Senator Richard Durbin

Interchange Amendment - Senate Floor Statements

May 5, 2010 – Floor Statement by Senator Durbin
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Mr. DURBIN. Mr. President, I don't know if there has ever been a perfect law. Maybe the law that was written on stone tablets and brought down the mountain by Senator Moses was a perfect law. Ever since then, human beings have tried to write laws that are good and acknowledge that they are human. Maybe the laws will have to be revisited and changed and revised. That humility comes with this job, because you understand this is an imperfect process. We debate, try to reach compromises and make concessions. Virtually every time at the end, you say: That isn't what I would have written, but that is what the Senate decided to move forward with.

Now we are in the midst of debating this law, 1,407 pages long, called the Financial Stability Act. Why are we doing a bill that looks like a telephone directory? We are doing it because of the recession, a recession which, frankly, hit America harder than anything since the Great Depression. Seventeen trillion dollars was taken out of the American economy. That is more than the value of all the goods and services produced in the United States in 1 year; $17 trillion yanked out of the economy, and most of us felt it. You felt it in your savings account, your 401(k). You saw it when the shop down the street laid somebody off or closed.

We know this is a real recession that hit America hard, 8 million people unemployed, 6 million people sitting out there frustrated, not even looking for jobs. That is a real recession. How did we reach that? We reached that because of some very bad decisions in Washington and on Wall Street. The decisions in Washington related to the future of housing. Are we going to expand the opportunity to own homes to people who traditionally did not own them? We thought it was a good idea.

I can remember when my wife and I bought our first home. Our lives changed. We were no longer renters. We were interested in that house and in our block and our neighborhood, our parish, and our community. It is a different look at life. Home ownership is a real American value. We also thought it was a pretty good investment. Stretch to make a house payment. Can we make it? Do you think we can make that monthly payment? If you can, you watch the value of that housing go up and say: Pretty good decision. Nice little house for the family and a good investment.

So we thought in Washington, let's expand that model. There is nothing wrong with where we started. There was nothing selfish about it or outlandish that we would move in that direction. Then came Wall Street. Wall Street said: If this is a good thing, we can make money on it. They took the mortgages people used to enter into with the bank down the street or downtown and sold the mortgages downtown to some other bank. Pretty soon that mortgage went into the business atmosphere and was chopped up in pieces, sliced and diced into securities and derivatives, traded and sold at the highest levels of Wall Street. Unfortunately, it got out of hand. It got so far out of hand that at the end of the day, it collapsed. Home values started coming down; defaults and foreclosures started increasing. People making all the money on Wall Street were sitting in financial institutions that were crumbling around them.

So where did they turn for help? They turned to taxpayers. They asked taxpayers: Bail us out. Come to our rescue. Keep our company in business even though we made some fundamental mistakes.

And we did. There is a good argument as to whether we should have. But I can tell you, having sat in the room where the Secretary of the Treasury and the Chairman of the Federal Reserve said, Senators and Congressmen, if you don't move fast, the American economy is going to collapse, what do you do? I have an education and some experience, but I am not sure I am ready to save the American economy singlehandedly. I took their advice, as did others in bipartisan votes that led to the bailout that saved these institutions.

They showed their gratitude to American taxpayers for saving them from their own malfeasance by declaring bonuses for one another, million dollar checks they gave to one another in congratulations for their economic failure. Naturally, Members of Congress and the American public said: It is disgusting that these people would make these mistakes. Ask the average mom-and-pop family to bail them out with their tax dollars and then give one another bonus checks to reward their misconduct.

That is what brought us here today. That is what this bill is about. This bill is about changing financial institutions to guarantee there will never be another taxpayer bailout, period. Senator BARBARA BOXER of California has the first amendment. It is a critically important amendment. It ought to have every vote in this Chamber. It says: No more taxpayer bailouts, period. That is a good starting point.

But then let's proceed from there. What are we going to do about these institutions to make sure they are held accountable, that they don't get so big their failure jeopardizes the American economy? That is part of this as well, the amount of money they have to keep on hand, the leverage, the liquidity, how they can loan this money, rules of the road to make sure we never get into this recession mess again.

There is another provision in here too, one that I think is equally important. It says we are finally going to create one agency of government that is going to look out for families and businesses across America who can be duped into legal agreements that can explode on them at the expense of their life's savings or their home. It is a consumer financial protection law, the strongest one ever passed in the history of the country.

I heard the Senator from Nevada call it a massive bureaucracy. It is not that. In fact, it is a self-enforcing agency that has the power to make decisions independently of existing agencies of government with one goal in mind: Empower consumers across America to make the right choices. We can't make the final decision about whether you sign that mortgage paper. We shouldn't. But you ought to know when you sign it what you are getting into. What is the interest rate? What is the term of this mortgage? Can I prepay this mortgage without penalty? Those are basic questions people need to be asked and answered. That is what this bill is going to guarantee through the Consumer Financial Protection Agency.

It took a long time to get to the point today where we will have our first vote on this bill. It took much longer than it should have. Senator Chris Dodd of Connecticut, who is chairman of the Banking Committee, sat down with Republicans, Senator Shelby of Alabama, over 3 months ago and said: Let's work together. Let's make this a bipartisan bill. After 2 months of effort, they concluded they couldn't reach agreement. At that point Senator Dodd said: I will reach out to Senator Corker of Tennessee, a Republican, and see if I can reach agreement with him for a bipartisan bill. He is on my committee.

They worked for a month. They could not reach agreement. So Senator Dodd said: There comes a point where we have to move this legislation. He called this bill before his Senate Banking Committee and invited Republicans and Democrats on the committee to [Page: S3130] give their best ideas. How would they change this, improve it? What would you do to this bill? Republicans filed over 400 amendments to this bill. That is a lot of work. Then came the day of the actual hearing on the bill. The decision was made on the other side of the aisle not to offer one single amendment, not one. Twenty minutes after it convened, it voted to pass the bill out and adjourned.

So when Senators from the Republican side of the aisle come in and say: There is not enough bipartisanship in this bill, I have to tell you, it isn't because of a lack of effort by Senator Dodd and members of the Banking Committee. We have tried to engage our friends on the other side of the aisle to help us make this a better bill. We still offer that invitation. There will be bipartisan amendments. There should be bipartisan amendments. But at the end of the day, if we don't make a fundamental change in the economy and the way we manage financial institutions, we will invite another breakdown, and we can't let that happen. There have been too many victims of this recession to let that happen.

President Obama has challenged us to get this done. We do so little around here. It is frustrating. We spent a whole week a few weeks ago, 1 whole week, debating whether we would extend unemployment benefits for 4 weeks. One week of debate, four weeks of extension. The following week we spent an entire week on the Senate floor debating five nominees the President had sent to us out of the 100 sitting on the calendar. All of these nominees were noncontroversial, passed with strong votes. We ate up an entire week on these nominees.

Then we wasted last week when the Republicans mounted a filibuster to try to stop debate on this bill. Three straight votes, Monday, Tuesday, and Wednesday of last week in favor of a filibuster. And finally, thank goodness, several Republican Senators went to their leadership and said: This is a bad idea. We ought to be on the right side of history for Wall Street reform, and we are not going along anymore with the filibuster. At which point it ended, and we started moving to the bill.

Today we may take up the first amendment. I hope we do. There are a lot of things that need to be included in this. Let me tell you one thing I will offer an amendment on which most Americans are not aware of. If you have a credit card and you go to a local business, whether it is a restaurant or a flower shop or to get your oil changed, and you present your credit card to pay for the service or the goods you are buying, you are not only going to pay the shopkeeper, the shopkeeper is going to owe the bank that issued the credit card a percent of what you paid. It is called an interchange fee. It turns out to be a substantial amount of money for retailers. They end up paying these credit card companies a percentage of the bill for the use of the credit card. There is nothing wrong with that. There should be a fee associated with the use of credit cards by businesses. But it has reached a point of unreasonableness. It has reached a point of unfairness. Let me give an example.

If I go to a restaurant in Chicago and pay for my dinner with a check, the restaurant turns the check in to the bank. The bank contacts my bank, the money transfers. There is no fee, no cost. However, if I go to the same restaurant and use a debit card, which takes the money directly out of my bank account just like a check, the company that issued the debit card and credit card will charge a percentage of that restaurant check to the owner of the restaurant. That money is coming directly out of my checking account just as a check is.

Why is the credit card company taking as much in a fee from a restaurant as they do with a credit card, where there is at least some question as to whether ultimate payment will be made? So we are going to have an amendment which addresses the interchange fee and tries to bring some fairness to it. I think it is long overdue. I hope all of the Members of the Senate who believe in small businesses will call them and ask them about the Durbin amendment on interchange fees. You will find, as I have, this is one of the major concerns of retailers and businesses across the United States.

I talked to a CEO of a major drugstore chain yesterday, and he told me his top four expenses for his nationwide chain of drug stores: No. 1, salaries; No. 2, what he called mortgages and rent; No. 3, health care, No. 4, interchange fees--the amount of money his chain pays to credit card companies. It is a huge expense of small business.

We are not saying there should not be an interchange fee. We are saying it should be reasonable, and if it does not involve effort, service, or liability on the part of the credit card company--such as the debit card--it ought to be reflected in the fee that is charged.

The last amendment I submitted is one I think taxpayers across the country ought to pay attention to. More and more each year, the Federal Government is accepting payment by credit card. You can pay for your income tax with a credit card. What does that men? It means Uncle Sam--the taxpayers--pays an interchange fee to the credit card companies, even though, ultimately, those credit card companies are all being paid.

So in my estimation, it calls for an amendment which says the lowest interchange fee rate should be charged to the Federal Government, so the taxpayers are not subsidizing credit card companies, which they are currently doing with interchange fees that do not reflect the liability involved in the transaction.

This is just one of the aspects of the bill. Some will say: Well, what does that have to do with the recession? I can tell you, consumer debt and personal debt had a lot to do with the recession. A lot of people, in desperation, turned to their credit cards. A lot of people found the interest rates on their credit cards going through the roof, and a lot of people did not understand why they were so expensive.

We are going to bring this out for debate. Once again, I hope my colleagues who support small businesses, as I do, and believe they are a lifeline to bring us out of this recession will join me in supporting small businesses to make sure we bring some sense to the interchange fees charged on credit cards and debit cards across America.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

May 10, 2010 – Floor Statement by Senator Durbin
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Mr. DURBIN. Mr. President, for those who are here following the Senate today, as announced earlier, we are resuming consideration of this bill, and, of course, it is the Wall Street reform bill, the Financial Stability Act. It is over 1,400 pages long.

The Senator from Virginia who is presiding over the Senate now is a member of the Senate Banking Committee. Senator *Mark Warner* has worked on this bill, and large sections of it are his handiwork in an effort to try to deal with changes on Wall Street which will protect our economy and make certain we don't relive some of the horror stories we have seen over the last several years, and we all know those stories pretty well.

There was a time not that long ago--about a year and a half ago--when, under the previous President, I was brought into a meeting just a few steps away from the Senate floor with the chairman of the Federal Reserve, Ben Bernanke, and the Secretary of the Treasury, Henry Paulson. They basically sat down in the first meeting and said: We wanted to let you know the largest insurance company in the world, AIG, is about to go broke. When it goes broke, it is going to bring down so many companies and corporations with it that it can literally crater the American economy. At that point, Chairman Bernanke said: So the Federal Reserve is giving $85 billion to AIG Corporation.

There was a moment of silence in the room, and finally someone in the room--I don't remember who it was--had the nerve to ask: Where did you get $85 billion at the Federal Reserve?

Chairman Bernanke said something like: Oh, we have our resources.

Someone asked: Where did you get the authority to give it to a private company?

They said: Well, there was a law passed during the Great Depression which said that if it looks as if the economy is going to crater, the Federal Reserve can step in.

So an obscure law that was over 75 years old and a fund of money most Members of Congress had never seen--since they are a separate agency and don't go through our appropriations process--ended up propping up a company. And it didn't cost $85 billion; I think when it was over it was $180 billion or somewhere in that range. The reason, of course, we couldn't let that company go down was they had literally insured contracts and corporations all around America, that there would be no default. They insured more contracts than they had a reserve to cover. As the contracts started to fail, they didn't have the reserves to back up their promise of insurance.

That was the first meeting. Only a few days later, they asked us to meet again, and I thought, this ought to be equally interesting, and it was. They brought us to a meeting, and Secretary Paulson, the Secretary of the Treasury, said: Now we are seeing, with the failure of Lehman Brothers and other companies, the potential that many large financial institutions in America are also going to fail. Then Secretary Paulson said: So we need a fund of money immediately, by Friday--and this was a Tuesday meeting--we need a fund by Friday of $800 billion to buy the so-called toxic assets, TARP funds, toxic assets relief program.

Again, there was a stunned silence in the room because even those of us in Washington who deal with millions and billions on a regular basis were stunned to get a request for $800 billion in a matter of days.

So the first question that was asked was: Who is going to prepare the legislation that actually asks for the money?

They looked around, and no one had kind of thought of that detail, and we said: We think the White House should. President Bush's White House, with Secretary Paulson, prepared a bill and sent it to us. The bill was exactly three pages long asking for $800 billion. Naturally, many of us thought that was not adequate. We needed to put provisions in there about how the money would be spent, the supervisory authority in Congress, and so forth.

Eventually, it was passed on a bipartisan roll call. People like myself who voted for it did it out of a feeling of desperation. What else could we do? If we were being told by the financial leaders of our government that our economy was about to fail--we had seen it already in the stock market going down in value, and we knew people were losing their jobs and businesses were failing--we felt this was the only way to try to stop this terrible crisis from becoming much worse.

Well, the toxic assets relief program ended up sending billions of dollars to these struggling financial institutions. They were struggling because they made bad judgments. They bought, created, and sold securities, derivatives, and interest which were, in fact, toxic. They were based on a mortgage market and the premises of that market which turned out to be totally wrong. They had made bad business decisions. Their companies were about to fail.

The Federal Government--make that the taxpayers of this country--was expected to step in and save them, which we did. To show their gratitude for this act of mercy--rescuing them from their own bad works--they declared bonuses for one another. They gave one another bonus checks after the Federal taxpayers bailed them out. Is it any wonder people across this country have a bad taste in their mouth about Wall Street, about the TARP program, about the bonuses? Is it any wonder we are here this week considering a bill to make sure we never relive this financial crisis? It is overdue--long overdue.

We know what this crisis cost us in real human terms. The estimates are that it took $17 trillion out of the American economy--$17 trillion in value--and it hit almost everybody. Anybody with a savings account, a retirement account knows what I am talking about. The value of the account went down 20, 30, 40 percent or more. So your net worth, your nest egg, your retirement plan was diminished because of this recession.

In addition to that, 8 million people are currently unemployed across America, having lost their jobs by this recession, and another 6 million have been unemployed long term and are not trying as hard as they once did. Even though those numbers are getting better--in fact, last week there was a good report--we know it is still serious. There are still too many people out of work because of this recession.

When we tried to bring this bill to the floor 2 weeks ago, we had a tough time. We had three votes Monday, Tuesday, and Wednesday, 2 weeks ago, and they were filibustered from the Republican side of the aisle. They refused to let us bring the bill to the floor.

While the filibuster votes were going on on the floor of the Senate, though, on another stage on Capitol Hill, the Permanent Subcommittee on Investigations of the Homeland Security Committee, chaired by Senator *Carl Levin* of Michigan, was holding a historic hearing and bringing in the top leaders of Goldman Sachs, including its CEO, asking them about their practices that had led to financial difficulties at that company and were being questioned now even in a lawsuit that has been brought by our government against that company.

That display and that testimony was happening at the same time the Republican filibuster to stop this reform bill was going on here on the floor. Finally, several Republican Senators spoke up to their leadership and said: That is it. We want to engage in this debate. We want to get it started. We want to do it in a prompt way.

The filibuster finally broke and we started, nominally, the debate last week. You could count, I think, on one hand all the amendments we considered in that week. We could have done much better. We wasted a lot of time. There are important policy considerations that have to be asked and answered by votes on the Senate floor--some from the Republican side, valid questions, and some from our side. What we are looking for--and I think the American people are looking for--is for the Senate to be the Senate, not just a dead end for debate, to deliberate these issues and cast a vote and move forward.

There was an amendment--of great moment--offered by Senator *Sherrod Brown* of Ohio and Senator *Ted Kaufman* of Delaware as to whether we should limit the size of financial institutions. They had a very catchy mantra, which was: Too big to fail means too big. They would limit the size of financial institutions so you could not have these big giants dominating the scene. There would be more competition and more financial institutions involved in our economy's business. That amendment failed. It got 31 votes. I was 1 of the 31 who voted for it. I was disappointed, but let's be honest, that amendment had its day in court, on the floor of the Senate. We debated it and a vote was taken.

Now we are moving on to other amendments. Senator *Sanders* of Vermont will offer an amendment, probably tomorrow, as to whether there should be an audit of the activities of the Federal Reserve. This is a big amendment and one that is somewhat controversial, but I think we have reached a point where Senator *Sanders* is likely to prevail. He came up with a bold idea, and now I think we are going to move toward that idea. The Senate is doing what it is supposed to do. There are other things we need to take up as well.

Senator *McCain* will offer an amendment about the future of Fannie Mae and Freddie Mac, which are two government-type entities that literally back up the mortgages for most of the homes across America. They are in trouble because so many homes across America are going underwater; that is, the value of the home is lower than the mortgage balance. If that affects one of the homeowners across the country, you can understand that these agencies are going to be in trouble financially. What are we going to do about it? If we eliminate the agencies, the housing market will collapse without this government guarantee. But if there is going to be a government guarantee, how much will the taxpayers be on the line for? It is an important policy issue.

I am glad we are moving into that debate. I wish to offer an amendment on credit cards. Two years ago, we debated credit card reform. At the time, we passed a historic bill that changed some of the rules and gave consumers across America more rights and disclosure when it came to the use of credit cards. If there was one mistake made in that credit reform, it was the argument between the large banks and credit card companies that they could not implement the changes, unless they were given a long lead time before it occurred. They were given that lead time in the bill, and they have used that lead time consistently to raise interest rates on credit cards across America. It was a mistake. We should not have given them that much time. We should have anticipated they would have done the wrong thing during that period of time.

There is another aspect of credit cards I would like to discuss, which I will offer an amendment on, which is the interchange fee. If I reach in my wallet and pull out my credit card at a restaurant in Chicago and use it to pay, I am going to be billed for the cost of that dinner on my monthly bill, and I have to deal with the credit card company about how much interest I would pay on the balance I owe, for example. However, there is another part of the transaction that takes place between the restaurant and the credit card company. If I use a credit card, then the restaurant is going to pay to the credit card company some percentage of the bill for my dinner. It turns out this so-called interchange fee between the retail establishment and the credit card companies has become a serious problem.

Let me give you an illustration. I go to the same restaurant and instead of using a credit card, I pay by check. It used to be done a lot but not much anymore. The restaurant takes your check to their bank and their bank calls your bank, transfers the funds in, and no fee is involved. However, if you use a debit card, which would take the money directly out of my checking account, the same as with my check, it turns out the interchange fee is applied. So many restaurants and retail establishments are saying: Why is it with a check the bank gets no extra money and with a debit card the credit card company gets money. What is that all about? Should it be the same fee as a credit card?

These are legitimate questions that aren't a minor issue. They turn out to be a major issue. I had the CEO of Walgreens contact me last week. He told me that when they look at the expenses of this national chain of drugstores, the No. 1 expense is compensation of employees, personnel costs; No. 2, mortgage and rent payments; No. 3, health insurance; No. 4, interchange fees. It turns out the fees Walgreens pays to credit card companies is the fourth largest item of cost for their business.

Imagine that instead of being Walgreens, a national chain of drugstores, you are a small town store. Let's think it through. How many times have you gone to the cash register and stood behind as somebody handed them a credit card or a debit card for a pack of chewing gum or something even smaller? I saw it at National Airport. After the person left, I said to the person at the cash register: What is the smallest amount anybody has ever put on a credit card here? He said it was 35 cents.

When you look at the interchange fees, it turns out that the retailer loses money on that sale. Most of these involve a flat fee that is certainly more than the profit they are going to make on a 35-cent or even a $5 sale and a percentage of the actual item that is charged to the credit card. I would say, when you look at this circumstance, you can understand why some smaller businesses want to say there will be a minimum amount you can charge--not 35 cents but obviously something where they are not losing money. They will lose money if somebody uses a credit card under the current interchange fees.

The major card companies currently--Visa and MasterCard--prohibit companies that accept their credit cards from establishing a minimum amount that can be charged. They are going to make money, and they are not going to give the retail establishments that kind of opportunity.

Of course, they also prohibit that company--that small retailer--from saying: I get a better deal on the interchange fee from Visa than MasterCard, so I will favor Visa. They used to say: If you go to the Olympics, so and so is the official credit card of--they can say that, but the retailer cannot say that. If you own a restaurant and say: I prefer this credit card or that credit card, you violate the agreements of the credit card companies.

With this amendment, we are trying to establish that the fees charged to retailers for debit card usage at their establishments will be reasonable and proportional. It will be monitored by the

Federal Reserve, which has that responsibility when it comes to credit card charges for consumers. So there is some parallel thinking here. The Federal Reserve will look at both sides--the retail establishment as well as the retail customer--in terms of the reasonable fees that can be charged by credit card companies.

Secondly, we eliminate the prohibition against what I consider to be competitive practices, where you would say you cannot use a credit card or a debit card at my establishment if your bill is less than $5 or something of that nature. That is currently prohibited, but it would not be under my amendment. This amendment has the support of some of the largest retailers and small businesses in America. Thousands have come to me and said: Please give us a fighting chance with the credit card companies. They are killing us. I cannot tell you how many speeches have been made on the floor of the Senate--on both sides of the aisle--about small businesses. We believe--I think both parties believe--if we are going to come out of this recession, it will be because of the strength and recovery of small business. This amendment is the No. 1 priority of small businesses across America. I wish to bring this amendment to the floor for a debate and a vote.

My colleagues can decide, do they want to come down on the side of retail establishments and small business or on the side of the credit card companies? Some will say: Wait a minute, what about community banks, the small banks that issue credit cards too? We specifically exempt them when it comes to this question of debit cards. If your establishment has less than $1 billion in assets--your bank--you will not be subject to this regulation. We are going after the largest banks that make the largest amount of money out of this, not the small town banks with local credit cards. We are trying to make this focused and fair and help small businesses.

On Friday, I went to a press conference at a supermarket in downtown Chicago. Potash Brothers have been around for decades, and it is a great success story of a family that came and opened a store. They have two or three and they are well liked and respected. They came and testified at this press conference about what they are going through, the struggle they have to make it as a small business in downtown Chicago--a supermarket that has to pay these high fees to the credit card companies. All they are asking is that the fees be fair.

We know that with the use of a credit card, the credit card company runs a risk that you would not pay off the balance. With the debit card, it comes out of your checking account or it doesn't. There is not a big risk factor involved.

Many people don't realize the size of this credit and debit card involvement in today's economy. Those cards are rapidly replacing cash and checks. There are over 1 billion credit and debit cards in the United States. In a nation of 300 million, that is more than three cards per person in the United States. Last year, Americans conducted $1.7 trillion in transactions on credit cards and $1.6 trillion on debit cards.

Credit cards and debit cards are now used in more than half of all retail sales in America, and the number is growing. Yet while paying with plastic may be a convenience for some, it turns out to be a real problem for small businesses. That is why this amendment is so important--to give small businesses a fighting chance. Individual businesses have no chance against the giants. Visa and MasterCard control about 80 percent of all the credit and debit cards in the United States. About $50 billion in interchange fees were collected in 2008, and about 80 percent of that money went to 10 big banks--the ones we think should be the subject of this requirement that the fees be reasonable and proportional, based on the amount of work that is being done.

It is no surprise these 10 banks hate the Durbin amendment like the Devil hates holy water. They cannot wait to see it defeated on the floor. I wish to debate it on the floor on behalf of retailers and small businesses across America, and I would like my colleagues to have a chance to join me in this effort. I don't think it is unreasonable. The big banks will try to stop this amendment from coming to the floor, but I will fight for it, and we are going to put people on record on how they want to vote on this issue. This will be the first time interchange fees will be taken up, to my knowledge, in the history of the Congress. It is about time. It is a major part of our economy. I think a fair and reasonable fee for the use of credit and debit cards is something we should stand behind and unreasonable charges should be basically prohibited based on the regulation of the Federal Reserve.

I will be offering that amendment this week. Those who want to cosponsor it are welcome to.

I suggest the absence of a quorum.

May 12, 2010 – Floor Statement by Senator Durbin
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Mr. DURBIN. Madam President, I have an amendment which has been filed and is at the desk, and a modification of that amendment, which I wish to explain for a moment.

It is an amendment related to interchange fees. Interchange fees are the fees charged to commercial establishments which accept credit cards. So if I owned a restaurant and accepted Visa or MasterCard, when my customer, who has a bill, presents the credit card to pay for it, then I have to pay a percentage of that bill to the credit card company. That is called the interchange fee.

That is separate and apart from the customer's relationship with the credit card company. This is the relationship of the merchant, the retail establishment, the small business, with the credit card company. Unfortunately, over the years, small businesses across America have had little or no bargaining power with the major credit card companies. They impose interchange fees on these businesses, and if you speak to some of the small businesses in Illinois or across the Nation, you will find that many of them feel they are being treated unfairly.

Let me give you an example. About half of the transactions that take place now using plastic are with credit cards, and there is a fee charged--usually 1 or 2 percent of the actual amount that is charged to the credit card. It is understandable because the credit card company is creating this means of payment. It is also running the risk of default and collection, where someone does not pay off their credit card. So the fee is understandable because there is risk associated with it.

But now gaining in popularity is this so-called debit card, where a person directly draws money from their checking account to pay that same restaurant. Had that person chosen to pay by check--a written check--it would have been banked by the restaurant in their own bank, and drawn from the bank of the customer, with no fee associated with it. If the customer uses a debit card--which accomplishes the same thing without the actual check paper involved--the credit card/debit card companies, Visa, MasterCard, and others--charge similar fees to what they charge for credit card. Yet there is virtually no risk involved in a debit card.

So many of these retail establishments and small businesses across America have come and said: We are not opposed to paying a reasonable, proportional amount for the use of a debit card, for example, at our business, but we cannot even get to first base with Visa and MasterCard. They say: We are going to charge you what we are going to charge you--take it or leave it.

As a consequence, I have submitted this amendment. This amendment is on behalf of small businesses across the United States which have rallied behind this because of their concerns about interchange fees on their cost of doing business. It says we will use the same mechanism we used in credit card reform--a bill that was brought to the floor by Senator Dodd of the Senate Banking Committee, which called on the Federal Reserve to establish the appropriate fees and charges to business establishments for the use of credit cards--and that these fees and charges be reasonable and proportional when it comes to debit cards. I do not think that is unreasonable. Senator Dodd offered that as part of the original credit card reform when it came to customers using credit cards. I do not think it is unreasonable to apply it to the business establishments.

You would think there would be general support of this across the board, except from the credit card companies and the biggest banks. But it turns out there is opposition to this from the so-called independent community banks and credit unions.

We created an exemption in my amendment saying if you are a so-called independent community bank that has assets of less than $1 billion, you will not be affected by this--believing we took the lion's share, the vast majority of community banks, and exempted them with the $1 billion exemption. Regardless, the independent community banks again teamed up with the American Bankers Association and said: We are going to oppose it anyway, even if the majority of our members are not covered by it. And credit unions, which go lockstep with the so-called independent community banks when it comes to a lot of banking issues, said the same thing. So in an effort to reach a compromise here that will help Members come to the support of this amendment, I am going to modify my amendment to extend and enlarge the exemption to institutions of $10 billion or less.

Let me tell you what that means. With the modification--changing it from $1 billion to $10 billion--it will have a dramatic difference. With a $10 billion exemption, 99 percent of banks would be exempt. All but the very largest banks in America--the ones that have a controlling interest in establishing interchange fees, I might add--99 percent of banks would be exempt. And 99 percent of credit unions would be exempt. All but three credit unions in the United States have less than $10 billion. And 97 percent of thrift institutions would be exempt--19 thrift institutions across America.

When I have talked to my friends on both sides of the aisle, they have said: If you can find a way to resolve the opposition of the community banks and credit unions, then we are open to this. Many of them have said they believe small businesses and retail establishments are being treated unfairly and they wish to support this. But they wanted to make sure they did not harm local and community banks. [Page: S3589] Well, I have gone from a $1 billion exemption to a $10 billion exemption. There are very few communities across America that have banks that will not be protected because of this enlargement of this exemption, and I urge my colleagues to consider that, and to also consider the other side of the equation. Think of the hundreds, if not thousands, of small businesses in your State that are being disadvantaged and treated unfairly with these interchange fees.

What we are asking for is to have an arbiter--in this case the Federal Reserve--determine whether the interchange fees, particularly for debit cards, are reasonable and proportional.

We also say you ought to allow a commercial establishment which accepts a credit card to establish a minimum amount which you can charge to a credit card. I went into Washington National Airport, standing at a news stand there, and was behind a woman who was charging 35 cents to a credit card. I said to the person at the cash register: Is that the lowest amount you have ever had charged to a credit card? She said: No. We had 25 cents charged one day.

If you look at the actual calculations of fees paid by that business for the use of that credit card, they lost money on that transaction. They did not make any money on that. By the time they paid the swiping fees and the interchange fees, at the end of the day, they made nothing. They could have lost money.

Is it unreasonable for a business to say: We are not going to accept credit cards for any purchase under $5 or $1? I do not think that is unreasonable since they are going to lose money in the process, and yet the credit card companies prohibit small businesses from even establishing those basic standards. They prohibit small businesses from saying: We will give you a discount on the price if you pay cash. Why? If we are truly going to have a competitive atmosphere and give small businesses in a struggling economy a fighting chance, why would we prohibit these things? Why would we give a monopoly--a virtual monopoly--situation here, where two major credit card companies can impose rules on small businesses which are so costly to them? That is why I have submitted this amendment. It is not an easy amendment--I understand that--because we have some competition among friends here and Members will have to decide which they think is the just position. I hope they believe this amendment is. I hope they believe that small businesses--which currently have no bargaining power against these monopolies, such as Visa and MasterCard--deserve a voice in the process. I hope they believe that some of the unreasonable standards set by credit card companies and imposed on small businesses have to stop across America.

I cannot tell you how many glowing speeches are given in Congress on behalf of small businesses. We all know how much they mean to us in our communities and in our overall economy. Well, here is our chance. Senators will have a chance to vote on behalf of retail establishments and small businesses all across their States who have come to me, begging me to move forward on this amendment.

I have said--and I believe it is true--this is the first time anyone has offered an interchange fee amendment on the floor of the Senate or in the House of Representatives. The fact is, it has not been offered because it is controversial. Some people do not want to touch it: Stay away from it. Don't bring it up. Well, that is not fair to small businesses. They deserve for us to step forward, and to offer these amendments, and to make a policy choice.

When I tried to offer this amendment on the Credit Card Reform Act, they said: Wrong place. When I try to offer it on this bill related to banks and financial institutions, some have said: It is the wrong place.

I have concluded there is no right place. This is a good place because it relates to consumer protection, it relates to financial institutions, it relates to our economy and making sure it thrives, and thrives in a responsible way. That means making sure interchange fees are reasonable across the board.

This amendment is needed. It is a response to price fixing by Visa and MasterCard. Interchange fees are received by the card-issuing bank in a debit transaction. However, Visa and MasterCard--which control 80 percent of the debit market--set the debit interchange fee rates that apply to all banks within their networks. Every bank gets the same interchange fee rate regardless of how efficient they have been in conducting debit transactions.

Visa and MasterCard do not allow banks to compete with one another or negotiate with merchants over interchange rates, and there is no constraint on Visa's and MasterCard's ability to fix rates at unreasonable levels.

VISA and MasterCard consistently raise interchange rates because the more interchange fees the banks receive, the more the banks will issue cards. Visa and MasterCard receive a fee each time a card is swiped, so rising interchange rates enrich them as well.

Visa and MasterCard incidentally have reduced debit card interchange fees in other countries while they have increased them in the United States. Let me repeat that. Visa and MasterCard have reduced debit interchange rates in other countries while they have increased them in the United States. Visa and MasterCard continue to raise U.S. interchange rates, which are already the highest in the world.

The General Accounting Office found that regulators in other countries have worked with VISA and MasterCard to voluntarily reduce their interchange rates. Just last month, VISA lowered many European debit card rates by 60 percent while increasing many U.S. debit card rates by 30 percent.

What can businesses do about it? Nothing--no bargaining power. So these American-based companies are cutting their charges in overseas markets and raising them at a time when we are facing one of the worst recessions in American history. They are making it tougher for that small business to survive. They are making it tougher for them to keep their employees at work. Is that the right thing to do when our economy is facing a recession? I don't think so.

I don't set an interchange fee rate in this law. Some have argued that we would reduce credit availability by regulating credit card interchange rates. However, the amendment's reasonable fee requirement only applies to debit cards; it doesn't apply to credit cards.

The Durbin reasonable debit fee requirement exempts small banks and credit unions with assets under $10 billion, which, as I say, includes 99 percent of all banks, credit unions, and thrift savings and loans across the United States.

This amendment would not enable merchants to discriminate against debit cards issued by small banks and credit unions. VISA and MasterCard contractually require merchants to accept all cards within their networks, and the amendment does not change that requirement. The amendment would not have the Federal Reserve set interchange prices. Under this amendment, the Fed would not set them. Instead, it would oversee the debit interchange fees set by card networks to ensure they are reasonable and proportional to cost.

It is the same standard which the Banking Committee and Senator Dodd offered when it came to credit card reform. It is not a radical notion. It is in the law already.

There is an argument some make that consumers benefit greatly from the current interchange fee structure. Let me tell my colleagues the reality. This statement is contradicted by statements from groups that represent consumer interests.

Ed Mierzwinski, who is the consumer program director at U.S. PIRG, testified before the House Judiciary Committee and said as follows: The deceptive anticompetitive practices of the two credit card associations VISA and MasterCard have injured consumers and merchants for years. Interchange fees or hidden charges are paid by all Americans, regardless of whether they use credit, debit, checks, or cash. These fees impose the greatest hardship on the most vulnerable customers: The millions of American consumers without credit cards or banking relationships. These consumers subsidize credit card usage by paying inflated prices for many goods and service. These prices are inflated by the billions of dollars of anticompetitive interchange fees used to subsidize reward programs.

The industry of credit cards also argues that merchants benefit from the [Page: S3590] present interchange system. A 2009 GAO report found that merchants receive benefits from the existence of credit and debit card systems. It does not say those benefits are the result of the present interchange system. In fact, the same report starts with the title, ``Rising Interchange Fees Have Increased Costs for Merchants,'' citing numerous growing costs that the interchange fee structure imposes on merchants. For example, the report states: Although accepting credit cards provides benefits, merchants report card costs are increasing faster than their ability to negotiate or lower these costs.

I would say basically if we are going to revitalize small business in America in retail establishments, if we are going to give them a fighting chance, we cannot ignore this any longer.

There are some who say: Withdraw this amendment. Wait for another day. Well, I have waited for a year and I don't want to wait anymore. I think we ought to go on the record. I think we ought to have the courage to stand up and say reasonable and proportional debit card rates that will be regulated by the Federal Reserve is not unreasonable; and secondly, that the anticompetitive practices which are imposed on small businesses and retailers across America have to come to an end.

Most of the people I talk to on the floor of the Senate understand this. I hope this modification I am making to my amendment--creating an exemption for banks with assets valued at lower than $10 billion--will make it clear that we are not trying to create any hardship on community banks and credit unions. Instead, we are going after the largest banks and credit card companies for what I consider to be unreasonable conduct when it comes to the treatment of small businesses and retail businesses as well.

I hope to call up this amendment either late today or tomorrow. I hope my colleagues will join me in standing up for small business. We give a lot of speeches about small businesses and retail businesses. This will give my colleagues a chance to vote for them on this interchange fee regulation reform.

I yield the floor and suggest the absence of a quorum.

May 13, 2010 – Floor Statement by Senator Durbin
3:57 p.m.
Video Link: http://www.c-spanvideo.org/videoLibrary/clip.php?appid=598138005

Mr. DURBIN. Mr. President, I am hoping that later this afternoon there will be a unanimous consent request that relates to an amendment I have introduced, amendment No. 3989, and I wish to take a few minutes now since there is no one else seeking recognition on the floor to describe this amendment in the hopes that when it comes up later, we can move to it and to a vote very quickly.

I have spoken on the floor of the Senate several times about the amendment because it is complicated in one respect. This amendment relates to the fees charged by credit card companies such as Visa and MasterCard to the retailers and businesses that accept the credit cards. So if you are a customer of a shop and you purchase something, you present a credit card. There are then two transactions taking place, at least. One transaction is between you and your credit card company, because you put the credit card out there and you have to pay the bill later on. The other transaction relates to the business, the shop that accepts your credit card. By accepting your credit card, they also accept an obligation to pay the credit card company or the bank issuing the credit card. It is called an interchange fee. There is another one called a swipe fee. So the credit card company is getting paid both ways. They get paid by the customers who pay interest on outstanding balances on their credit cards, and they get paid by the retail establishments that accept the credit cards. The credit card companies have a lucrative business going on both sides of the transaction.

This amendment I am speaking about relates not to you as a customer owning a credit card, but rather to the shop or retail establishment that accepts the credit card. What is a reasonable amount for them to pay? There are two major types of credit cards. One is a credit card and the other is a debit card. A credit card is basically that. You are buying on credit with the promise to pay when your monthly bill comes around. The debit card is different because it takes the money directly out of your checking account and gives it to the shop owner. They are different in that, No. 1, there is more risk, because people may not pay their credit card balance at the end of the month, so risk is associated with it; and in the other there is very little, if any, risk. If there is no money in the checking account, then it isn't going to be paid to the shop owner. It is a very simple transaction much like writing a check and the bank honoring the check.

My amendment addresses the interchange fee. That is the amount paid by the retail establishment to the credit card company when a customer presents a credit card.

The two major credit cards in America are Visa and MasterCard. They account for over 80 percent of the credit and debit card business in the United States. They are the giants in America. There are others--Discover, American Express, and others. But the two, Visa and MasterCard, are the two big kids on the block. They have established legal arrangements with the businesses that accept their credit cards. It is those legal arrangements we are questioning with this amendment which I am going to propose later in the day.

This amendment will help small businesses, merchants, and consumers by providing relief from high interchange fees for debit card transactions. We are focusing on debit card transactions because those are the ones that have much less, if any, risk involved to them.

On the floor of the Senate, we are working on a bill to prevent the big banks from basically rigging the financial system in a way that helps Wall Street and hurts the shops on Main Street. If we are going to look at the rigged financial systems that hurt small businesses, we have to include the credit and debit card industries.

Credit and debit cards are rapidly replacing cash and checks in the American economy. There are over 1 billion credit and debit cards in America. Think of that: 300 million people and 1 billion credit and debit cards. That gives you an idea of the number of cards people own.

Last year, Americans conducted $1.7 trillion in transactions on credit cards and $1.6 trillion on debit cards, which are becoming more and more popular. Credit and debit cards are now used in more than half the retail sales in the United States of America. Yes, being able to pay with plastic is a great convenience, but there is another reality. The shift from cash and checks to credit and debit means that the way we do business in America is increasingly falling under the control of these two giants of the credit and debit card industry--Visa and MasterCard.

These card networks dominate the credit and debit industries, as I mentioned earlier. They are used in 80 percent of all such transactions. Unfortunately, these two companies are looking for profits, and they are not always looking out for the best interests of the merchants, the small businesses, the [Page: S3696] retail businesses or the consumers. Interchange fees are a classic example.

A lot of people in Congress do not want me to bring up this issue. They have told me this is the wrong bill to talk about it. I think not. I tried to bring it up under credit card reform and they said: No, Senator Durbin, that is the wrong bill. Now I want to bring it up on the Financial Stability Act, and they say: No, it is the wrong bill. I do not think it is. I do not think there is a right bill with an issue that is this controversial and complex. But it is an important enough issue that we should address it and we should vote on it.

Visa and MasterCard require interchange fees every time someone uses a debit or credit card. The fees range from 1 percent to 3 percent of the amount of the transaction. It is a convoluted system. Visa and MasterCard charge interchange fees to the merchants, but instead of keeping the money, they pass the money to the banks that issue the Visa and MasterCard. Why do they do this? Some of it is to help the banks cover the cost of conducting the transaction. Most of it is to induce banks to issue more Visa and MasterCard credit cards.

Around $50 billion in interchange fees were collected in 2008, with about 80 percent of that money going to 10 of the largest banks in America--80 percent of it. The card-issuing banks use this interchange revenue to pay for ads, to offer rewards, to issue more cards. Not surprisingly, the revenue also helps banks make large profits and give bonuses to their CEOs. Banks love the money, and they love the current interchange system.

As interchange fees go up, it means banks get more money to issue more cards and increase their profits. Rising interchange fees also benefit Visa and MasterCard because it means more cards will be issued, and with each card comes another fee, called a network fee, every time the card is used.

What a great system--as long as interchange fees are increasing, both the card networks and the banks could not be happier.

The troubling thing about interchange fees is they are deducted from every transaction left for the seller. This is very different from cash and check systems. When a business makes a cash sale, it gets full payment in hand, and the Federal Reserve requires the checks clear at their full face value. So a $100 sale by cash or check is a $100 sale. But when a business makes a $100 sale by credit or debit card, the banks and their card networks take a cut. The business may end up with only $98 out of $100 that is on the debit card, maybe less. The business is getting shortchanged the actual face value of the transaction.

To make up for interchange fees, businesses are forced to raise their prices, cut back on expenses or something such as that. They may even cut back on employees to keep up with these interchange fees. In a normal market, you see banks competing with one another to do business with the restaurants, shops, and the merchants. With that competition, things would be a lot better. But, in fact, the real world of credit cards with the two giants, Visa and MasterCard, is a world where there is little or no competition.

The credit and debit card markets are not normal. Visa and MasterCard unilaterally set interchange fee rates that apply to all banks within their card networks. There is no negotiation between the banks and merchants over reducing interchange rates. Individual businesses in New Hampshire, Illinois, New York, and all across America have no bargaining power with these giant credit card companies. They set the rules, they fix the fees, take it or leave it.

Visa and MasterCard have every incentive to continue to raise interchange fees because that additional revenue makes it more likely banks will issue more cards.

What can businesses do to stop these rising interchange fees? Almost nothing. Some--very rarely--businesses say they do not accept credit or debit cards, but the vast overwhelming number of businesses do. They have to. It is part of doing business in America.

Visa and MasterCard have 80 percent of the credit and debit market. Merchants have to use them. They tell the merchants: If you want to take our card, you live with the fees we charge. That is not a competitive situation at all.

This current system is not sustainable. If left alone, it is going to get worse for small businesses that face higher fees, for consumers who face higher prices, and for everyone but the banks and credit card networks.

Here is the most unbelievable part. Businesses in every other country in the world get a better interchange deal from Visa and MasterCard than businesses in the United States of America. I told that to someone, and they said: It sounds like pharmaceutical drugs, where you can buy the U.S. pharmaceutical drug more cheaply in Canada, Mexico, and Europe. It is the American consumers paying more.

The same thing is true when it comes to Visa and MasterCard. They charge American businesses higher interchange fees than they charge businesses around the world. Visa and MasterCard already charge the highest interchange rates in the world to American businesses, and the rates keep going up.

There was a GAO report last year. It found that Visa and MasterCard--listen to this--had voluntarily reduced the interchange fees on businesses in other countries. Just last month, Visa voluntarily lowered many of its European debit rates by 60 percent--unilaterally lowered them by 60 percent. What happened in the United States? They raised the fees by 30 percent on American businesses trying to fight their way out of this recession.

These huge credit card companies had some sympathy for Europe but not for America. That is unacceptable, and we need to do something about it. That is why I offer this amendment.

The amendment requires that debit card interchange fees be reasonable and proportional. I do not pick a number. I do not set a fee. We want to make sure they are proportional and reasonable to the cost incurred in processing the transaction.

Debit card transactions are fundamentally different from credit card transactions. All that happens in a debit card transaction is you deduct money from your bank account. It is akin to writing a check. That is why debit cards are advertised as check cards.

Right now in the United States, there are zero transaction fees deducted when you use a check. The Federal Reserve does not allow transaction fees to be charged for checks. But when it comes to debit cards, Visa and MasterCard charge high interchange fees just as they do for credit. Why? Because they can get away with it. There is no regulation, there is no law, there is no one holding them accountable.

An estimated $20 billion was collected from businesses and consumers across America in debit interchange fees last year--$20 billion. That money comes from the bottom line of every small business in every town in America that accepts payments by debit card.

My amendment will bring some reasonableness to the system. It tells the Federal Reserve to ensure that debit fees are reasonable and proportional to cost and not just a way of generating huge profits at the expense of small businesses. If we can reduce debit interchange fees to a reasonable level, it would be similar to a tax break on every debit card sale a merchant makes. Think how much that would help small businesses on Main Street.

One of my colleagues said: Even if the businesses save money and do not have to pay more to the credit card companies, what makes you think they are going to give the consumers a break with it? They may take it in profits. They can. There is no way to police that.

I just had a press conference with the National Association of Convenience Stores. We know them as the small shop on the corner that has some groceries and maybe candy bars, slurpies--whatever you want to stop and buy. It also turns out these convenience stores sell 82 percent of the gasoline sold in America. They are part of the same association.

I said to the man who ran the association: What guarantee do we have, if we reduce the amount you have to pay the credit card companies, that the consumers will feel it? He said: We are the only business that posts prices right out on the sidewalk for all the motorists to see of our most popular [Page: S3697] item, our gasoline. We fight over pennies. If we can reduce it a penny or two a gallon, we are going to attract more customers. If we can save money when it comes to these interchange fees, it puts us in a more competitive position to bring in more customers to buy gasoline. That is one side of the argument that could inure to the benefit of the consumers. There are no guarantees.

In the world I am talking about, you get to shop around. As the customer, you pick the convenience store, you pick the grocery store, you pick the prices. When it comes to the owners of the store using credit cards, they do not get to shop. They get a ``take it or leave it'' from MasterCard and Visa and have no bargaining power whatsoever.

Many Senators are worried about community banks that also issue credit cards. One thing I hear over and over from my colleagues is we do not want to hurt small town banks, regional banks, banks that are not the big boys on Wall Street that issue credit cards. That is why I amended my amendment and said we will exempt all banks with less than $10 billion in assets. If you have more than $10 billion in assets, it would be hard to call you a community bank. You are a much bigger operation.

Under my amendment, Visa and MasterCard could continue to set the same debit interchange rates they do today for small banks and credit unions. Ninety-nine percent of banks, 99 percent of credit unions have assets of less than $10 billion. Of all the credit unions in the United States, only three have assets over $10 billion.

One of my colleagues said: I am very close to the credit unions. I say to my colleague: I am sure you are also close to the small businesses in your State, and in this situation, 99 percent of the credit unions, virtually every credit union in your State would be exempt from this law, but your small businesses may benefit from it because the largest banks have the largest impact on credit card interchange fees.

My amendment would subject the biggest banks in America, the ones that issue the vast majority of debit cards and get the vast majority of interchange fees, to a reasonable fee requirement.

I hear the so-called independent community banks of America oppose my amendment. I could not understand it. If I exempted banks with less than $10 billion, that would exempt 99.8 percent of all of the so-called community banks in America. Why do they still oppose it? I have learned why. The Independent Community Bank Association is a major issuer of credit and debit cards. They are one of the top 25 credit card issuers in the United States and are the 23rd largest debit card issuers. They make a lot of money off interchange fees. They do not have clean hands in this debate. They are, in fact, conflicted in this debate. They are not arguing on behalf of small banks. Sadly, they are arguing on behalf of their own trade association credit cards and the fact they receive these generous interchange fees.

ICBA, so-called Independent Community Bankers Association, profits from the unfair swipe-fee system just like the biggest banks in America today. That is a conflict of interest.

Is this Washington trade association truly representing small banks that will get higher interchange fees than the big banks under my amendment or is it just interested in protecting its own revenue stream? I called back to some of my friends in downstate Illinois, where I come from--small town, small city America--and I talked to them about this. I said: I am exempting banks with assets of less than $10 billion.

They said to me: Well, that is perfectly reasonable. It won't touch any community banks you know in downstate Illinois.

That is an indication to me that this trade association out here is not speaking--really speaking--for community banks when they say they oppose this amendment as amended.

My amendment also aims to make sure Visa and MasterCard can't block merchants from offering discounts to their customers. For example, Visa has a provision in its contract with all of the businesses that accept it that the business cannot offer a customer a discount to use a competing credit card, such as a MasterCard. MasterCard has a similar provision. So they are protecting one another. You can't say, for example, that your shop prefers Visa cards because the Visa card charges you less as a business. They prohibit that back and forth.

Some people say: Well, maybe that is okay. Would it be okay if we take it to the next example: It is like Coca Cola saying that a store can sell Coke but only if it agrees not to sell Pepsi at a lower price, and it is like Pepsi saying the same thing. Who loses in that deal? I can tell you who loses--the customer, because there is no competition and the business because it does not attract the customers with competition and lower prices. Translate that into credit cards, and that is what Visa and MasterCard are doing today. My amendment strips these provisions from Visa and MasterCard contracts so merchants can offer discounts without penalty.

My amendment would also allow merchants to offer discounts for customers who pay by cash, check, or debit card as opposed to credit cards. Sometimes, Visa and MasterCard threaten to fine merchants who offer discounts for these cheaper forms of payment. My amendment would end those threats once and for all. This type of effort to promote noncompetitive practices should not be allowed, and my amendment would bring it to an end.

Nothing in my amendment would allow merchants to discriminate against cards issued by small banks and credit unions. That was another comment. They said, well, listen, Durbin, if your amendment passes, they will say: This establishment will not accept credit cards from a small bank that issues these cards. We make it express in the amendment that we are offering that you cannot discriminate against the issuer, that is, the bank, of the credit card. You can only say you prefer one network over another because the interchange fees on your business happen to be lower, but you can't pick out banks. You may say: We prefer Visa or MasterCard, but you cannot pick them out by banks.

Interchange fees have real-life consequences on businesses across America. I have been receiving calls and letters from small business owners all over the State asking Congress to fix this rigged interchange system. Last week, my office received petitions signed by 92,000 Illinois consumers seeking to reform credit and debit interchange fees. The amendment has also been endorsed by 203 national and State trade associations representing every type of business you can think of, and it has been endorsed by Americans for Financial Reform, a coalition of over 250 consumer, civil rights, labor, retiree, and business groups.

If you talk to Visa, MasterCard, and the biggest banks, all you will hear is how well the current system is working and how we ought to keep our hands off it. But if you talk to the local grocery store owner or the person who owns the local restaurant in your hometown or the man who owns the gas station or the family who runs a local diner--small businesses and merchants across America--they will tell you stories about dealing with Visa and MasterCard and what it has meant to them in their business.

This afternoon, Art Potash, who owns some grocery stores in Chicago, came by my office. We had a little press conference. He talked about the competitiveness of the grocery business, where the return is usually 1 or 2 percent and he ends up paying 2 to 3 percent back to the credit card companies for people who use credit and debit cards. He is stuck because if he doesn't accept credit and debit cards, he is really trying to fight the tide. More and more people are using them. But he is paying a fee, which is cutting right into the bottom line. With this interchange fee at a more reasonable level, he would be able to expand his business and hire more people. Wouldn't that be a good outcome in an economy where we are desperate to deal with unemployment? Let's put Main Street above the big banks and credit card companies. I ask my colleagues to help me in passing this amendment.

Madam President, I have received letters and comments from merchants and businesses across the State of Illinois supporting my amendment for interchange reform. I have received them from James Phillip of Phillip's [Page: S3698] Flower Shops in Westmont, IL; Robert Jones, president of American Sale patio store in Tinley Park, IL; George LeDonne, owner of LeDonne Hardware in Berkeley, IL; Russ Peters, owner of Mobile Print in Mount Prospect, IL; Jim Dames, owner of Snackers Cafe in Western Springs; George Preckwinkle, a friend of mine and president of Bishop Hardware and Supply, with 10 locations in central Illinois; Paul Taylor, owner of Taylor's Gifts and Bonsai; Rattanaporn Deeudomchan, owner of the King and I Thai Restaurant in Oak Park; Yvonne Francois, who owns Queenie's Court, a restaurant in the food court at the Ford City Mall in Chicago; and John Gaudette, director of the Illinois Main Street Alliance, representing 450 small businesses across the State.

I ask unanimous consent to have printed in the Record at this stage of the debate some of the comments and letters which have been sent to me.

There being no objection, the material was ordered to be printed in the Record, as follows: AMERICANS FOR FINANCIAL REFORM, Washington, DC., May 13, 2010. Senator Durbin, U.S. Senate, Washington, DC.

Dear Senator Durbin: We write on behalf of Americans for Financial Reform, an unprecedented coalition of over 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, religious and business groups as well as Nobel Prize-winning economists. We support a strong Consumer Financial Protection Bureau and oppose weakening amendments to the Restoring American Financial Stability Act, S. 3217.

Durbin Amendment #3989 is a move towards helping Main Street.

Americans for Financial Reform supports the Durbin Reasonable Fees and Rules for Payment Card Transactions Amendment #3989 because it is good for merchants and good for consumers. The bank payment networks, Visa and MC, impose high, nonnegotiable interchange fees for accepting credit and debit cards and use other unfair contractual practices that mean all consumers pay more at the store and more at the pump, whether they pay with cash or plastic. The bulk of the $48 billion estimated yearly take from interchange fees flows to the largest Goliath banks. Giving merchants more flexibility against unfair bank and card network practices will result in more payment choices for consumers and lower merchant costs.

For information, please contact Ed Mierzwinski.

Sincerely, AMERICANS FOR FINANCIAL REFORM. -- May 12, 2010.

To the Members of the United States Senate: The undersigned organizations, representing a diverse array of interests including small business, state, organizations, dentists, retailers, restaurants, grocery stores, convenience stores and others, write in strong support of S. Amdt. 3989, sponsored by Senator Richard Durbin, regarding interchange fee reforms to S. 3217, the Restoring American Financial Stability Act of 2010 now before the Senate. Unless relief is granted, interchange ``swipe fees,'' which amounted to $48 billion in 2008, will continue to rise as card companies and issuing banks seek even higher profits, primarily on the backs of our organizations' members. This comes at a time when businesses, state agencies and charities--all of whom pay interchange fees--are struggling to help the economy grow again and when consumers can least afford pricing increases.

Despite Congress' efforts to reign in abusive practices, credit card companies continue to take advantage of a major loophole in financial regulation. In fact, they announced interchange rate increases just months after the passage of the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (Credit CARD Act), effectively circumventing many of the reforms instituted by Congress. More recently, Visa Europe announced last month that it was voluntarily dropping debit card interchange fees to 0.2% in Europe, a decrease of 60%, while earlier in the month Visa increased rates on similar transactions in the United States by some 30%. Quite literally, at a rate of approximately 2.0% on debit card interchange fees, which is 10 times higher in the United States, American businesses are subsidizing European transactions.

Simple, common-sense reforms are needed to correct this market imbalance, which would give our organizations' members additional tools to manage our costs related to interchange fees. First, the amendment would give the Federal Reserve the authority to conduct an open and fair rulemaking--without prescribing an outcome--in order to develop regulations to ensure that interchange fees imposed on debit card transactions be ``reasonable and proportional'' to the cost incurred in processing the transaction.

Debit transactions are not an extension of credit and are directly drawn from a consumer's checking account, yet the interchange rate on debit transactions continues to increase. Small banks, credit unions and thrifts with assets of under $10 billion would be carved-out from these rules, meaning that 99% of all banks, 99% of all credit unions, and 97% of all thrifts would be exempt, allowing them to continue to receive the same interchange fees they receive today.

Second, the amendment would prohibit anti-competitive restrictions on discounts and the setting of minimum transaction levels, providing entities with the freedom to choose their preferred method of payment. Under current rules, any business, charity or government agency that accepts credit or debit cards is prohibited from setting a minimum transaction level, such as $3, even though the entity may actually lose money on the transaction because of slim profit margins. Visa and MasterCard can and do impose fines on small businesses up to $5,000 per day for such offenses, which has the effect of ensuring that the card companies and big banks turn a profit even if the small business loses money on the transaction. In addition, the amendment allows businesses to incentivize the use of one card network over another (e.g., a discount may be provided for Discover cards if they carry a lower interchange rate) and allows businesses to offer discounts on certain forms of payment (e.g., a discount may be offered for cash, check, PIN debit, etc., all of which carry lower rates than credit cards). This amendment would not enable merchants to discriminate against debit cards issued by small banks and credit unions. Visa and MasterCard require merchants to accept all cards within their networks, and this amendment does not change that requirement.

By providing these and other important reforms, the Congress will send a strong message that it supports modernizing and updating our financial payments systems while providing relief to businesses owners who have seen their interchange credit card assessments skyrocket--for many businesses exceeding the cost of providing health care benefits to their employees.

In closing, we are very concerned about the unintended consequences of not addressing interchange fees will have on our industries as the card companies and big banks continue to seek higher profits as a direct result of financial regulatory reform legislation, and other failing portfolios, through ever increasing interchange fees. We ask that you support S. Amdt. 3989, sponsored by Senator Durbin, to the Restoring American Financial Stability Act of 2010 when it comes up for a vote in order to ensure that financial regulation reform is comprehensive and complete. We look forward to working with you and your staff to incorporate these meaningful, common-sense reforms as part of the financial regulatory reform legislation.

Sincerely, National Trade Associations.

American Apparel & Footwear Association, American Association of Motor Vehicle Administrators, American Beverage Licensees, American Booksellers Association, American Dental Association, American Home Furnishings Alliance, American Hotel & Lodging Association, American Nursery & Landscape Association .....

May 13, 2010 – Floor Statement by Senator Durbin
4:21 p.m.
Video Link: http://www.c-spanvideo.org/videoLibrary/clip.php?appid=598138007

Mr. DURBIN. Madam President, I see one of my colleagues on the Senate floor, so I am going to yield. And I say to my colleagues, I am hoping this amendment comes up this afternoon. I will take less time to describe it then, but I wanted to use this time to put my full statement in the Record. I will just say to my colleagues that there won't be another amendment that we will consider this week or in the near future of such importance to small businesses across America. Let's stand up for these small businesses and give them a fighting chance against giants in the credit card industry. It is only fair, and it is a good way to revive this economy and put people back to work.

Madam President, I yield the floor, and I suggest the absence of a quorum.

May 13, 2010 – Floor Statement by Senator Durbin
6:25 p.m.
Video Link: http://www.c-spanvideo.org/videoLibrary/clip.php?appid=598138601

Mr. DURBIN. Mr. President, I ask the Chair to inform me when I have 1 minute of my 5 minutes remaining.

I think this is an amendment that is well known to my colleagues. I have spoken on the floor several times. It is about the interchange fees charged to small businesses across America for the use of credit cards.

This amendment does the following things: It directs the Federal Reserve to ensure that debit fees on debit cards are reasonable and proportional to processing costs; it stops Visa and MasterCard from imposing any competitive restrictions; it ends prohibitions on discounts for use of different network cards; it ends prohibitions on discounts for cash, debit, or credit; and it ends prohibitions on minimum purchase levels for paying with a credit card.

It does not affect credit card interchange rates. We do not establish a rate. That is left entirely to the Federal Reserve to review. We do not allow discrimination against small banks or credit unions. The modification specifically prohibits any discrimination against the issuer of a credit card. A merchant may decide to favor one network over another but cannot favor one bank over another that issues a card. So there can be no discrimination against a credit union, community bank, or a large bank, for that matter. It doesn't set interchange prices.

By putting a $10 billion threshold in terms of the banks issuing the cards, we literally exempt 99 percent of all banks and credit unions from the application of this law. Still, just going for the largest banks in America--86 banks in America--we will cover 65 percent of all the credit and debit transactions in this country. So it is a significant amendment, and it protects the community banks and the credit unions.

I will tell you that I am very concerned and disappointed by the so-called Independent Community Banks Association, which continues to oppose this amendment despite my best efforts to exempt virtually all of their members from being covered. I understand they have a conflict of interest because they are in the top 25 issuers of credit and debit cards in the United States. They make a lot of money under the current situation. They may not want to change it, but it is not fair to small banks in Illinois and across the Nation for them to speak to this issue when they have this conflict of interest.

The second thing I want to say to the credit unions is that there are 8,200 credit unions in America, and all but 3 are exempt from this law--99.999 percent of credit unions are exempt from this law. For them to be opposing it because of three of the biggest credit unions in America is unfair to the rest of their members and certainly unfair to the merchants who do business with them every day.

This is the single most important amendment for small business and retail business in America that we will consider on this bill. In a time of recession, when we need small businesses to step up and create jobs, this is a way to move forward.

Members have heard from all across the country, from small businesses and retail merchants who are asking for some fairness, some justice when it comes to these major credits cards that literally dictate the terms of their agreements with these small businesses. I urge my colleagues to support the Durbin amendment.

Mr. President, I am going to reserve the remainder of my time.

May 13, 2010 – Floor Statement by Senator Durbin – Prior to Roll Call Vote
6:29 p.m.
Video Link: http://www.c-spanvideo.org/videoLibrary/clip.php?appid=598138607

Mr. DURBIN. I say to my colleagues, I know this is a complex and in some ways a controversial amendment. But I can't think of a better way for us to establish a reasonable standard that debit cards, which are now becoming more common and are equivalent to a check, are going to be charged against the merchant that honors the card only in a reasonable and proportional way by the same agency we used under the consumer credit card reform bill of just last year.

I urge my colleagues, if they are listening to small businesses across America, struggling to survive, trying to add new employees, give them a helping hand by voting for the Durbin amendment so they can have reasonable charges for the use of credit cards and debit cards at their establishment. I urge the passage of this amendment and I yield the remainder of my time.

I ask for the yeas and nays.

May 13, 2010 –Roll Call Vote
6:30 p.m.
Video Link: http://www.c-spanvideo.org/videoLibrary/clip.php?appid=598138608

May 19, 2010 – Floor Statement by Senator Durbin
Video Link: http://www.c-spanvideo.org/videoLibrary/clip.php?appid=598166729

Mr. DURBIN. Mr. President, I stand in support of the Merkley amendment. [Page: S3967] This is an effort by JEFF MERKLEY of Oregon and CARL LEVIN of Michigan to try to strengthen the bill that is before us on Wall Street reform; to try to minimize the types of investments made by banks which could, in fact, jeopardize those government institutions that guarantee the deposits at banks because some bankers make bad decisions and bad investments. What Senator Merkley is trying to do is to reduce that likelihood, which means banks are less likely to fail and taxpayers are less likely to be holding the bag.

Senator Levin of Michigan, you will remember, 3 or 4 weeks ago held a historic hearing with Goldman Sachs representatives, including Mr. Lloyd Blankfein, their CEO, to discuss some of their practices. Those of us who know Senator Levin know he is a very studious and thoughtful individual and he doesn't take on complex issues lightly. He spent months in preparation for that hearing, and coincidentally it came up just as we began the debate here on Wall Street reform. It was quite a hearing. It went on for many hours because there was an effort by the witnesses to avoid answering questions, so the committee decided they would keep the witnesses there until the questions were answered. As a result, they stayed into the night. At the end of the day, I think people had a better understanding of some of the practices at Goldman Sachs, one of the largest financial institutions on Wall Street. I think they also may have had some second thoughts about some of the standards being used by that firm and others.

We know Goldman Sachs is currently being investigated by the government for alleged wrongdoing when it comes to the sale of investment products. It turns out, as best I understand it, that this Wall Street firm of Goldman Sachs was selling investments to individuals and then basically betting they would fail--with their own money. It strikes me as a complete abdication of any financial or fiduciary responsibility, to put their customers in that kind of compromised position. It is interesting that I have had a conversation with people in other firms on Wall Street who think this is routine and not extraordinary. That makes it all the more troubling.

The Levin portion of the Merkley-Levin amendment addresses this issue about the ethical considerations of these companies that, in fact, are selling products to their customers and then turning around and secretly, quietly betting with their own investments that those products will fail.

So that sort of thing should be addressed in this bill. The Merkley-Levin amendment is an amendment which would have been considered regardless of whether today's cloture motion had passed.

For those who do not follow the Senate, the cloture motion is an attempt to at least bring a close to the beginning of a debate and start to wind down the debate toward a vote. So we had a vote today. We needed 60 votes in the Senate out of 100 Members to vote in favor of the cloture vote.

After 4 weeks on the floor of the Senate on this Wall Street reform bill, the majority leader and many of us felt we had reached a point where we needed to start winding this bill down and bring it to a final vote. Well, we needed 60 votes to do it. There are 59 Democratic Senators here when all are present and accounted for. One of our Senators, Mr. Specter of Pennsylvania, was not here today, and as a consequence we found ourselves needing help from the other side of the aisle.

We needed at least one--it turns out three--Republican vote in order to move forward and to bring this bill to a vote. At the end of the day, we did not have them. We fell one vote short. We had two Republican Senators who crossed the aisle and voted with us--that would be the two Senators from Maine, SUSAN COLLINS and OLYMPIA SNOWE--and no other Republicans who would join us in trying to bring this bill to a close with some closing amendments and a vote.

If you followed the debate on this bill, it is no surprise that the Republicans are reluctant to be part of Wall Street reform. When the debate started, it started with three--not one but three--straight filibuster votes. Those were efforts by the Republicans to stop us from even bringing this issue and subject to the floor of the Senate. Many of us felt this discussion and debate over this bill was long overdue. We know this recession has cost us dearly in the United States. We know it extracted $17 trillion out of the American economy.

We felt it personally. You felt it in your savings account, your IRA, your retirement account. You saw it when the business down the street started to lay off its employees and another one closed. You noticed the home across the street going into foreclosure.

You heard all the stories about unemployed people, maybe some in your own family. So we knew what this recession meant and what it cost us, $17 trillion. What we are trying to do with this Wall Street reform bill is to change the way they do business on Wall Street so we never face another recession such as the one we are in, brought on by the greed and stupidity of the so-called banking experts on Wall Street.

We know what happened. Wall Street got away with murder for years, and taxpayers ended up holding the bag. Hundreds of billions of dollars out of the Treasury, out of the wallets of families across America in terms of tax payments, that ultimately found their way to Wall Street to rescue the failing businesses there.

Why were they failing? Well, try reading ``The Big Short'' by Michael Lewis, one of the most popular books now in America. Mr. Lewis was in my office today. He has written a number of books, and he is pretty good at it. He talked about his experience sitting down with people who were insiders on Wall Street who were describing what went on literally for years.

What you think is that when you get to the top, you will find the smartest people. I guess that is possible and likely. But in this case, when you got to the top, you found some of the dumbest people who were involved in constructing investment ideas that were fundamentally flawed, taking failing mortgages across the United States and packaging them together and then trying to sell them locally and globally and watching the bottom eventually fall out.

Lewis wrote this in this his book, ``The Big Short.'' Many of us have read it. He and I had a chance to talk about it today. But it was that kind of conduct that led to this recession that cost us all these jobs, that wrecked the savings accounts of American families, that has set us back on our heels, and we are finally coming out of it slowly. But it has cost us dearly as a nation.

We are trying to change the way Wall Street does business so we never have to face a recession such as this again. The Republicans in the Senate, with only a few exceptions, have resisted our efforts to pass this bill.

First, with three straight filibusters to stop us from bringing the Wall Street reform bill to the floor, three efforts to stop us from even debating the bill, then 4 weeks of debate on the floor of the Senate, and I will tell you, that is rare. I have been around here for a few years. It is very rare that you would spend 4 weeks on one bill. Well, this is our fourth week on this bill.

During that time, Senator Dodd, the chairman of the Senate Banking Committee, has been working with Senator Shelby, the ranking Republican from Alabama, who is on the floor, and they have been going back and forth with amendments.

I think Senator Dodd said today almost 60 amendments have been considered, pretty close. A lot of different ideas have come to the floor back and forth. Some Democratic amendments have been considered and failed, some passed. Some Republican amendments were considered and failed. There were bipartisan roll calls. It has been a real Senate debate.

It feels good. It does not happen enough around here. This so-called deliberative body spends a lot of time, such as at this moment, where nothing is going on, on the floor except some profound speeches by the Members. What we have tried to do, during the course of this debate, is give everybody a chance to bring out their point of view. Points of view are much different. That is OK. That is why we are here. We are supposed to debate these things and vote on them.

I had an amendment last week, one that I have been working on for literally 3 years or more, that deals with [Page: S3968] the credit card companies' charges to merchants and retailers. When a customer uses a credit card, they not only get credit to buy a meal, for example, that restaurant has to pay a percentage of the bill, the cost of the meal, back to the credit card company. This interchange fee has become unfair to small businesses.

Well, after working at it for more than a week, we finally had the amendment called 6 days ago, and it was enacted, passed by the Senate, with a vote of 64 to 33, 17 Republicans joined me. So it was a good bipartisan amendment. It was a surprise to many because the credit card companies and the banks that support them are very powerful. In this case, they came up short. The retailers, the merchants, the convenience stores, the gas stations, the restaurants, grocery stores all across America finally prevailed in this long battle against the credit card companies.

But that was the best of the Senate, I thought, and of course I am partial because my amendment passed. But it was the best of the Senate because it was a real debate and a real vote and an outcome which was bipartisan.

We felt this was a good time, in the course of the debate, to start winding it down and come down to a handful of amendments, vote on them, and then vote for final passage so we can conference this bill, work it out with the House, send to it the President to be signed into law. But we could not get the votes.

The Republicans, but for two Senators, refused to give us the votes to end this part of the debate and bring this bill to a final vote. It is frustrating. I do not know that they can argue that we have been unfair. We have given pretty wide berth to the Republican side to offer the amendments they wanted to offer. They have offered quite a few, and we have, too, on our side of the aisle.

So I do not think you can argue that we should not stop debate over fairness in the course of the debate. They might be arguing they do not want a bill at all. That is possible. First, they filibustered to stop us from bringing the bill to the floor. Now they are basically filibustering to stop us from ending the debate on the bill and bring it to a final vote.

I only know of several groups across the country that want to stop the debate on this bill: Wall Street, the biggest credit card companies, and the biggest banks. They want to stop this bill. They want to kill it. They have spent a fortune on lobbyists, roaming around our offices on Capitol Hill, to try to convince Members to stop this Wall Street reform bill.

Well, they at least were successful today. They convinced all but two Republican Senators to come to their side of the issue and to stop this debate on Wall Street reform. That is unfortunate because I think the American people expect us to get something done. They expect us to hold Wall Street accountable, to make sure the reckless gambling by Wall Street institutions that led to the loss of more than 8 million American jobs comes to an end.

They want to end taxpayer bailouts once and for all. They do not ever want to hear the word ``TARP'' again, unless it is something you can put over the top of your station wagon. They certainly do not want us in a situation where we are coming up with hundreds of billions of dollars to bail out these banks. Thanks to an amendment by Senator BARBARA BOXER of California, one of the first, we made it clear that we are prohibiting any future bank bailouts under this bill. Senator Boxer was a real leader on that issue.

I think most Americans believe we need to have an agency that is going to be here in Washington which will administer the strongest consumer financial protection law in the history of the United States, a law that will empower consumers when they go through a real estate closing or sign a credit card agreement or sit down next to their son or daughter to sign the student loan forms or take out a loan for a car, knowing they are not going to be cheated and treated poorly.

This agency is there to empower consumers so they are not, in fact, swindled out of their life savings and are not brought into legal deals which are totally unfair. We want to bring sunlight and transparency to shadowy markets. Some of the things we voted on will move us in that direction, to start eliminating some of the trading that has gone on that is an outrage.

I do not think business as usual is the right way to go. But the Republican votes today, all but two Republican Senators voted to continue business as usual on Wall Street. They do not want this bill to pass. So they voted that way today. At the end of the day, 39 out of 41 Republican Senators voted for the status quo, keep things as they are on Wall Street.

In addition, of course, we understand that Wall Street is powerful. When my amendment came up on interchange fees, the banks warned Senators: If you vote for the Durbin amendment, we are not going to support you; that is, contribute, in the next election campaign. That was on the front page of the New York Times last Saturday. It is the most bald-faced admission I have ever seen by special interest groups that they are putting the pressure on Members who vote for Wall Street reform.

So I say to my colleagues: They may have won today and kept the banks happy. But, ultimately, it is more than the bankers who will be voting in November. It is people all across America who are angry at what happened on Wall Street and do not want it to happen again. They are going to remember the Senators who voted with Wall Street and those who voted for reform, and today we have a roll call that indicates it.

We have to make sure we make the changes that make the difference across America. Some of the things that have happened here are pretty graphic. Paul Krugman, a writer from the New York Times, wrote a few weeks ago: The main moral you should draw from the charges against Goldman, though, doesn't involve the fine print of reform; it involves the urgent need to change Wall Street. Listening to financial industry lobbyists and the Republican politicians who have been huddling with them, you'd think that everything will be fine as long as the federal government promises not to do any more bailouts. But that's totally wrong--and not just because no such promise would be credible.

For the fact is that much of the financial industry has become a racket--a game in which a handful of people are lavishly paid to mislead and exploit consumers and investors. And if we don't lower the boom on those practices, the racket will just go on.

That is why this vote today was so critically important. Those who want to stick with the status quo, who want to reward the special interests, who want to load up this bill with lobbyists' loopholes, prevailed today on this vote today by one vote on the floor of the Senate. There will be another vote tomorrow and maybe the day after too. The question is, Will any other Republicans, aside from the two Senators from Maine, break ranks and join the Democrats for Wall Street reform? This is a once-in-a-political-lifetime opportunity. If they want to stand with the special interests and Wall Street to stop this reform, they will certainly have to answer for it when the time comes and they face the voters.

This attempt we are making to change the rules on Wall Street is an attempt to empower the people of this country to help them make the right decisions personally and to make certain that they do not end up losing their savings and their homes and their jobs because of the greed and selfishness of those on Wall Street.

I can remember many years ago on the floor of the Senate, when I was a brand new Senator, way in the back row there, and offered an amendment to a bankruptcy bill. The amendment said: If you are a predatory lender; that is, if you violated the laws of America in the loans that you are making, such as mortgages, you cannot then turn around in bankruptcy court and recover from the debtor who has been the victim of your predatory lending practices.

I was arguing on the floor with Senator Phil Gramm of Texas, who was here arguing against my amendment. He was high ranking on the Senate Banking Committee. He said: If the Durbin amendment passes, it is going to kill the subprime mortgage market in America. Well, I lost by one vote. If my amendment had prevailed, who knows, history might have been a little different. That is why one vote makes a difference.

Today, we needed one more Republican Senator to vote for Wall Street reform. We had two. We needed one more. I understand two of our Democratic Senators withheld their votes [Page: S3969] because they want this bill to be stronger. I hope they will come around. I hope they will vote with us. But at the end of the day, we only had two Republican Senators who stepped up and said they favored Wall Street reform.

Well, I lost my amendment by one vote that might have changed a little bit of financial history if it had passed. Today, we lost by one vote when it came to Wall Street reform.

We are not going to quit. President Obama is committed to it. Democrats in the Senate are committed to it. Democrats in the House already passed their bill. We need to get this done. It is time to stop the obstructionism. It is time to stop the stonewalling. It is time to bring this to a close with a handful of amendments on both sides of the aisle. Let's have an up-or-down vote, and let's get on with it. Let's pass this bill.

On final passage, a number of Republicans who have been holding back and would not support this bill may have second thoughts. They may decide they don't want to be found on the wrong side of history again; that it isn't worth standing up with the special interest groups or Wall Street lobbyists when America is crying for basic reform and accountability.

I yield the floor.