

in both ways, and I knew him as a friend.

Like many in Oregon, I am saddened by Harold's passing. Harold was a successful real estate developer. He and his wife of 62 years, Arlene, gave generously to my alma mater, the University of Oregon, and to Portland State University. They established the Harold Schnitzer Diabetes Health Center at the Oregon Health Sciences University. Their gifts of art and financial support helped transform our Portland Art Museum into a center for regional art works.

The generosity of Harold and Arlene can be found throughout Oregon in places such as the Oregon Zoo, a special favorite of my children, Lewis and Clark College, the Mittleman Jewish Community Center, the Oregon Symphony, the Oregon Ballet, and the Portland Opera. A centerpiece of Oregon's art community is the beautiful Arlene Schnitzer Concert Hall in our downtown Portland community. It is affectionately known as "the Schnitz."

Harold Schnitzer was a humble man, and he came from humble roots. As a boy, he earned 25 cents a week polishing metal in his father's Portland scrap yard. From there it was on to the Massachusetts Institute of Technology for a degree in metallurgy, and then he went on to a career in real estate.

Certainly, our colleagues from the bay area of California know who Harold Schnitzer was because with great pride he restored the historic Claremont Hotel Club and Spa in Berkeley to its former glory. In true Harold Schnitzer fashion, when he sold the hotel in 1998 the proceeds provided the funding for two family charitable foundations.

We have lost a man, but, fortunately, we have not lost his vision and his generosity. His wife Arlene will continue to stand for those kinds of good works in our home State, and their son Jordan, a successful businessman in his own right who shares his parents' passion for philanthropy, continues every single day to look for opportunities to serve our home State. You can look no further than the Jordan Schnitzer Museum of Art in Eugene and downtown Portland's Simon and Helen Director Park, named for his maternal grandparents.

What I liked most about Harold Schnitzer was his very wry sense of humor and particular knack for summarizing the events of our time. I remember often when I would see him after a particularly spirited discussion in the Senate. Harold had a great interest in politics and was a devout consumer of all the Sunday morning talk shows. After a particularly volcanic debate in Washington, DC, about some issue where it seemed nothing could get resolved, I would go home and be out and about, perhaps at the grocery store in Portland, and I would see Harold. He would tug on my elbow and say: I have been watching what is going on in Washington, DC, RON. Got things

pretty much worked out back there, do you?

He would kind of chuckle and sort of express perfectly his sense of the irony of the challenges we have in Washington, DC. He knew somehow we would always get through them. Whenever I was around Harold, I got a sense that he really captured some of the irony of what goes on in Washington, DC, very well. He brought that same kind of approach and that light touch and combination of humor and irony to so much of what he did.

In my view, Harold Schnitzer represented what was good in humanity. His legacy of good works is going to go forward. But for all those who didn't know him personally, didn't know him like I had the chance to, I wanted to take just a few minutes to tell the Senate and our country that Harold Schnitzer was a very special man. In my view, he was what I call a vintage Oregonian—somebody who got up every day and tried to make our State and country a better place. He will be greatly missed.

With that, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. MANCHIN). Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak as in morning business.

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

INTERCHANGE FEES

Mr. DURBIN. Mr. President, there are many issues which come before the Senate, and some are simple and some are complex. The issue I am going to speak to today is one which you are personally aware of, Mr. President, as the Senator from West Virginia, and one that more and more Members are becoming aware of. It is the question of interchange fees or swipe fees.

For those who do not follow this closely, every time we use a credit card or a debit card in the United States of America, the retailer or merchant we do business with pays a fee to the bank that issues the card. The fee is established by the major credit card networks, Visa and MasterCard. They tell the banks how much they will receive each time a customer uses these cards.

What it comes down to is the fee that is being charged, the debit card fee, has become a subject of controversy. Let's go back in history a little bit. I can still remember when people used checks, and some still do but not as frequently. Now we use the plastic form of a checking account. Instead of writing out a check and pushing it through the banking system, and for a

few cents watching it be processed, we use a debit card. A debit card draws money directly out of our checking accounts to the merchant we are doing business with.

So the debit card has, in fact, by a large measure, replaced checks—and in many instances replaced cash—as more and more people are using plastic for transactions. So I started hearing from merchants and retailers all around the United States about the fee that was being charged for debit card transactions.

Now, debit card transactions are different from credit card transactions in this respect. When I use my credit card, I am going to be billed each month for what I put on my credit card. There is a collection issue: Will Durbin actually make his monthly payment? Will he make it on time? Is he able to make the payment? And there is a question about whether this is going to be processed.

So there is, I guess, an uncertainty involved in credit card transactions and much less so when it comes to debit card transactions because that money is coming directly out of our checking accounts to the merchant. So in terms of risk, there is greater risk with a credit card than for a debit card. Nevertheless, over the years what we have seen is the swipe fee, or fee charged to a merchant for the use of a debit card, keeps going up, up, and up.

People would say: Well, why don't the merchants and retailers bargain with Visa, MasterCard, and the banks to make sure they do not have to pay an increasingly large fee every time a person uses a debit card?

The answer is they have no power to bargain at all. Not at all. So the retailer, the merchant, ends up accepting the debit card, swiping the debit card, paying for the transaction, and then paying a fee, to the point where one would ask: Well, how much of a fee is it?

The average debit card fee, found by the recent study of the Federal Reserve, is about 40 cents a transaction. Now, 40 cents may not sound like much if someone is buying a television—of course, though, it is going to be a percentage fee—but think about 40 cents if a person standing in front of you in line at the airport is buying a package of bubble gum. That 40 cents is all the profit that retailer could ever expect, and it is going right out the window. In fact, they are losing money on the transaction because of the debit card.

So for years retailers and merchants, restaurants, convenience stores, hotels, charities, universities, went to Visa and MasterCard and said: You cannot keep just raising this fee. It is not fair to us. You are not justifying it in terms of the costs of doing business, and we are paying more and more out of each transaction, even though the cost has not gone up.

Basically, Visa and MasterCard told them: Go take a hike. We are going to charge what we want to charge. Take

it or leave it, buddy. If you do not want to take plastic, that is your business. Try to do business without it. You cannot.

So retailers and merchants were on the losing end of this conversation. So they came to me and said: Is there a way to do a study on this issue and determine what is fair? So a few years ago I joined with Senator Bond of Missouri, and the two of us, on the credit card reform bill, asked for a public Fed study on fee and cost information. Well, it turned out the banking industry did not want any study at all. They killed our amendment for a Fed study and told people—all the people in the Senate, Democrats and Republicans—vote against even a study of the swipe fee, the debit card interchange fee.

So we ended up empty handed. The day came last year when we revisited the issue. This time I came to the floor with an amendment and said: Here is what I would like to do. I would like to give to the Federal Reserve the power to promulgate a rule which says the fee charged for the use of a debit card is going to be reasonable and proportional to the costs incurred by the bank in processing this transaction. We are going to put in a factor for fraud. If there is something they need to add to take care of fraud, add it in. We went a step further. We said this is not going to apply to every bank and credit union that issues a debit card. We are going to exempt the overwhelming majority of community banks and credit unions across America.

There are about 15,000 community banks and credit unions across the United States—15,000. So we said: If your bank or credit union has a valuation of less than \$10 billion, you are not covered by this reasonable and proportional law. You are exempt. At the end of the day, it meant that about 100 banks across America were subject to this new law and three credit unions. All the rest are exempt.

So you say: Well, Durbin, if you exempted all of these banks and credit unions, almost 15,000 of them, and you only affected about 100 of them, how can this have any impact? Well, it turns out, of the largest banks in America, three of the big ones—that would be Chase, Wells Fargo, and Bank of America—really comprise nearly half of all the debit card transactions in the country. Some say even more, 60 percent or even more. So by just making this a law that applies to the largest banks, we are affecting the majority of debit card transactions, and we are establishing a reasonable and proportional fee for what the transaction is.

So the retailer and merchant, the person running the mom-and-pop store or the person running a big box store is going to get fair treatment in terms of how much is charged.

So you say to yourself: Well, how much are they charging now? The Federal Reserve estimates they are charging about 40 cents a transaction, and

the actual cost to the bank and the credit card company is about 10 cents. They are charging four times as much as they should on each transaction.

How much money is it worth to the banks? The estimates range from \$1.3 to \$1.7 billion a month—a month. Now, these banks, the big banks that I am addressing with this law, they are not having little collections outside the bank to keep themselves in business. They are bringing in quite a bit of money. They are very profitable, and to say that they should have a reasonable charge for retailers and merchants across America, small businesses and large businesses alike, I do not think is unreasonable. Remember, we exempted the community banks. We exempted the credit unions. It is only the big ones that are going to be affected by this.

Well, one would think I had done the worst thing in the world to these banks and credit card companies. They have unleashed, with the greatest fury they can possibly put together on Wall Street, this attack against the Durbin amendment. They are sending out letters—Chase is—to all of the people who have debit card accounts and credit card accounts saying if this Durbin amendment goes through, we are going to charge extra fees here and extra fees there.

Well, at the end of the day, that is the threat that we always hear from them. The fact is, since they are virtual monopolies in their business, they are increasing their fee charges regularly. People across America know it. Every time we put in a reform, they race to raise their interest rates and race to raise their penalties. They give these “free” checking accounts loaded with penalties if you stumble and do not pay on the exact day or whatever it happens to be.

So it has become quite a battle. It is a battle between Visa, MasterCard, and the biggest banks in America versus the retailers and merchants of America. They are both engaged. Now, the retailers and merchants cannot hold a candle to the big banks and credit card companies when it comes to their investment in this fight. But they are trying valiantly, and we are organizing small businesses across the United States—in Illinois, West Virginia, all over the place—to step up and say: Come on. This is an important part of business.

Now, I ran into one of my colleagues on the Senate floor, and she said: What I am worried about is even if you reduce the fee charged to the retailer for using the debit card, how is that going to help the customer? How is that going to translate into anything more than profits for the business?

Well, Mr. President, in your family background, you have been involved in business. If you have a competitor across the street, whether it is a gas station, a drug store, a grocery store, a restaurant, you know your price competition is an important part of wheth-

er a person chooses your store over the other store. So when you give the owner of the store a break on the fee that is being charged by the credit card companies and banks, then you give them an opportunity to engage in more price competition.

But what about Walmart? This is the monster of retailers in terms of size, about 10 percent of all of the sales in America. I can tell you, even with Walmart, Target is looking over its shoulder. It is watching the prices of goods and deciding whether it can be competitive. So there is competition at this level.

If we give retailers a break when it comes to the amount they have to pay to the banks and credit card companies, I think it is going to end up in consumer benefits. The consumer organizations, the major ones in this town, support what I have done. They aren't supporting the position of the big banks and credit card companies.

One of the arguments that comes down is interesting. The lion's share of the argument against my amendment is not coming from the people directly affected by it. We are not hearing as much in Washington from those big banks on Wall Street or the credit card companies, and they are the ones most affected by it. Why? They don't have much credibility around here. These are the folks who came filing in for a bailout when they made some pretty bad decisions and got billions of dollars from the Federal Government to bail them out, and then, of course, they turned around and gave bonuses and all sorts of high-level compensation to their officers. So they are not the most popular crowd on Capitol Hill. So they have brought in surrogates to argue their position, and the surrogates, as my colleagues know, are the small banks and small credit unions saying the Durbin amendment is terrible.

The first thing we have to say to them is: You are exempt. You are not covered by the Durbin amendment. If you have \$10 billion in assets or less, you are not covered. Still, they argue, at the end of the day, we think this might hurt us.

I have taken an extra step, beyond the law, to try to deal with some of their concerns because I value these community banks and credit unions. I worry they have now become part of the banking industry—in capital letters—instead of what they were traditionally: our neighborhood banks, our small town banks, our local credit unions. They have now become part of this big banking industry thing. I don't think it is healthy for them, and I don't think it is healthy for the economy or for consumers. So what I did was go to the merchants coalition on my side of this issue, the retailers, and ask them to put out a statement of policy when it comes to whether they are going to discriminate on the card that is presented.

Let me be more specific. If you are running a restaurant in Wheeling, WV,

and somebody walks through the door and puts a debit card—these are all debit cards—puts a debit card down to pay for the meal, will your restaurant take a close look and say: Oh, that is a community bank with a higher interchange fee than it might be with a card from Chase Bank, for example? That is one of the concerns expressed by the community banks and credit unions. Even though you exempted us, all these retailers could discriminate against us because our swipe fee is higher than it might be coming out of Chase.

We ended up with a letter—an important letter—which I have shared with every one of my colleagues, and it is a letter from the Merchants Payment Coalition, which I ask unanimous consent to have printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MERCHANTS PAYMENTS COALITION,
Washington, DC, May 2, 2011.

Hon. DICK DURBIN,
Majority Whip, U.S. Senate,
Washington, DC.

DEAR SENATOR DURBIN: We understand that some in the financial services industry are claiming that the Durbin Amendment exemption from interchange “swipe fee” regulation for financial institutions with assets under \$10 billion will not be effective in practice because merchants will discriminate against debit cards with higher swipe fees. On behalf of the undersigned trade associations, and the tens of thousands of merchants and retail locations we represent, we are writing to make clear that we have no contractual or practical ability to treat debit cards issued by small financial institutions or credit unions differently than those issued by large institutions. Furthermore, our member companies are committed to customer service and it is not in their interest to discriminate against debit cards that so many customers carry.

Currently, merchants are subject to Visa and MasterCard network rules that require us to accept all Visa and/or MasterCard debit, regardless of which bank or credit union issues the card. This is called the Honor All Cards rule and we risk the threat of \$5,000 per day fines—or higher—if we break this rule, so we assure you that merchants have no intention of violating this term of brand acceptance. These rules also prevent merchants from pricing goods differently based upon the financial institution that issued the card.

Additionally, even if these rules were not in place, merchants have no practical ability at the point-of-sale to distinguish between big bank and small bank cards, nor the swipe fee rates associated with those cards. Indeed, in many if not most retail environments, employees never see the face of the card the customer is using: the customers swipe their cards themselves.

Lastly, even if merchants could differentiate between card issuers, there are no market or economic incentives to discriminate against mid-sized and smaller financial institutions’ cards. If a customer wants to pay with a card, merchants will let them use that card because the retail industry is fundamentally all about competing to deliver value and customer service. If merchants didn’t accept the card, they would risk losing the sale and losing the customer; a risk very few in the competitive retail industry are willing to take. Additionally, most con-

sumers only have one debit card in their wallet. We would absolutely prefer they pay with that debit card, rather than with a credit card, because while debit card per transaction rates have grown exponentially over the past several years, credit card swipe fees are far higher and continue to be a significantly more costly burden on businesses of all sizes.

We appreciate the opportunity to set the record straight regarding the many misrepresentations being made about the Durbin Amendment, and you have our commitment that the retail community across the nation will do its part to help ensure that the exemption of financial institutions with less than \$10 billion in assets from the swipe fee reforms on debit cards will work in the marketplace.

Sincerely,

American Beverage Licensees; Coalition of Franchisee Associations; Food Marketing Institute; Interactive Travel Services Association; International Franchise Association; National Association of College Stores; National Association of Community Pharmacists; National Association of Convenience Stores; National Association of Shell Marketers; National Association of Theatre Owners; National Association of Truck Stop Operators; National Council of Chain Restaurants; National Franchise Association; National Grocers Association; National Restaurant Association; National Retail Federation; National Small Business Association; Petroleum Marketers Association of America; Retail Industry Leaders Association; Society of Independent Gasoline Marketers of America.

Mr. DURBIN. Thank you, Mr. President. Let me quote a few words from it. This is a letter to me, dated May 2:

Dear Senator DURBIN:

We understand that some in the financial services industry are claiming that the Durbin Amendment exemption from interchange “swipe fee” regulation for financial institutions with assets under \$10 billion will not be effective in practice because merchants will discriminate against debit cards with higher swipe fees. On behalf of the undersigned trade associations, and the tens of thousands of merchants and retail locations we represent, we are writing to make clear that we have no contractual or practical ability to treat debit cards issued by small financial institutions or credit unions differently than those issued by large institutions. Furthermore, our member companies are committed to customer service and it is not in their interest to discriminate against debit cards that so many customers carry.

Currently, merchants are subject to Visa and MasterCard network rules that require us to accept all Visa and/or MasterCard debit, regardless of which bank or credit union issues the card. This is called the Honor All Cards rule and we risk the threat of \$5,000 per day fines—or higher—if we break this rule, so we assure you that merchants have no intention of violating this term of brand acceptance. These rules also prevent merchants from pricing goods differently based on the financial institution that issued the card.

The No. 1 complaint of community banks and credit unions about discrimination against their cards is addressed directly by this letter. I have made this a part of the RECORD. It is being sent to every Member of the Senate.

There is a second part of this argument. The question is whether Visa

and MasterCard, the networks, will continue to allow the community banks and credit unions to charge a higher interchange fee than the big banks. Under our law, there is no reason to change it. So I am challenging Visa and MasterCard and these card networks to state clearly and unequivocally, as this letter has stated, that they will not discriminate against these smaller banks, community banks, and credit unions. The merchants have come forward as a matter of record, and it has been put in the CONGRESSIONAL RECORD this day, to say there will be no discrimination. At the end of the day, if Visa and MasterCard will make the same promise of no discrimination, then ultimately there is no disadvantage to the community banks and credit unions. None. Now the burden is on the big credit card networks to step up to the plate.

I am sending a letter today to the president and CEO of the Illinois Bankers Association, the Illinois Credit Union League and the Community Bankers Association of Illinois and we are going to send it to their national affiliates as well, sending them a copy of this merchants letter so they can no longer make the claim that they are going to be victims of discrimination by merchants and retailers and asking them to now step up and join us in challenging Visa and MasterCard and the major card networks. That, to me, resolves the most fundamental issue that has been brought to the Members of the Senate. They can no longer claim that these retailers are going to discriminate against them. As a matter of record, they will not.

I think it is important for us to change this system, and I think it is important for these virtual monopolies of Visa and MasterCard to be held accountable. I think what we have done in passing this law and giving the Federal Reserve the authority to establish this rule is the right thing to do.

Now there is a big effort afoot to stop us. The Presiding Officer knows that. They are lobbying such as I have never seen before on Capitol Hill. You would think there was \$1 billion a month at stake, and there is. They are determined to stop the Federal Reserve from issuing a rule which says that retailers and merchants across America will be treated fairly. They are going to stop them, if they can, and I am going to fight them all the way. I am hoping my colleagues who joined me in this vote and those who share my feelings about small business across America will stand with me.

I know the alternative. The largest banks in America and the credit card companies have a lot of friends, and they are very powerful, but I think we ought to give the Federal Reserve the chance to issue reasonable final rules.

In fact, talk to any bank across the country, and they are going to tell you that the current system is working just fine. They don’t want reform. They don’t want any change. They

want to keep it as is. It is worth billions of dollars to the major banks to keep this charge as is, at the expense of businesses across America.

I favor transparency and I favor competition and I wish we didn't have to bring the Federal Reserve into this conversation. But we looked for a neutral regulatory agency that would establish a reasonable and impartial fee, promulgate a rule, issue it after a public comment period and implement it, and that is what we are striving to do.

The CEO of JPMorgan Chase, who is a friend of mine—or at least he used to be—Jamie Dimon, has called interchange reform downright idiotic. He spent a good portion of his recent annual shareholder letter criticizing this reform. Chase has also sent a letter to its customers warning about my amendment, and Chase is constantly threatening to raise fees on its customers unless they stop the Durbin amendment. A few weeks ago, I sent Jamie Dimon a letter and responded to some of his criticisms. I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, April 12, 2011.

JAMIE DIMON,
Chief Executive Officer and President,
JPMorgan Chase & Co., New York, NY.

DEAR MR. DIMON: In your recent annual letter to your company's shareholders, you wrote a lengthy and dismissive critique of the debit interchange fee reform legislation that I drafted and that Congress enacted last year. You have also been quoted describing my amendment as "counterproductive," "price fixing at its worst," and "downright idiotic." I am compelled to respond, and I ask that you share this response with your shareholders as well as your customers.

Clearly, debit interchange reform has displeased many in the financial services industry. Your industry is used to getting its way with many members of Congress and with your regulators, and my amendment and the Federal Reserve's draft regulations were not written the way you wanted. But that does not mean they were written poorly or that the process that created them was flawed. To the contrary, interchange reform will carefully but firmly rein in the fee collusion that your bank and thousands of other banks currently engage in through Visa and MasterCard. The wisdom of this reform is confirmed by the irrationality of the arguments that your industry raises against it—arguments that are based upon misrepresentations and threats rather than evidence or logic.

The American people deserve to know the real story about the interchange fee system and the ways that banks in general—and Chase in particular—have abused that system. I have said and written much on this topic already, but I will respond to five of your specific criticisms below.

1. Your letter claims that my reform amendment "is an example of a policy that has little basis in fact or analysis." In fact, the amendment was drafted based upon years of Congressional hearings, Government Accountability Office reports, academic articles, and published studies by the Federal Reserve's economists and payment system experts. These analyses showed that the

debit interchange system is uncompetitive, inefficient, and harmful to consumers. Your industry often acts like these analyses do not exist, so I will explain what they reveal.

The debit interchange system is not a properly functioning market. For years, card-issuing banks like Chase have agreed to let the Visa and MasterCard duopoly fix the interchange fee rates that banks receive from merchants each time a debit card is swiped. The banks get the fees but they do not set the fees. This system of price-fixing by Visa and MasterCard on behalf of thousands of banks has gone entirely unregulated.

There are two core problems with Visa and MasterCard's fixing of interchange rates. First, centralized rate-fixing does not give card-issuing banks incentive to manage their operational and fraud costs efficiently. This is because all banks in the network are guaranteed the same network-fixed interchange rate whether they are efficient or inefficient. Competition is absent and inefficiency is subsidized when fees are set in this manner.

Second, Visa and MasterCard have incentive to constantly increase interchange rates and there is no countervailing market force to temper these fee increases. Visa and MasterCard want as many of their debit cards to be swiped as possible because they are paid a network fee by merchants each time a card is swiped. By raising interchange rates, Visa and MasterCard can entice banks to issue more of their cards. Because Visa and MasterCard have enormous market power and control around 80 percent of the debit cards in consumers' wallets, merchants cannot realistically say no to accepting Visa and MasterCard and have no leverage to negotiate fee rates with them. There is no naturally-occurring market force in today's interchange system that would ever lead rates to go down.

So merchants are stuck with ever-rising debit interchange fees that add up to more than \$16 billion each year. These fees not only affect merchants, but also universities, charities, government agencies and all others who accept debit cards as payment. The fees end up getting passed on to consumers in the form of higher retail prices for groceries and gas. Consumers, and particularly unbanked consumers, ultimately bear the cost of subsidizing the interchange system.

We owe it to our nation's consumers and businesses to ensure that the interchange system is efficient, transparent, and subject to competitive market forces. Studies have shown that Americans pay the highest debit interchange rates in the world, and that these rates have continued to increase in recent years. The Federal Reserve has also found that the high interchange rates charged today far exceed what it actually costs to conduct a debit transaction. Nearly every other industrialized country has established reasonable regulation over their debit systems, and these countries have achieved improved efficiency, lower fraud, and consumer benefits. The time has come for reasonable reform of the dysfunctional U.S. debit interchange system, and my amendment will make that reform a reality.

2. You say that "it's a terrible mistake and also bad policy for the government to get involved in price fixing." Of course, my amendment does not create price fixing—it constrains the price fixing that Visa and MasterCard currently perform on banks' behalf. Visa and MasterCard cannot simply be trusted to fix interchange prices in a way that is fair for all participants in the debit card system. They have not proven worthy of that trust.

Last year Congress decided that there should be reasonable regulatory constraints placed on Visa and MasterCard to ensure

that they cannot use their market dominance to funnel excessive interchange fees to the nation's biggest banks. A strong bipartisan majority supported my amendment, which said that if Visa and MasterCard are going to fix fee rates on behalf of banks with over \$10 billion in assets, those rates must be reasonable and proportional to the cost of processing the transaction. It is important to make clear that if Chase wants to set and charge its own fees in a competitive market environment, the amendment does not regulate those fees. The only regulated fees are those fees that banks let card networks fix on their behalf.

3. You criticize the law Congress passed because it does not consider "the cost of fraud." Your comment highlights how the current interchange system, which supposedly does consider the cost of fraud, creates exactly the wrong incentives when it comes to fraud prevention. Fraud rates are far lower for PIN debit transactions than for signature debit transactions, but Visa and MasterCard set higher interchange fees for signature debit than for PIN ostensibly to cover the higher cost of fraud. Banks now urge cardholders to pay with signature in order to get the higher fees. For example, on April 21, 2010, the American Banker reported that your own bank sent a mailing to your debit customers that strongly suggested they should "always select" signature.

Chase's practice of steering American cardholders toward fraud-prone signature debit stands in stark contrast to Chase's practices in Canada. The Chase Canada website indicates that "chip and PIN technology will become available for all Chase Canada MasterCard and Visa cards in 2011." Your Canadian-based subsidiary Chase Paymentech Solutions says on its website that chip and PIN technology provides "Enhanced Security and Fraud Reduction—Chip technology is virtually impossible to copy and combining its use with a PIN helps reduce lost, stolen or counterfeit transactions." It is frankly inexcusable that your bank would urge your American customers to "always select" a fraud-prone technology while you provide your Canadian customers with technology that enhances security and reduces fraud.

In contrast to the current U.S. interchange system which rewards banks for promoting fraud-prone signature debit, my amendment will allow interchange fee increases only to those banks that successfully prevent fraud. The Federal Reserve can implement this in its final rulemaking by setting target fraud prevention metrics and allowing increased interchange for banks that meet those targets.

4. You say that Chase needs debit interchange fees to pay for the "fixed costs of servicing checking accounts and debit cards" such as "printing and mailing of the cards," "operational and call center support to service the cards," and "the costs of ATMs and branches." Here you are using the old financial industry trick of first conflating the cost of conducting debit card transactions with the cost of offering other checking account-related services, and then arguing that network-fixed debit interchange rates should be used to cover this whole basket of costs. It is a clever argument that aims to justify Visa's and MasterCard's exorbitant price-fixed rates, but the shortcomings of this argument are evident.

The costs you cite in your letter are costs which banks should be incentivized to manage efficiently, and allowing Visa to fix interchange fee rates across all its member banks to supposedly cover these costs is a recipe for inefficiency and excess. Card network companies like Visa are not positioned to know what the appropriate level of cost is

for operating “ATMs and branches,” nor are they equipped to determine how much of a particular bank’s “printing,” “mailing,” “operational” and “call center” costs are attributable to debit cards instead of ATM cards or credit cards. Further, Visa has no way of knowing if a particular bank is using debit interchange revenue not to cover legitimate costs but instead for rewards, ads, profit, or executive bonuses. Indeed, because Visa itself profits by incentivizing banks to issue more and more of its cards, Visa has every incentive to inflate the interchange fees it fixes to levels that compensate banks far in excess of their costs. In order to correct these incentives for inefficiency and excess, my amendment limits network interchange price-fixing on behalf of the 3 biggest banks to an amount that is reasonable and proportional to the costs that are necessary to authorize, clear and settle a particular debit transaction over the network’s wires.

Also, your claim that interchange fees must be high enough to cover all checking account-related costs is undermined by the fact that banks also charge many other high consumer fees under the premise of covering those exact same costs. Banks like Chase charge consumers many fees for maintaining and accessing funds in their checking accounts—monthly fees, overdraft fees, failed payment fees, ATM withdrawal fees, failure to maintain a minimum balance fees, account closing fees, and more. Bank revenues from these consumer fees have not gone down in recent years as interchange fee revenues have gone up; to the contrary, bank revenues from consumer fees have also reached record highs. I would draw your attention to the November 12, 2008, Wall Street Journal article entitled “Banks Boost Customer Fees to Record Highs” and the July 1, 2009, New York Times article entitled “Bank Fees Rise as Lenders Try to Offset Losses,” both of which discuss your bank and other banks’ efforts to raise consumer fees long before my amendment was ever written.

5. You say that the amendment “potentially will harm consumers” because “banks will be forced to lose money on debit interchange transactions and likely will compensate by increasing fees in some way for deposit customers.” This threat defies both facts and logic.

First, there is no evidence that banks cannot continue to offer debit cards profitably with reduced interchange. As Andrew Martin explained in the excellent January 4, 2010, New York Times article entitled “How Visa, Using Card Fees, Dominates a Market,” up through the early 1990s banks used to offer debit cards even though they received no interchange fees. In fact, many banks used to pay merchants for accepting debit cards, because debit cards saved money for banks when compared to the banks’ costs of processing paper checks. The current high-fee debit interchange system in this country only developed because Visa entered into and took over the debit market the mid-1990s through an antitrust violation, and Visa then imported credit card-type interchange fees into the debit space. Studies have shown that many other countries enjoy vibrant debit systems with interchange fees strictly regulated or prohibited entirely. In short, past experience in this country and present examples in other countries demonstrate that banks like Chase can easily continue to offer debit card services without the excessive subsidy of high interchange fees.

Second, if Chase follows through on threats to increase consumer fees (beyond those increases you have already made in recent years), market competition would suggest that many of your deposit customers would take their business elsewhere. In fact, many of those customers would likely take

their business to the small banks and credit unions who are exempted from my amendment’s interchange fee regulation and for whom Visa and other debit networks have already agreed to set a higher tier of interchange rates. And for those who continue to speculate that my amendment will hurt small banks and credit unions, I recommend they read Simon Johnson’s excellent analysis in the April 7 New York Times entitled “Big Banks Have a Powerful New Opponent.”

In conclusion, I recognize that Chase will likely see decreased revenue from interchange reform, but I urge you to keep some perspective. Last year Chase had \$17.4 billion in profits—up 48 percent from the previous year—and a 15 percent profit margin. Your own personal compensation “jumped nearly 1,500 percent to \$20.8 million in 2010” according to Reuters. In contrast, middle-class American families are struggling to get by in a tough economy—an economy that went south because of the banking industry’s unregulated excesses.

There is no need for you to threaten your customers with higher fees when you and your bank are already making money hand-over-fist. And there is no need to make such threats in response to reform that simply tries to spare consumers from bearing the cost of interchange fees that are anti-competitive and unreasonably high.

Interchange reform is necessary and it is long overdue. Right now the Fed is working diligently to craft a set of final regulations that will reflect the comprehensive information it has gathered and that will respond to the valuable comments it has received. In the coming weeks I am confident the Fed will produce a reasonable set of reforms that will enhance the efficiency, competitiveness and fairness of the debit system. This will neither be “counterproductive” nor “idiotic.” It will be good news for all Americans.

Sincerely,

RICHARD J. DURBIN,
United States Senator.

Mr. DURBIN. Thank you, Mr. President. I haven’t had a reply yet from Mr. Dimon. He called me. I called him back. That seems to be the end of our exchange. But I would like to hear his response. I encourage him to share my letter with the same shareholders and customers to whom he has written. After all, in his shareholder letter, Mr. Dimon said he wanted “analysis in the full light of day” of the Durbin amendment, so I figured he would want his audience to be informed on my position. I don’t think Chase has done that yet. I hope they will.

I know the banking industry prefers for the giant Wall Street banks to stay in the background when it comes to this fight because they are not that popular. Estimates indicate that about half of all debit swipe fees go to just 10 big banks and the Big Three, Bank of America, Chase, and Wells Fargo, make the most of all, well over \$1 billion a year each. But the banking industry knows the public isn’t happy with big banks, so the industry is using small banks and credit unions as their public face in this battle. Industry argues that even though my amendment exempts all but the largest 1 percent of banks from fee regulation, the exemption will not work and small banks are going to get hurt. Well, this letter makes it clear that when it comes to retailers and merchants, there will not

be any pain inflicted. They are, in fact, exempt under the law and they will be exempt in practice.

As I said, I received a letter from 20 of the Nation’s largest retail associations that reaffirms what I just said. I think the letter is compelling. In this letter, these merchant groups make it clear they don’t have the contractual authority, the practical ability or the economic incentive to discriminate against small bank or credit union debit cards. They point out that Visa and MasterCard contracts impose strong penalties on them even if they try. Second, they point out that in many, if not most, retail environments, the merchant doesn’t have the practical ability to distinguish between a small bank or a large bank card at the point of sale.

I had Wendy Chronister, whose family owns a chain of gas stations in downstate Illinois, come to my office and talk about this. I have known her mom and dad a long time, and Wendy is running the business and running it well. She said: Senator, for goodness’ sake, when they put the plastic on the counter we take it. We need the sales. We are not going to argue with them about who issued the credit card or debit card. That just stands to reason. They are not going to ask them to put their debit cards away when they come to a cash register. They will lose sales and customers if they do it.

Finally, the merchants make the observation that most customers only have one debit card, so if you want to make a sale, they are going to take that debit card.

What I have tried to do with this letter is to show that those on my side of this debate—the small businesses, the retail merchants, convenience stores, hotels, and restaurants across America—are trying to be reasonable. Had the credit card companies and major banks been reasonable on this issue, I never would have introduced this amendment. They refuse—refuse—to bargain with the retailers and merchants. They said it was a “take it or leave it,” and they did it in the obscurity of retail contracts and regulations which are almost impossible to work through.

I think those who are asking for a delay and study of this issue should be called out for what they are asking. Every month they delay means customers and consumers across America will pay over \$1 billion more in these fees on debit cards—money taken away from retailers, taken away from small business, and taken away from our economy. When these small businesses have the advantage they can get under the Durbin amendment, they are going to be able to be more profitable, expand their businesses, and hire more people. How many times have we heard a speech on the floor that the key to economic recovery in America is small business. If you truly believe, then you cannot vote for this 2½-year delay and study of this issue, if you truly believe

in small business. I think the issue is very clear.

I urge my colleagues not to fall for this game the banks and card companies are playing. Don't let them delay and derail the swipe fee reform consumers need so badly. The Senate has already voted to establish a process for interchange reform. We should let that process continue and we should let the Federal Reserve issue their rules, which they are planning to do in just a matter of weeks, and I think at that time we will see that there is a reasonable way to deal with this that doesn't create a disadvantage for community banks and credit unions.

(Mr. CARDIN assumed the chair.)

GAS PRICES

Mr. DURBIN. Mr. President, according to the U.S. Energy Information Administration, the average price of gasoline is \$3.96 a gallon nationwide. I have my own specially appointed monitor of gasoline prices in the State of Illinois: my wife. I called her yesterday morning and she said to me: Senator, it is up to \$4.20 a gallon in Springfield. What are you going to do? So she put me on the spot. Since she is my No. 1 constituent, I said: I will at least make a speech, and that is what I am going to do on the floor of the Senate.

In my home State of Illinois, the price is well over \$4 a gallon—not just in Springfield but statewide. Every time they go to the pump, families and small businesses feel the pinch. At the same time, the five largest oil companies in the country made \$33.9 billion in profit between January and March of this year. ExxonMobil earned almost \$11 billion in the first 3 months of this year—69 percent greater profits this year compared to last year. The high oil and gas prices are forcing many American families to make tough choices about what to forgo so they can fill the tank.

It gets worse. While operating at substantial profits, oil companies will get an estimated \$4 billion this year in Federal subsidies. Think about that. These companies making \$11 billion in the first 3 months of the year are asking for Federal subsidies. We don't have the money to subsidize them. In fact, we have to borrow.

How do you pay for higher gas prices in America? You are going to pay it three ways. First, you pay at the pump, sometimes 80 or 90 bucks to fill your tank, even in Maryland. Secondly, you are going to pay when you pay your taxes because your tax dollars are going back to the oil companies to subsidize their operations.

But you are going to pay a third time. Do you know why? Because we have to borrow 40 cents for every \$1 we spend in America and we borrow it primarily from China and we have to pay China back with interest. So your children and your grandchildren are going to pay interest on the money we borrowed to provide a subsidy—an annual

subsidy—of \$4 billion to oil companies that are making recordbreaking profits.

What is wrong with this picture? Is there anybody left in this town who is willing to fight for families and small businesses that are getting nailed with these high gasoline prices?

The interesting thing—and I know the Presiding Officer, who was a former Congressman from Maryland, knows what I am saying is accurate—there are rights of spring in America: the opening of the baseball season, the Easter egg hunts, seder dinners for our Jewish friends, and skyrocketing gasoline prices. Every single year, right before the summer vacation season, the oil companies raise gasoline prices at the pump, and politicians line up at microphones, such as this one, and beat the heck out of oil companies and talk about how fundamentally unfair it is and then we replay this movie next year—every year, year after year.

For the oil companies, why do the prices go up? Any excuse will do. This year, it was Libya. Qadhafi is in trouble. We are going to raise prices at the pump by 40 cents, 50 cents or \$1. It turns out Libya is responsible for about 3 percent of the world's oil supply, and even if there is an interruption of the supply from that place, most of their oil goes to Europe. But, as I said, any excuse will do when it comes to raising gasoline prices.

Next week, we are going to take up a bill I support that would end these tax subsidies to big oil companies. Have you seen their advertising? These oil companies, such as ExxonMobil, that made \$11 billion in the first 3 months of the year, say, if we cut their subsidies, they are going to raise gasoline prices even higher. Talk about being at the end of a gun here: Your money or your life.

The Close Big Oil Tax Loopholes Act would end the special treatment given to several companies with leases in the Gulf of Mexico. These companies have been allowed to drill and pump oil without paying the Federal Government for the oil they extracted. Ending the special treatment and tax breaks we give to oil companies will generate billions of dollars. We suggest—I suggest—let's take the money that is going to these highly profitable—recordbreaking profitable—oil companies and put it in to reduce the deficit. How about that for a start? Reduce the amount of money we are borrowing from China so we do not have to pay interest on it.

This bill is not intended to punish the oil companies for turning a profit. But it certainly is not going to reward them with more taxpayers' dollars. It simply asks large wealthy international companies—in an industry that has existed for over 100 years—to pay their fair share and no longer depend on the government for a handout.

Some of these tax breaks started almost 100 years ago. They were created to encourage companies to explore for

oil. However, at \$113 a barrel, how much more encouragement do these oil companies need?

Domestic oil production, incidentally—I hear about this all the time from some of the critics—domestic oil production in this country has been increasing consistently since the year 2008. Domestic production was 1.8 billion barrels in 2008. It was 2 billion barrels in 2010.

In 2004, about 60 percent of oil consumption in America was from imports, and imported oil as a percentage of consumption has dropped a little more each year. Last year, it dipped to 50 percent—still too much, but the amount of imported oil has come down as domestic production has gone up.

The United States is currently the third largest oil producer in the world behind Saudi Arabia and Russia. This is despite the fact that we have less than 2 percent of the world's total proved oil reserves.

Oil production, incidentally, has also been increasing on Federal lands and waters since 2008.

Some of the critics are saying: You know why gas prices are up? They will not let the oil companies go out and drill in the Gulf of Mexico and other places. Shouldn't we be careful about drilling in the Gulf of Mexico? I think so. BP taught us that lesson last year. But having said that, oil production has increased on Federal lands and waters since 2008.

In the last 2 years, oil production from the Federal Outer Continental Shelf has increased by more than one-third—446 million barrels in 2008 to over 500 million barrels in 2009 and more than 600 million barrels in 2010.

Oil production on Federal lands increased 5 percent in 2010 over 2009. But greater domestic production of oil has not led to lower gasoline prices. We have higher gasoline prices. Drill baby drill is not the solution to rising gas prices in the short or long term.

The United States consumes each year 25 percent of the oil that is produced in the world. We have the capacity to produce 2 to 3 percent. We cannot drill our way out of this challenge.

Crude oil prices went up in February with the spread of political unrest in the Middle East and North Africa, even though domestic production in the United States was going up too.

The oil industry has access to millions of acres of Federal land and water—land they have bought leases on and land they will not drill on. For them to argue the government is stopping them from drilling, the obvious question is, So what about the land you currently have to drill on? Why aren't you taking that lease land and putting it into production?

Out of the 41 million acres under lease across the United States, the oil industry is only using 12 million acres for production. That leaves 29 million acres under lease to oil companies that are not being used today.

Thirty-eight million offshore acres are currently under lease, but only 6.5