

very troublesome. I want every American to believe that when they walk onto an airplane, no matter the company, that the experience, the capability in the cockpit is such that they can have comfort. I don't care whether you are flying on an Airbus 320, a Boeing triple 7 or A-8, you ought to feel, as a passenger, that that experience, the crew rest, the capability with the airplane in the cockpit gives you a substantial margin of safety.

We have an unbelievable record in the skies across the country. We have had very few accidents. In recent years when we have had accidents, most of them have been with commuter airlines. I am not suggesting in any way that we get along without commuter airlines, but I believe the FAA has some significant questions to answer. I believe the FAA has a lot of work to do. We will now have a nomination hearing for Randy Babbitt to head the FAA. Frankly, the FAA has not had consistent leadership. I hope Mr. Babbitt will provide that. I expect during his confirmation hearing he will get a great many questions about these issues.

I will have more to say about what we will do in my subcommittee as well later today. I did want to mention that I have been stunned by what has been revealed by the National Transportation Safety Board about that crash in Buffalo, NY by that commuter carrier. The family members of those who perished in the crash obviously are very concerned as well by what has been disclosed. It is a service to this country for the NTSB to have done a complete investigation. It will provide for all of us a reminder that there is much yet to do in the FAA to make certain that we maintain a good record of safety going forward. That applies to the major airlines and just as well and equally to commuter airlines.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

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#### CREDIT CARDHOLDERS' BILL OF RIGHTS ACT

Mr. DURBIN. Mr. President, we are considering a bill which affects millions of Americans. It is about credit cards. We all have them. We all wonder each month, when we get a monthly statement, what in the world it means. I am a lawyer. I have been a legislator for a while. I couldn't even tell you what the back of my credit card statement says every month. But I know if you end up missing a payment, if you end up being late on a payment, the world can crash down on you, because I have gotten plenty of letters from peo-

ple around my State and the country about some of the things that happen when it comes to these credit cards.

I thank Senator DODD and Senator SHELBY. This is the first credit card reform legislation in how many years? Ever. That is a long time. It is overdue.

All of us know how much they have become a part of our lives, and all of us know how vulnerable we are when interest rates go through the ceiling, when they end up saying: Because you are a day late on your payment, unfortunately, you have to pay a penalty. Then there is interest on the penalty. And did we tell you there is interest on the interest on the penalty. You think it will never end—\$25, \$50, \$75.

Senator DODD, in this credit card reform legislation, does one of the most significant things for American consumers we have seen.

I want to offer an amendment. Understand, if you go to your local restaurant in your hometown and have a meal and pay for it with a credit card, the owner of that restaurant has to pay part of your bill to the credit card company and the issuing bank. It is called an interchange fee. So the owner of the restaurant doesn't get the \$20 that you put on the counter. That owner may end up paying several percent of that \$20 to the credit card company and to the bank.

When we created the original law in this area back in 1981, we said: It is OK for people in restaurants and other places to say to their customers: We will give you a discount if you pay in cash or by check. That is the law; right? It makes sense. The person who owns the restaurant says: I am only going to charge you \$18.75 instead of \$20 because you are paying in cash instead of with the credit card. That way I don't have to send part of your \$20 back to that credit card company.

That was the law, and it seemed to be a pretty good one. The credit card companies weren't happy with that. They didn't want people to get incentives not to use credit cards. They created new, legal entities for credit card companies that didn't quite fit into the 1981 definition so that they wouldn't be covered by the possibility of a consumer discount. And then, for those bold companies like that hometown restaurant that decided they still wanted to offer a cash discount, they piled up the rules on them at the credit card companies and said: If you don't advertise in just the right way, we will fine you. I can tell my colleagues, gas stations are being fined \$5,000 because they offered a discount of \$1 or \$2 to a consumer.

As a consequence, retail merchants came to us and said: Give us a break. If we are going to have a discount for cash or check, say so in the law so that we can offer this to the American consumer.

The credit card companies hate it like the devil hates holy water. It is like old Senator Bumpers from Arkansas used to say: Like the devil hates holy water. They don't want to change.

This bill will change a lot of things they don't like. Thank goodness. I hope the Members of the Senate will accept the amendment I am offering with Senator BOND of Missouri, a Republican, a bipartisan amendment that says: Merchants across America can offer a discount over credit cards for people who pay in cash, check, or with a debit card, which is the new checking account for many younger people.

That discount is going to help that establishment to be able to say to folks: Well, we can give you a break here on the product you just bought or the meal you just bought; and say to the consumers across America who are struggling in this economy: Here is a way to save a few bucks. You can pay in cash, and you will not have to pay as much as you would on a credit card.

I think that is a move in the right direction. I am glad retail merchants, large and small, all across America have rallied behind this amendment. Whether it is your gas station or a little shop in your hometown or the restaurant you go to, they will be able to say to you: If you pay in cash, check, or debit card, we can offer you discounts on your final bill. I think that is a good break for people across America that they can enjoy every single day if they want to, if that is the way they want to make the purchase. If they want to use the traditional credit card, that is up to them.

So this goes back to the original law, knocks away all of the obstacles put in the path of this law by the credit card companies, and basically says, this gives retail merchants across America a way to offer a discount to American consumers.

So I hope my colleagues on both sides of the aisle will join me on that amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

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#### CLIMATE CHANGE

Mr. BARRASSO. Mr. President, I have in my hand a memo by Obama administration attorneys—a compilation of attorneys—from a number of different Federal agencies. It is marked "Deliberative" and "Attorney Client Privilege." This memo is well thought out. It is scientific as well as a legal critique of the decision by this administration to use the Clean Air Act to regulate climate change. The memo confirms the fears of every small business owner, every farmer, every school and hospital administrator, in both large and small communities, that the Obama administration knows that using the Clean Air Act to regulate climate change is bad for America. They know it, but for political reasons they have ignored the science. The consequences to our economy have also been ignored, as well as the impact on the American people.

I am going to be clear. To me, this memo is a smoking gun. This memo

makes clear statements about the dangers to America of using the Clean Air Act to regulate climate change.

The memo states:

Making the decision to regulate carbon dioxide under the Clean Air Act for the first time is likely to have serious economic consequences for regulated entities throughout the U.S. economy, including small businesses and small communities.

Should EPA later extend this finding to stationary sources, small businesses and institutions would be subject to costly regulatory programs. . . .

Costly programs.

The document also highlights that EPA undertook no “systemic risk analysis or cost-benefit analysis” in making their endangerment finding.

The White House legal brief questions the link between the EPA’s scientific technical endangerment proposal and the EPA’s political summary.

The EPA Administrator said in the endangerment summary that “scientific findings in totality point to compelling evidence of human-induced climate change, and that serious risks and potential impacts to public health and welfare have been clearly identified. . . .” But the memo states that this is not at all accurate. The memo actually questions—questions—the science behind designating carbon dioxide as a health threat, stating the scientific data on which the agency relies are “almost exclusively from non-Environmental Protection Agency sources.”

The memo goes on to say that the essential behaviors of greenhouse gases are “not well determined” and “not well understood.”

The memo says:

The finding rests heavily on the precautionary principle, but the amount of acknowledged lack of understanding about the basic facts surrounding [greenhouse gases] seems to stretch the precautionary principle to providing regulation in the face of unpreceded uncertainty.

Under the same precautionary principle, the memo says the Environmental Protection Agency could “also regulate electro-magnetic fields and noise.”

This memo confirms that the administration has ignored its own advice. It is looking to make up scientific facts to make a predetermined conclusion. This is politics trumping science. It is the American people who will ultimately pay the price.

I have long stated my concerns that using the Clean Air Act to regulate climate change is a bad idea for our country.

The Chamber of Commerce has stated that 1.2 million new entities such as schools, farms, hospitals, office buildings, big-box stores, enclosed malls, commercial kitchens, nursing homes, and small businesses—in both large and small communities—all would be captured under this preconstruction permit program under the Clean Air Act.

If only 1 percent of the 1.2 million major stationary sources of carbon di-

oxide in this country undertook new construction or modifications each year, well then, the agencies would have to process 12,000 permits every year. Given the EPA’s statement in its Advanced Notice of Proposed Rulemaking in 2008 that 2,000 to 3,000 new permits could “overwhelm” the EPA and the States, how can permitting authorities handle the 12,000 they would have to look at? How can they handle 12,000 permits annually? The answer is, with everything they do and everything they stated, they cannot.

EPA Administrator Lisa Jackson says she is not planning to regulate small emitters. She says she can be targeted in what she regulates. But by what authority can the Environmental Protection Agency of this Nation not include all the emitters of carbon dioxide that meet the emission thresholds that are set out in the Clean Air Act? Strangely enough, not just the authors of the administration’s legal brief but also environmental groups disagree with the Administrator of the Environmental Protection Agency because she says she can limit those and regulate those she chooses.

The Sierra Club’s chief climate counsel stated last year that:

The Clean Air Act has language in there that is kind of [an] all or nothing if carbon dioxide gets regulated and it could be unbelievably complicated and administratively nightmarish.

The Center for Biological Diversity says:

The EPA has no authority [at all] to weaken the requirements of the [Clean Air Act] simply because its political appointees don’t like the law’s requirements.

I have warned the Administrator of the EPA that groups such as these will sue the EPA if the EPA does not capture both large and small emitters. She has dismissed these threats. This is despite the Wall Street Journal last week reporting that a representative of the Center for Biological Diversity stated that her group is prepared to sue for regulation of smaller emitters, such as farms, schools, hospitals, and nursing homes—and they will do that—if the EPA stops at simply going after the large emitters.

I have asked for a plan from the Administrator on how she will address losing court cases if the agency is sued for picking winners and picking losers. Her response in a committee hearing—this was this week—is that she cannot share with me any such plans they might have in that forum of a committee meeting. Well, I would ask the Administrator, if you cannot share information with the elected representatives of the 50 States, then in what forum can you share the information? None of this is in keeping with the transparency that has been promised under this administration.

Similarly, I have asked the person who has been nominated to head up the Air and Radiation Office, Mrs. Regina McCarthy, in the Environmental Protection Agency, the same question. Her

response was she cannot share with me her plans because she is not in the job yet. She has said she would like to be informed of potential suits and would then personally meet with anyone wanting to sue to convince them not to sue. Well, Government officials cannot go running around trying to convince every litigant—whether it be an environmental group or a local group that does not want something in their backyard—not to sue. This is not a good policy. This is not good enough.

I am seriously troubled with the administration and their approach to this issue. I have a hold on Mrs. McCarthy’s nomination because this process of using the Clean Air Act to regulate climate change is flawed. There appears to be no plan to address it.

With the release of this internal document, we now know that the plan the administration has to address climate change is political and not scientific. They know that using the Clean Air Act to regulate climate change is bad for America. They choose to ignore the threat to America. They are playing a dangerous game of chicken with Congress and the American people.

Either we will all jump to pass the President’s energy tax—his cap-and-tax plan—or we will crash head-on into this regulatory ticking timebomb. In the end, it will be the American people who will have to pay the price.

The administration has tried to convince the public to support this cap-and-tax proposal.

Charlie Munger, who is the CEO of Berkshire Hathaway—who works closely with Warren Buffett; they have been partners for years—stated that creating an artificial market in Government-mandated carbon credits would be a “monstrously stupid thing to do right now.” And he said such a move is “almost demented.”

Well, according to the Wall Street Journal, the administration has now consulted pollsters who advocate avoiding such phrases now as “cap and trade” and “global warming.” The White House Council on Environmental Equality has also scheduled a meeting—earlier this week—with the president of ecoAmerica, a Washington-based nonprofit that uses—their terms—“psychographic research” to “shift personal and civic choices of environmentally agnostic Americans.” This is a sign of desperation. The administration realizes the American people are not buying what they are trying to sell here. The consequences of this issue are too grave for America.

Mr. President, I would say take this regulatory ticking timebomb off the table. Let’s pass legislation taking the Clean Air Act out of the business of regulating climate change. Then let’s forge a plan in a bipartisan way that makes America’s energy as clean as we can make it, as fast as we can do it, without raising energy prices for American families. Let’s develop all of our energy resources—wind, solar, geothermal, hydro, clean coal, nuclear,

and natural gas. We need it all. We need an “all of the above” energy strategy to address our Nation’s energy needs. I look forward to working with my colleagues to address those needs for our Nation.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### PROGRESS ON CREDIT CARD REFORM

Mr. DODD. Mr. President, I see my good friend from Alabama is here as well. I wanted to give my colleagues a little sense of an update. I know we are all anxious to know how we are progressing.

While we haven’t had a vote this morning on any amendments, I think words of encouragement might be helpful at this juncture, to let Members know we are reaching agreement or have reached agreement on a series of amendments that will be incorporated into either a managers’ amendment or some manner or form.

To give my colleagues an idea of the amendments being worked out: Senator COLLINS of Maine and my colleague from Connecticut, Senator LIEBERMAN, have an amendment on what is called “stored value” cards which we will reach an agreement on; Senator FEINSTEIN and Senator CORKER, along with Senator CASEY and Senator GRASSLEY, have an amendment on university—I believe the word is either “affiliates” or “attitudes.” Anyway, it is dealing with younger people on university campuses and credit cards. We have either reached an agreement on that or are reaching one, but one will be reached on that as well. There is the amendment from Senator LEVIN dealing with deceptive advertising, which I think we have reached agreement on as well. Senator KOHL has an amendment for a study on the marketing of credit cards. Senator FEINSTEIN and Senator GREGG have an amendment on an emergency PIN program FTC study that has also either been agreed to or is in the process of reaching an agreement. Senator AKAKA has an amendment dealing with credit counseling standards. He has been a strong advocate of that for many years and we thank him for it. That is also an issue upon which we have reached some agreement. There is an amendment dealing with usury and an interest rate study which I will offer.

We had a vote yesterday on at least the waiver—we didn’t actually have a vote on the Sanders amendment—dealing with a cap on interest rates set to the national credit union standard. I

supported the Senator’s effort to waive the budget point of order for us to debate that. That is not to say I would have agreed necessarily with that specific amount, but clearly there is a strong desire in the country to get our arms around this issue of exorbitant interest rates. I thought maybe we ought to be doing it, because there are different institutions with different methods of calculating that. We probably ought to take a look at how we can do that in a more comprehensive manner. So there are a number of agreements.

I see my friend from Alabama. Our staffs worked together last night late into the evening and were able to sit down with Members on both sides of the proverbial aisle, as we talk about here, to reach an understanding. While we have not had a vote this morning on any amendments, work is being done to come to final conclusion on these amendments.

There are amendments that we have not reached agreement on. Let me say to my colleagues, cloture has been filed by the leader. My hope is we can finish this bill today. I have a list of 30 or 40 amendments here from Members who wish to offer them. We have a good bill. Is it a perfect bill? No. Is it a bill that Senator SHELBY would have written on his own? No. Is it one I would have written on my own? No. But, again, we have a product that is worthy of this institution’s support. It is the first time we have dealt with reform of the credit card issuing industry. At a time when our fellow constituents are being hammered by rising costs, by fees and interest rate hikes that make it harder and harder for them to keep their families together economically, it is a major step forward and it is deserving of our support.

That is not to suggest that many of these amendments are not good ideas. It doesn’t mean we have finished this debate once and for all, forever. Obviously, we will be back on these issues. We are in this Congress, and we will in the next as well. We want to see how this works. We believe it will work well on behalf of our fellow citizens. But at some point we need to get moving and get this done, even though it comes short of everyone else’s ideal goal. I say that respectfully.

I have some Members with six or seven different amendments they want to offer. If that is the case, we will never finish this bill. I don’t think that is in our interests. Every day we delay is a delay for the final enactment of this legislation or the imposition of its standards. Implementation is nine months from enactment. Every day we wait pushes that date further out at a time when we can help our fellow citizens in this matter of credit card reform.

I won’t go back through all the provisions that are incorporated in the bill. I have done that several times. I think my colleagues are pretty well aware of what is included. This is a bipartisan

bill. People didn’t think we could reach this point. We have done so. Once again, Senator SHELBY and I have worked together with our staffs to achieve that. This bill has been roundly endorsed and supported by every major consumer group in this country. That is no small achievement. So there ought to be a moment of pride here that we have put something together worthy of our support.

These amendments I have mentioned already which we can adopt, we will in either a managers’ amendment or by some means by which they can be accepted, but then we need to take these other remaining amendments and I need to have colleagues decide whether they are willing to have them modified or studied or whether they are willing to have their amendments not be offered at this time. They can help considerably or we run the risk of losing this bill. I wouldn’t have said that a day or so ago, but we are getting precariously close to that outcome: pushing this off to next week. We have the supplemental coming up. When the agenda is taken over by other items, it is very difficult to come back. So here we are on the cusp of actually achieving an unprecedented result and I don’t want to see us lose that opportunity.

I urge my colleagues to step up and come give us a hand to try and move forward on this bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I wish to join in and associate myself with some of the remarks my colleague, the chairman of the committee, Senator DODD, has made. One, we have what we think, with the Dodd-Shelby substitute, is a step in the right direction. It is a step in the right direction for consumers. It is also a step in the right direction to bring balance to the credit card industry. Is it everything I would want from the Republican side? No, but it is not everything that Senator DODD and some of the Democrats would want. We have worked together to forge an outcome. We have put a lot of thought and a lot of work into this, as have our staffs, who have worked days and nights. We are close. We could pass this bill today if we could bring a few more people together. I think this is a milestone as far as protecting consumers, informing consumers, as well as to give some balance.

You cannot take risk out of the marketplace. You have to consider risk when you make loans. We have some of that in here. But we have great reforms in here that I think we can live with. Some people don’t want a bill on both sides, or the others want something that is probably not achievable, not good for the economy, and not good for the American people. We have to remember that the credit card business does extend credit, to some extent, to people where that is their only credit. This bill will at least let them know a lot of the terms upfront. It will let