amendment is that it appears to require pricing below cost. In contrast even to statutes setting rates for utilities or so-called natural monopolies – which payment card networks are not, as there are many competing payment options – the Durbin Amendment does not even allow banks and credit unions to reap a profitable “rate of return.” Rather, the statute says that banks and credit unions may not even cover the costs of the technology associated with the card network infrastructure, only the “incremental costs” per transaction. Imagine if 7-Eleven Corp., one of the retailers that lobbied hard for the Durbin Amendment, were slapped with price controls on Slurpees that allowed it to cover the costs of sugar and water but not of the Slurpee machine. The firm would rightly scream about big-government interference then make up the costs through higher prices on other products or service cuts.<sup>13</sup>

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If banks and credit unions can’t make a profit or even cover costs on what they charge retailers to process debit cards, they will have to make it up in significant part through what they charge their customers. Cash-strapped consumers have certainly been hit hard by the Durbin Amendment as much of the cost of processing debit cards has been shifted to their wallets. “Free checking is going the way of the free checked bag,” reported USA Today in September. The paper cited a Bankrate.com survey showing that largely in anticipation of the Durbin Amendment, “only 45% of non-interest bank checking accounts are free, down from 65% in 2010 and 76% two years ago” and that “the average monthly fee for a non-interest account is \$4.37, up 75% from a year ago.”<sup>14</sup>

### **Illusory Gains from Price Controls – Georgia History Shows Banks and Retailers Prosper and Suffer Together In the Long Run**

So far, retailers look like the big winners from these price controls. In the short term, according to a report by CardHub.com, the Durbin Amendment has resulted in a transfer of \$8 billion from banks and their customers to retailers’ coffers.<sup>15</sup> And contrary to claims of proponents of these price controls, it does not look like much of this retailer windfall has been passed on to consumers. Georgia-based Home Depot recently said a reduction in some of its prices might have been attributable to the Durbin Amendment, though its vice president of credit said he couldn’t “draw a direct correlation to Durbin.” But the items on

<sup>13</sup> Kelly McCutchen and John Berlau, “Don’t Expect Savings from Debit Card Price Controls,” *The Forum*, March 5, 2012, <http://207.57.255.197/forum/?p=2081>

<sup>14</sup> Sandra Block, “Like Your Free Checking Account? Prepare to Say Goodbye,” *USA Today*, September 26, 2011, <http://www.usatoday.com/money/perfi/credit/story/2011-09-23/checking-account-fees/50548182/1>

<sup>15</sup> Brian O’Connell, “Durbin Rule Costs Banks Billions: Consumers Paying Price?” *TheStreet.com*, May 4, 2012, <http://www.thestreet.com/story/11522455/1/durbin-rule-costs-banks-billions-consumers-paying-price.html>

sale represented just 1 percent of the items in its store, and don't come close to the \$35 million a year the company had previously told investors it would reap from the Durbin price controls.<sup>16</sup>

The larger point is that in the long run, everyone loses from the destructive effects of price controls. Only so many costs can be transferred to consumers, and merchants are likely to reap what they sow in terms of both the quantity and quality of services from financial institutions in debit card processing, which will slow down sales and result in more security breaches.

Shortages are an outcome of all price controls that act as price ceilings. As free-market economist Thomas Sowell writes in his book, "Basic Economics," price ceilings mean "less is supplied at a lower price than at a higher price – less both quantitatively and qualitatively."<sup>17</sup> In the case of payment systems, price controls also reduce the incentive to invest in new mobile payment technologies that could eventually reduce payment processing costs even below what they are now under the Durbin Amendment.

But even more importantly, the strain the Durbin Amendment puts on Georgia's banks means that they will have less ability to fund the Georgia entrepreneur building the next Home Depot or Coca-Cola. A New York Times article around the time the Durbin Amendment was adopted noted that the measure was pitting Home Depot and Coca-Cola against Georgia banks such as SunTrust.<sup>18</sup> But Georgia's history shows that hurting the banks would harm the entrepreneurs as well, since Georgia's financial institutions have been linked to the fortunes of its manufacturers and retailers, and to the growth of the Peach State economy as a whole.

**SunTrust's predecessor, the Trust Company of Georgia, was instrumental in Coca-Cola's growth and in keeping much of the benefits of this growth in the state of Georgia.**

Thomas D. Hills, former Georgia state treasurer and an expert on economic development in the state, has written, "Historically, commercial banks in the South have played a significant role in financing the economic development of the region." Hills quotes the statement of historian William J. Cooper that "banks had become inextricably connected to the prosperity that surged throughout the economy."<sup>19</sup>

As many authors have documented, SunTrust's predecessor, the Trust Company of Georgia, was instrumental in Coca-Cola's growth and in keeping much of the benefits of this growth in the state of Georgia. In 1919, the Trust Company organized what today would be known as both a friendly leveraged buyout and an initial public offering (IPO) of Coca-Cola. Trust Company President Ernest Woodruff put together a syndicate of wealthy investors to buy the majority of stock in Coca-Cola and then made 500,000 shares of this stock available to the public, almost half of which were bought by residents of Atlanta. The front-page headline in the Atlanta Constitution on Aug. 22 of that year blared, "COCA-

<sup>16</sup> Kenneth Clayton, "Who Really Wins When Government Controls Prices, *American Banker*, June 15, 2012, <http://www.americanbanker.com/bankthink/Home-Depot-Durbin-interchange-price-controls-1050171-1.html>

<sup>17</sup> Thomas Sowell, *Basic Economics: A Common Sense Guide to the Economy* (Fourth Edition), Basic Books, New York, 2010

<sup>18</sup> Binyamin Applebaum, "Debit Fee Cut Is a Rare Loss for Big Banks," *New York Times*, May 14, 2010, [http://www.nytimes.com/2010/05/15/business/15credit.html?\\_r=1&hp](http://www.nytimes.com/2010/05/15/business/15credit.html?_r=1&hp)

<sup>19</sup> Hills, p. 7

COLA BOUGHT BY ATLANTANS,” reflecting widespread joy that the company, which already had its soft drink in international markets, would not have to sell out to “New York interests.”<sup>20</sup>

Journalist Mark Pendergrast writes in his acclaimed, "For God, Country & Coca-Cola," that at the time the Trust Company organized the Coca-Cola buyout and IPO, “it was by far the smallest of Atlanta’s seven banks.” Because of the stock it received after this transaction, the Trust Company became one of the largest and was able to further finance business development in Atlanta. SunTrust’s buying spree of banks in the 1990s was in large part made possible by its Coca-Cola stock, which by then was worth more than \$1 billion.<sup>21</sup> And of course, Atlanta’s development was also furthered greatly by Trust Company President Ernest Woodruff placing his son Robert at the helm of Coca-Cola in 1923. The younger Woodruff would run the company for the next 60 years, during which time he would become one of Atlanta’s greatest civic leaders and philanthropists.

Ironically, note Hills and others, SunTrust’s transaction would likely have been illegal in the very next decade.<sup>22</sup> The Glass-Steagall Act prevented commercial banks from entering into investment banking from its enactment in the 1930s to its repeal in 1999. Ironically, in the wake of the financial crisis, many are calling it for its return as a way to “rein in” Wall Street banks. Dodd-Frank’s Volcker Rule, often called “Glass-Steagall 2.0,” could also have prevented the Trust Company buyout of Coca-Cola by prohibiting banks from “proprietary trading” for their own portfolios. If either of these regulations had been in effect in 1919, “New York interests” would have very likely been to ones to finance Coca-Cola’s expansion, to the detriment of Georgia’s growth.

Six decades after the Trust Company took Coca-Cola public, another national powerhouse from Georgia would burst on the scene with the assistance of a regional bank. In the few years after it opened in the Atlanta area in 1978, Home Depot expanded in part by borrowing from the First National Bank of Atlanta (later First Atlanta). This bank too became part of a national powerhouse, as it merged with North Carolina-based Wachovia in 1985, after Georgia had relaxed its branching restrictions. This was part of the wave of consolidations that created powerful Southern banks, which, according to Hills and other experts, was a significant factor in the South’s dynamic growth over the last 30 years.<sup>23</sup>

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<sup>20</sup> Mark Pendergrast, *For God, Country & Coca-Cola* (Revised Edition), Basic Books, New York, 2000, p. 129.

<sup>21</sup> Interview with Thomas D. Hills, June 19, 2012

<sup>22</sup> Ibid.

<sup>23</sup> Ibid; Hills, “The Recent Rise of Southern Banking.”

## **Conclusion: Return to Prosperity by Growing – Not Slicing – the Pie**

Georgia's economic policy fundamentals are sound, and there's no reason to believe the state won't rise again once the bad loans encouraged by flawed federal housing policies are resolved. But with Dodd-Frank, the Durbin Amendment, and the general trend toward federal regulation on steroids, Georgia's banks of all sizes are facing disruptions that impede their ability to once again fuel the state's prosperity.

In the first few months the Durbin Amendment was in effect, the price controls cost SunTrust \$50 million, about one-fourth of its profits from the previous quarter.<sup>24</sup> The price controls cost the smaller Georgia bank Synovus 34 percent of its net income.<sup>25</sup>

The Durbin Amendment is also beginning to impact Georgia's smaller community banks that are not subject directly to the price controls (but are subject to Durbin's other restrictions, such as forcing banks to allow merchants to "route" transactions through another bank's network.) Steve Bridges, executive director of the Community Bankers Association of Georgia, has been told of a few examples in which a community bank's interchange income was reduced by 10-15 percent. And he believes more Durbin-related losses could be coming to Georgia's community banks.

"Our concern is that retailers, especially large retailers, will drive their customers who use debit cards to use those cards issued by the larger banks subject to the debit card caps," Bridges said recently. "Therefore, the community bank issued cards will become less acceptable in the marketplace. We are quite concerned about the effect that could have on community banks. We are concerned this will result in interchange fees being driven down for community banks."<sup>26</sup>

The timing of this loss of revenues could cause even more banks to fail. In testimony before the Senate Banking Committee in Washington, Federal Reserve Chairman Ben S. Bernanke commented that if the

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***Steve Bridges, executive director, Community Bankers Association of Georgia***

<sup>24</sup> Pallavi Gogoi, "Bank Scramble to Make Up for Lost Debit Card Fees," *Associated Press*, November 4, 2011, <http://news.yahoo.com/banks-scramble-lost-debit-card-fees-200135401.html>; Calculation from SunTrust's filings with the Securities and Exchange Commission

<sup>25</sup> "Durbin Takes a Toll," *American Banker*, January 31, 2012, [http://www.americanbanker.com/issues/177\\_21/debit-cards-Durbin-amendment-Dodd-Frank-1046230-1.html?zkPrintable=1&nopagination=1](http://www.americanbanker.com/issues/177_21/debit-cards-Durbin-amendment-Dodd-Frank-1046230-1.html?zkPrintable=1&nopagination=1)

<sup>26</sup> Interview with Steve Bridges, June 14, 2012.

exemption for community banks doesn't work, "it's going to affect the revenues of the small issuers, and it could result in some smaller banks being less profitable or even failing."<sup>27</sup>

One of the central tenets of the capitalist system that has made Georgia and the U.S. economic powerhouses is opposition to redistributionist policies – from taxes to burdensome mandates to price controls – and pursuit of policies to grow the proverbial pie. It's tempting during tough economic times, both for individuals and businesses, to grab a slice of the pie through a government favor. Ultimately, however, everyone gets a bigger slice when the pie is allowed to grow. Right now, the federal government is aiming many knives at Georgia's pie through Dodd-Frank and its noxious Durbin Amendment, as well as thousands of other regulations that hit banks, consumers and entrepreneurs. Everyone in Georgia should realize the best way to restore prosperity is to unite in removing the knives that are keeping the Peach State pie from growing as big as it could be.

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<sup>27</sup> "Bernanke Says Debit 'Swipe' Rules May Cause Bank Failures," Atlanta Journal-Constitution, May 12, 2011, <http://www.bloomberg.com/news/2011-05-12/bernanke-says-lawmakers-should-be-concerned-about-swipe-rules.html>