

massively to higher deficits and more debt well into the future, the CLASS Act being one example of that. I suggest as well that when you create a \$2.6 trillion new entitlement program, if history is any indication, that would dramatically understate what the true costs are. We have seen that historically, that whatever the estimates are about some of these new government programs, they are significantly less than what was estimated when they were created in the first place.

I would argue on the issue of how the new health care bill on its first anniversary impacts the issue of debt, we are not going to know probably for some time but I think we can get a pretty clear idea that this is going to lead to much higher deficits and much higher debt in the outyears because of the statement the Congressional Budget Office and the CMS Actuary and even now the Secretary of Health and Human Services are saying with regard to programs such as the CLASS Act—which was created under this bill.

I think the other reason you are going to see the debt and deficit explode is because of the gimmicks that were used by the Democrats to finance the health care bill. I mentioned the CLASS Act was one of those, but there were a number of other gimmicks that were used as well. There was the Medicare payroll tax increases, the Medicare cuts that are supposed to occur under this to pay for the new health care entitlement program. It was also indicated at that time they were going to extend the lifespan of Medicare. Essentially, what happened is the same revenues were spent twice; they were double counted. In other words, there was new revenue going to come into the Medicare trust fund because of increased payroll taxes and because of the reductions in spending in those Medicare accounts that allegedly would create a credit for the Medicare trust fund. Unfortunately, all those new revenues are going to be used to finance this new health care entitlement program.

Somewhere down the road, when the time comes to pay the bills of Medicare, you are going to have to borrow money to do that because of the way these gimmicks were used and the way the double counting was used, not only to credit the Medicare trust fund but also to use it as an offset for the new health care entitlement program.

If you look at the actual numbers it is somewhere on the order of \$400 billion that was double counted in the Medicare trust fund and about \$30 billion, I believe, was the number on the Social Security trust fund. For these gimmicks, the chickens are going to come home to roost at some point in the future and it is going to lead to significantly larger deficits and a much higher debt than we are looking at today, than what was contemplated when the legislation was passed in the first place.

Whether it is the gimmicks that were used, whether it is these new entitle-

ment programs such as the CLASS Act, whether it is the actual cost—even estimated cost of \$2.6 trillion in new expansion of government, whether it is the loss of jobs associated with the higher taxes, the higher health care premiums in this legislation, if you are going to evaluate it based upon the issues that are most important to the American people—and that is the economy, jobs, spending, and debt—on the first anniversary of this health care reform legislation, this has been already a huge failure by any objective measurement. My guess is before this is all said and done we are going to continue to see more and more of our employers having to drop their coverage, perhaps pay the penalty rather than continue to provide coverage for their employees, and push them into the government program.

I think you are going to see more and more government control, more and more influence and intervention of the Federal Government, more and more cost to taxpayers, and higher and higher health care costs for small businesses and for families and for individuals in this country. On the first year anniversary of this legislation, I think the best thing Congress could do would be to repeal it and start over with commonsense health care reforms that will actually reduce the cost of health care, that will be fiscally responsible, that will not break the bank, and that will help get us on a path where we can create jobs and get the economy growing again rather than inhibiting that.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Mr. President, we are in morning business?

The ACTING PRESIDENT pro tempore. We are.

Mr. DURBIN. The Democratic side is now recognized?

The ACTING PRESIDENT pro tempore. They are.

Mr. DURBIN. How much time is remaining?

The ACTING PRESIDENT pro tempore. There is 25 minutes 47 seconds.

#### INTERCHANGE FEES

Mr. DURBIN. Mr. President, I usually do not get up in the morning and race to read the editorial page of the Wall Street Journal. It is not part of my morning routine. I do not agree with them on most of the positions they have taken and I have found many times the statements they make are sometimes grossly inaccurate. This morning was no exception.

They printed an editorial on the issue of interchange fees on debit cards. They had some critical things to say, which is their right, and my responsibility as an elected official to absorb. I know folks on Wall Street and their friends in the press are not happy with the interchange reform which Congress passed last year. They are certainly entitled to their opinion, but

they are not entitled to their own alternative reality. When I read this Wall Street Journal editorial this morning, I felt as though I had entered into some fact-free twilight zone.

Swipe fee reform is an important issue. So the people who are following this debate understand what we are talking about; each time you use a credit card or a debit card to pay for something—a meal at a restaurant, groceries, pharmaceuticals, a donation to a charity, buying gas for your car—each time you do there is a fee that is charged to the merchant. That fee is charged by both the bank issuing the card and the underlying credit card company. It is called an interchange fee.

And it is a fee that is imposed on businesses large and small all across America literally without negotiation. It is a fee that is dictated because there is little or no competition.

The Wall Street Journal probably prides itself on being the protector or defender of the free market system. There is no free market system when it comes to interchange fees. If you want to accept a Visa or MasterCard from a certain bank, you will pay a certain interchange fee every time a card is used at your establishment. What I learned in a hearing on this subject years ago is that there is virtually no negotiation in establishing these fees. And merchants came to me. The first who came to me was not a major retailer but a buddy of mine in Quincy, IL, named Rich Niemann. Rich Niemann is a very conservative man who probably reads the Wall Street Journal every day, but he has done quite well for himself and his family and his company by opening up food stores all over the Midwest.

Rich is a roll-up-your-sleeves, grass-roots businessman. He said to me: Senator DURBIN, these credit card companies and their banks are killing us. The interchange fees bear no relationship to the actual cost of the transaction.

He said: You know, if somebody pays for groceries with a check, it clears the bank for pennies regardless of whether the check is for \$10 or \$100. If they use a debit card, which is a plastic check drawing directly out of their account to pay, it ends up we pay an interchange fee which is substantially higher; and there is nothing we can say about it.

The Wall Street Journal, the defender of the free market system, the defender of competition, has to acknowledge the reality that there is no competition when it comes to these duopolies, Visa and MasterCard, and when you consider that merchants have no voice or little voice in establishing what their fee is going to be when it is charged.

So we came to the floor of the Senate and said we need to have interchange fee reform. The measure passed, the amendment passed, by a margin of 64 votes—17 Republicans, 47 Democrats—and then was accepted in conference

and became part of the law, the Dodd-Frank Wall Street reform.

What it said was this: The Federal Reserve would analyze the current state of the market and establish what a reasonable and proportional interchange fee would be, what is fair. Since there is no competition under the current system, let's at least establish what is fair. Let's not let Visa, MasterCard, and the banks fix prices for lack of competition.

You know what the early analysis showed? The average interchange fee was in the range of 40 cents per transaction. The actual cost? The actual cost? Closer to 10 cents, maybe even less. They were charging three to four times as much over the cost of actually clearing the transaction to merchants and retailers across America, which, of course, diminishes their profitability, diminishes their ability to expand their small businesses and large alike and is passed on to the consumer.

Now, you would think even the Wall Street Journal, this bastion of conservatism and defender of the free market, would acknowledge the obvious. The obvious is, small businesses and large businesses alike are being overcharged across America by credit card companies and banks without restraint. That is not a free market that is imposing a cost.

What is it worth in terms of interchange fees, which they refer to kind of dismissively as small and not to be concerned about? What is it worth to the credit card industry and the major banks in America every month? It is worth \$1.3 billion in interchange fees collected on debit cards—\$1.3 billion.

So let's do the math for a minute. It is over \$15 billion a year—\$15 billion a year—which the Wall Street Journal wants to protect as a handout to the biggest banks and credit card companies in America. Well, be my guest, Wall Street Journal, but do not stand up and say you are defending businesses across America because businesses, large and small, are sick and tired of the noncompetitive, opaque system that currently exists they are paying for.

My amendment does not create price fixing. It places reasonable limits on price fixing that is already present in the interchange system. If you look at any bank's Web site, see if you can find how much that bank charges merchants in interchange fees. You will not find anything. There is no disclosure.

Why? Because for years the banks let Visa and MasterCard fix the interchange rates that each bank receives when its card is swiped. This means banks do not have to compete with one another on the fees they receive from merchants. They all receive the same fees no matter how much any particular bank actually spends to process a transaction or prevent fraud.

The current interchange system, the one that needs to be reformed, is a price-fixing scheme. Period. My amend-

ment simply says if big banks are going to let the Visa and MasterCard duopoly fix fees on their behalf, the Federal Reserve should regulate those fees so they are reasonable. If a bank wants to charge its own fees to reflect the cost it bears, so be it. My amendment does not regulate that. As long as those fees are transparent and competitive, I am fine with them. But when the banks all get together, when they conspire to let Visa and MasterCard fix fees for them, that is when my amendment steps in. That is what offends the Wall Street Journal, the defender of America's free markets.

We know big banks today receive far more in interchange than it costs them to do debit transactions. They use this excess interchange subsidy for things such as ads and reward programs and executive bonuses and, certainly, for profits. That is what they do.

The effect of my amendment will be to squeeze the fat out of the interchange system. Big banks will still be able to use interchange to pay for reasonable processing costs, but they will not be able to use this interchange scheme to take excess fees out of the pockets of merchants and their customers.

Well, you might ask, is this the case in every country? The answer is, no. In other countries that use Visa and MasterCard, something interesting has occurred. Do you know what the interchange fee is on debit card transactions in Canada? Zero. No fee. Do you know what it is in Europe? It is a tiny fraction of what it is in the United States. So for Visa and MasterCard and the banks that issue these cards to argue that even reducing interchange fees will cripple them, will force them to raise fees, will cancel services they already offer, is to belie the reality that in many places in the world, unlike America, they are not overcharging merchants. They have reasonable interchange fees; in some places, no interchange fees.

Let's look at the Wall Street Journal's claim that because of swipe fee reform, we "will soon be paying for check-writing privileges." Well, this is an old song. We have heard it before.

It is surprising the Wall Street Journal would repeat this argument to say that interchange reform will cause people to start paying for their checking accounts. I would urge them to read back issues of their own newspaper. Let's go back to the November 12, 2008, Wall Street Journal article entitled, "Banks Boost Customer Fees to Record Highs." Well, this was long before the Durbin amendment. They were already raising fees, and they will continue to raise fees. That is why some of the banks enjoy huge profit margins and bonuses, dramatic bonuses, for the executives who work there.

They might read the opening line of that article which said:

Banks are responding to the troubled economy by jacking up fees on their checking accounts to record amounts.

I am quoting the Wall Street Journal. They were already raising fees on customers long before this debate began. Another line in the same article says:

The average costs of checking-account fees, including ATM surcharges, bounced-check fees and monthly service fees, have hit record highs.

That was 2008, long before our debate on the Senate floor. If the Wall Street Journal's writers cannot be bothered to even read their own newspaper, I urge them to read what the Bank of America's spokeswoman, Anne Pace, told the Associated Press on October 19, 2010. She said:

Customers never had free checking accounts. They always paid for it in other ways, sometimes with penalty fees.

Again, this is a spokesman for the industry being brutally honest about free checking.

It astonishes me how many people simply repeat the banking industry's talking points without ever doing any fact checking. Banks always say if anybody tries to regulate them, it will lead to higher consumer fees and checking fees; and reporters print it like it is the gospel.

Hasn't anyone ever realized that threatening higher consumer fees is a great strategy to scare away any efforts at reform? It is a great tactic because it is all speculation. We cannot prove or disprove for sure what is going to happen in the future.

What we can do is look at past experience and use it as a guide. For example, we know from the last few years that banks and credit card companies have constantly tried to raise fees both on consumers and merchants as high as the market would allow them to go despite the recession. We also know from experience that competitive markets, which the Wall Street Journal should honor before they honor these duopolies involved in price fixing—competitive markets overseen by reasonable regulation are the best way to keep fees and prices at an appropriate level.

Unfortunately, we also know the current interchange system is an unregulated, uncompetitive market. That is why we see fees that are hidden, non-negotiable, and many times higher than what a competitive market would produce.

Let's talk about the Wall Street Journal's views on how swipe fee reform will impact consumers. I do not know that the Wall Street Journal would be viewed by many, if any, as a great proconsumer publication. This morning they wanted to wear that mantle. They say it is a "hoax" that reform is proconsumer; then, "as usual, the little guy is going to get trampled."

How frequently have you turned to the Wall Street Journal to find out who is going to stand up for the little guy in America? Almost never in my case and, certainly, they have this wrong.

Some might say it is great the Wall Street Journal now appears to care about consumers. Of course, I would feel better about it if I had not read yesterday's editorial in the Journal. That is one where they said they would like to see Congress kill the Consumer Financial Protection Bureau.

This is a series. There is a recurring theme. The theme is consumers are going to lose, and merchants are going to lose, and small business is going to lose if this defender of the market, the Wall Street Journal, has its way.

Here is the reality. Consumers right now are already paying for the interchange system. In November 2009 the GAO said, under the current system, "merchants pass on their increasing card acceptance costs to the customers." The Consumer Federation of America, which supports reform and opposes the repeal that is now underway, does care about consumers. That is why they exist. Here is what they said in a letter this week:

The current interchange system is uncompetitive, non-transparent and harmful to consumers. It is simply unjust to require less affluent Americans who do not participate in or benefit from the payment card or banking system to pay for excessive debit interchange fees that are passed through to the cost of goods and services.

That quote is from the Consumer Federation of America, U.S. PIRG, Public Citizen, and the Hispanic Institute submitted testimony last month where they said:

The current swipe fee market is broken and all consumers pay more for less because of escalating swipe fees.

They also said:

Sixteen countries and the European Union regulate swipe fees and their experience demonstrates that regulation benefits consumers in lower fees and lower costs of goods.

Make no mistake, what is at stake here—what is at stake here with the effort to repeal or delay the implementation of this reform on behalf of businesses, large and small, across America—what is at stake here is a handout to the largest banks in America and the credit card companies of more than \$15 billion a year.

A bailout was not enough for these big banks. Now they want a handout, and the Wall Street Journal is standing by the sidelines applauding that notion. These defenders of free enterprise cannot wait to construct a system where the largest banks on Wall Street and the credit card giants can take more money out of our economy from small businesses and consumers alike. That is their idea of free enterprise; it is not mine.

The Wall Street Journal accuses me of pushing for swipe reform as a "sop to Wal-Mart, Home Depot and other giant retailers."

Well, make no mistake. Every merchant, every business accepting debit cards is going to be affected by this reform, large and small. And the facts tell us that everyone who accepts debit

cards will benefit from swipe fee reform, not just big merchants but small businesses, universities, health care providers, charities, government agencies, as well as many others, convenience stores—the list goes on.

I ordered a study 2 years ago and held a hearing last year in my appropriations subcommittee on how much the Federal Government pays in interchange fees with our taxpayer dollars. The total was \$116 million a year. Those who are supporting the repeal or delay of this reform are imposing additional debt on a government already deep in debt. Where will those debts be incurred? From the biggest banks on Wall Street and the biggest credit card companies, by and large.

I tried to reform the government interchange rate on my appropriations bill last year but could not get it through. I will be back.

I have been at this interchange reform effort for a number of years now. I got into it because of a hearing held by then-Republican Senator Arlen Specter. Before that hearing, I did not know or even understand this issue. After it, I decided something had to be done. I would not be doing this if it was just for the big box companies. I would not be fighting so hard for reform if it was not good for small businesses and certainly for consumers and the American economy.

I hope the Wall Street Journal is also aware that card companies such as Visa charge higher interchange fees to small business than to big businesses. How do you like that for competition? Small businesses get it the worst under the current system. Wouldn't it be nice if the Wall Street Journal stood for small business once in a while? Go look at Visa's Web site, at their interchange rates for retail debit. You will see right now the biggest retailers have to pay an interchange fee of 0.62 percent plus 13 cents a transaction, while the smallest retailers pay 0.95 percent plus 20 cents a transaction.

Dollar for dollar, interchange reform will help small businesses more than big ones. That is the reality of this reform.

I do not expect to ever be endorsed by the Wall Street Journal. I do not even know if they make endorsements, and I have not even asked. But I am going to insist they stick with the facts. I know the Wall Street Journal is not going to stray very far from Wall Street banks, which bear the same basic name, as well as the credit card companies that are a duopoly in this American economy. I am going to continue this battle for Main Street, not Wall Street.

I urge my colleagues who are being inundated—literally inundated—by banking lobbyists right now seeking to stop this reform; that when they go home, steer away from the big banks. Go to the small businesses that accept credit cards and debit cards. Go to any one of them and ask them whether they think this is an important reform for the future of their small business,

and for the local economy. I think they are going to hear the other side of the story. Some of these small businesses cannot afford the lobbyists who are prowling the halls of Washington today, but they deserve our attention as much as, if not more than, the big banks on Wall Street and the card companies.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### CONCLUSION OF MORNING BUSINESS

Ms. LANDRIEU. Mr. President, I ask unanimous consent to yield back any remaining morning business time, which I think is under 3 minutes.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

#### SBIR/STTR REAUTHORIZATION ACT OF 2011

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 493, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 493) to reauthorize and improve the SBIR and STTR programs, and for other purposes.

Pending:

McConnell amendment No. 183, to prohibit the Administrator of the Environmental Protection Agency from promulgating any regulation concerning, taking action relating to or taking into consideration the emission of a greenhouse gas to address climate change.

Vitter amendment No. 178, to require the Federal Government to sell off unused Federal real property.

Inhofe (for Johanns) amendment No. 161, to amend the Internal Revenue Code of 1986 to repeal the expansion of information reporting requirements to payments made to corporations, payments for property and other gross proceeds, and rental property expense payments.

Cornyn amendment No. 186, to establish a bipartisan commission for the purpose of improving oversight and eliminating wasteful government spending.

Paul amendment No. 199, to cut \$200,000,000,000 in spending in fiscal year 2011.

Sanders amendment No. 207, to establish a point of order against any efforts to reduce benefits paid to Social Security recipients, raise the retirement age or create private retirement accounts under title II of the Social Security Act.

Hutchison amendment No. 197, to delay the implementation of the health reform law in the United States until there is final resolution in pending lawsuits.

Coburn amendment No. 184, to provide a list of programs administered by every Federal department and agency.