



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 112<sup>th</sup> CONGRESS, FIRST SESSION

Vol. 157

WASHINGTON, WEDNESDAY, JUNE 8, 2011

No. 82

## House of Representatives

The House was not in session today. Its next meeting will be held on Thursday, June 9, 2011, at 10:30 a.m.

## Senate

WEDNESDAY, JUNE 8, 2011

The Senate met at 9:30 a.m. and was called to order by the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York.

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God of light and truth, in these challenging times, enable our Senators to hear Your still small voice. Make this awareness of Your presence renew their spirits and lift their vision of what this Nation can become by Your grace. May they be people dedicated to moral values and determined to live by the highest ethical standards possible. Lord, keep them from success that is purchased with cowardice, cunning, or deception. Enable them to experience the constancy of Your presence so that they will choose the harder right and leave a legacy that honors You.

We pray in Your holy Name.  
Amen.

### PLEDGE OF ALLEGIANCE

The Honorable KIRSTEN E. GILLIBRAND led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication

to the Senate from the President pro tempore (Mr. INOUE).

The bill clerk read as follows:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, June 8, 2011.

### To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KIRSTEN E. GILLIBRAND, a Senator from the State of New York, to perform the duties of the Chair.

DANIEL K. INOUE,  
*President pro tempore.*

Mrs. GILLIBRAND thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. REID. Madam President, following any leader remarks, the Senate will be in a period of morning business for 1 hour. The majority will control the first half of that time and the Republicans will control the final half.

Following morning business, the Senate will resume consideration of the Economic Development Act, with the time until 2 p.m. equally divided between the opponents and proponents of the Tester amendment.

At approximately 2 p.m., there will be a rollcall vote in relation to the Tester amendment regarding swipe fees, with a 60-vote threshold.

### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business for 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first half of that time and the Republicans controlling the second half.

The Senator from Illinois.

### DEBIT CARD SWIPE FEES

Mr. DURBIN. Madam President, this afternoon there will be a critical vote that will take place on the Senate floor. It is one of the most controversial, business-oriented votes that we have faced. Leading up to this vote has been one of the most heated debates and exchanges that many of us in the Senate have seen in our time. It relates to an issue that affects almost every American family, and certainly all American businesses, and the financial community. It is a basic question that needs to be resolved on the Senate floor.

My friend and colleague from Montana, Senator JON TESTER, is offering an amendment, which I oppose. I have the highest respect for JON. We have discussed this, and our friendship remains strong throughout this debate.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



Printed on recycled paper.

S3571

We just see this differently. Whatever the outcome of the vote, I certainly am going to continue my strong friendship with JON and be a fan of what he brings to the Senate and what he does for the State of Montana.

Joining him in this amendment is Senator BOB CORKER of Tennessee. I have the same high regard for Senator CORKER, and any remarks that I make today are no reflection on them at all. I think they are both honorable people who are standing tall for their point of view, with which I happen to disagree. But I want to make it clear that I think this is a historic vote, a threshold vote in terms of whether the Senate, the Congress, and the Government of the United States will step into a situation that has created a fundamental unfairness. And this is the unfairness.

When we use debit cards, or plastic, to pay for a transaction, there is a fee that is collected. It is a fee that is paid to banks and, of course, paid to the issuing credit card network. The merchant or retailer that accepts that plastic, that debit card, has no voice in determining what that fee will be, and it is invisible.

Just one floor below us in the Capitol is a carryout. I went there this morning to pick up a little breakfast, and there was a young lady—a Capitol Hill policewoman—in front of me. She took a package of chewing gum and put it on the counter and handed her debit card to the cashier. The chewing gum cost \$1.20. The average fee paid by the merchant—in this case, the proprietor of the carryout—is 44 cents on that transaction, more than one-third of the cost of the pack of chewing gum. The owner of the carryout had no voice in that fee. It is a fee that has been imposed on that merchant by the credit card network that issued the debit card.

A year ago, we took up this issue and asked, Is it fair or reasonable? The reason I think we need to take a look at this is, in the United States of America the so-called swipe fee is dramatically greater than in virtually any other country in the world. The same networks, Visa and MasterCard, charge, on average, 1.14 percent on every transaction using a debit card. If one goes to the European Union, the average debit interchange fee is .2 percent, less than one-fifth of what is charged in the United States by the same credit card network. Then, of course, take a look at Canada, just north of the United States, where there is no—zero—interchange fee charged on debit card transactions.

Why is the United States, through its consumers, small businesses, and large retailers alike, paying so much more? These credit card networks, through their issuing banks, are charging this because they can. There is no restraint whatsoever—at least there wasn't until last year.

We had a debate on the floor of the Senate, and we asked—on behalf of

consumers, small businesses, retailers, and merchants all across America—should we establish a reasonable fee for the use of a debit card? We voted, with 64 votes, to do that. The fee is to be established by the Federal Reserve.

Most everyone would concede two things. First, the Federal Reserve is not partisan. It is going to make this judgment based on the economics of the marketplace, in terms of what the fee should be. Second, if there is any bias at the Federal Reserve, it is not toward consumers. This is not a consumer protection agency. No one has ever called it that. It is an agency which, by and large, is more comfortable in the boardrooms of major banks. So we gave them this responsibility.

What the Federal Reserve came up with, after 5 or 6 months of investigation, was a startling discovery; and that was the interchange fee being charged on debit card transactions in the United States, on average, was 44 cents—that is what the 1.14 percent translates into, 44 cents a transaction—and the actual cost to the debit card network issuing banks was in the range of 12 cents.

What is being charged to consumers and small businesses all across America is more than three times the reasonable and proportional cost of the transaction. At that point, the Federal Reserve said: We are going to sit down as instructed by this law passed by Congress and signed by the President and come up with a reasonable interchange fee. They confessed—Chairman Bernanke and others said it was a challenge, and it is. But they said they were going to do it, and do it right, and they needed more time. Chairman Bernanke called me and said: I need an additional 6 to 8 weeks to do that. I said I was sorry to hear that.

They had more than 11,000 comments posted to the Federal Reserve about what this debit fee should be, what is a reasonable fee. They are about to announce, before the end of this month, what it is going to be. I don't know what their report will say. I suspect it will be somewhere between 12 cents and 44 cents, with many other provisos included. That is where we stand.

Under the law passed last year, this new debit card interchange fee rule would go into effect July 21. Well, needless to say, it has generated a lot of controversy, particularly among the card networks, Visa and MasterCard, and the issuing banks that issue these debit cards. They don't like this at all.

As Senator Dale Bumpers of Arkansas—who used to sit right back there—used to say: They hate this interchange fee regulation “like the devil hates holy water.” They have done everything in their power to stop the Federal Reserve from issuing a rule that would bring down this 44-cent charge on every swipe of our plastic debit cards. Of course, they want to do it before the Federal Reserve issues their rule.

Today on the Senate floor, at 2 o'clock this afternoon, the banks and credit card companies get their chance to stop the Federal Reserve from coming forward with this new approach to the interchange fees.

As you can imagine, it is a titanic struggle because of all the retailers and merchants in the United States. From Walmart, on down to the corner bodega in Manhattan, or the corner store in Chicago, they are all involved. When I get into the car that picks me up at O'Hare to take me to my apartment in Chicago, my driver says: We are pulling for you. Every time somebody gives us a debit card, we end up paying more and more because of it.

I think the reach of these charges may surprise a lot of people. Here is a letter that we received yesterday from Tom Gordy, president of the Armed Forces Marketing Council. He writes and says:

On behalf of the member companies of the Armed Forces Marketing Council, I want to offer our sincere appreciation for your efforts to curb the skyrocketing costs to retail business through debit card fees.

Our particular concern about debit card fees is the adverse impact the fees are having on the pocketbooks and the quality of life of military families through the military exchange systems.

As you are aware, the military exchanges provide a non-pay compensation benefit to military families and support military families' financial readiness by offering name brand products at an average savings of over 20 percent. Additionally, the profits generated by the military exchanges are given back to the military community through dividends that support quality of life programs on military bases, including childcare centers, movie theaters, gyms and swimming pools, to name a few.

Let's bring it back to the Senate floor now, and here is what he writes:

Currently, the three military exchange systems—Army-Air Force Exchange System, Navy Exchange Command and the Marine Corps Exchange—are having to pay well over \$100 million per year combined in interchange fees and interchange fees are the fastest growing uncontrollable expense to the military exchange system.

As interchange fees continue to increase, the military exchange systems must either absorb the costs, thus reducing the dividends that support essential military quality of life programs, or they must pass the cost of the fees on to the military family by raising prices. Either way, military families lose because of interchange fees.

That is just one example, but an example that should hit close to home to us because it is an example that reflects on the quality of life of people we care for very much—military families—who sacrifice for this Nation. A system which is designed to help them is paying over \$100 million a year to the issuing banks for the Visa and MasterCard debit fees. Is \$100 million reasonable? If next year it is twice that, is that amount reasonable?

Most people would argue, if you believe in a free market system, you believe in two things: transparency, so people know what the rules of the game are—the actual prices and cost—

and competition. The honest answer is there is no competition here. Visa and MasterCard literally dictate these fees that are collected. What choice does a merchant have? Could you stay in business today and not take plastic? I guess some people do, but not many. The reality is more and more people are using plastic to buy things as basic as a pack of chewing gum for \$1.20, which I saw this morning.

That is what this debate comes down to. The question is whether we will let the Federal Reserve issue this rule, take a close look at it, watch its implementation, and then respond, if needed. I don't know if their rule will be excellent or need help. I am prepared to stay the course with it. If we need to address it in any aspect with further legislation, I want to do that.

I particularly want to address my friends—at least those friends I have left—in the banking community. I am not going to stand here in defense of Wall Street. I think they have had quite a bit of friendship and love thrown their way by this Congress over the last few years. I am going to say, though, when it comes to community banks and credit unions, I think they deserve an exemption. It was included in the law. If we need to provide any other reassurances after the rule is issued, I will be there. I believe I can speak for the merchants and retailers, that they will be there as well. They have never disputed this issue of the community banks and credit unions being treated differently than the big banks.

But I do want to make it clear what is going on here in terms of the biggest banks that issue these debit cards. There is \$1.3 billion a month collected in debit card interchange fees—\$1.3 billion—which is more than \$15 billion a year. Three banks—Bank of America, Chase, and Wells Fargo—control 50 percent of the debit card market, and they will collect nearly \$7 billion in fees this year off of these debit cards. As I mentioned, the merchants and retailers have no voice in this. They pay what they are told they have to pay and they collect it from consumers.

Jamie Dimon is a person I have known. He is the CEO of Chase Bank. I worked with him when he was in Chicago. I had many conversations with him when he moved back to New York. I respect him for his business acumen. But he has been particularly pointed in going after this regulation of interchange fees. He has called it idiotic, in letters to shareholders and his customers. Chase has written to all of their debit card customers across the United States and said this so-called Durbin amendment—incidentally, it isn't an amendment anymore, it is a law—will mean that Chase will have to raise fees on the people holding debit cards because they will collect less from debit card interchange fees.

That seems to make sense, doesn't it? If less revenue is coming in, they will have to make it up some way. But

I want to call to the attention of those who are following this debate to this fact: The bonuses distributed by the banks on Wall Street last year amounted to \$20.8 billion. If they lost every nickel in interchange fees on debit cards, it wouldn't even get close to the amount they paid out in bonuses to their executives.

So before Mr.—before the Chase Bank—I don't want to be personal about this—threatens its customers about increased fees and reduced benefits, let them be honest with their customers about the bonuses that are being paid. That bank—Chase—if I am not mistaken, had an increase in annual earnings of 48 percent this year. They are doing quite well, thank you.

And for the record, let me remind those who are following this debate that the taxpayers of America were asked to stand by these banks in one of their darkest hours when we faced this recession. Many of us believe it was brought on by some awful practices on Wall Street and among other banks, insurance companies, and financial institutions around the world. But in their darkest hour, when things were toughest, where did they turn for help? Not the good old free market system, but the Treasury of the United States of America. So in the end we gave—we gave—\$25 billion to the Chase Bank. We gave \$45 billion to Bank of America and \$25 billion to Wells Fargo to help them through their time of need.

Oh, sure, they survived and they paid us back. But what was their gratitude? How was it reflected? It was reflected by these banks, after receiving taxpayer money to get them out of the hole they dug for themselves, turning around and awarding bonuses to their executives right and left. That is not an expression of gratitude where I come from. Now they come to us and say, we want you to continue this interchange fee subsidy, 50 percent of which goes to the three largest banks in the United States of America.

I think it is time for us to say no. I think it is time to stand for consumers and small businesses across America who have no voice, no power, and deserve our help in making this system fairer, more transparent, and more competitive.

The amendment before us is one I want to address specifically. Because instead of letting the Federal Reserve issue their rule at the end of this month—measuring whether its impact is as we had planned, responding, if needed, to changes—what the banking community and the credit card networks want to do is to kill this rule literally in the cradle before it has a chance to be issued, before it has a chance to be implemented. I think that is plain wrong.

Right now, I hear my colleagues who come to the floor offering this amendment—both Senator CORKER and Senator TESTER—saying this is a compromise. This is a compromise.

This is not a compromise. A compromise involves sides with differing

views sitting down together and working out their differences. I wasn't invited to any meeting to come up with this so-called compromise. The merchants and retailers and businesses across America were not invited—not at all. There were no representatives of consumers in these meetings for this grand compromise. This was a compromise between the biggest banks, the medium-sized banks, and the small banks. So it is a bankers' compromise for bankers' benefit. That is what it comes down to.

In the last 2 days alone, letters opposing this amendment have been sent by consumer groups—military exchanges, as I mentioned, 11 colleges and university associations—because, incidentally, our kids at college bookstores, using debit cards, are actually paying more for their books because of these fees as well—308 national and State merchant trade associations and 6,500 small businesses. They are all opposing this so-called compromise amendment, though it isn't a compromise.

Secondly, this amendment is described as a 1-year delay of the interchange rulemaking. Actually, it is an open-ended delay. The bankers who wrote this very carefully crafted it. The amendment requires the Federal Reserve's rules to be rewritten in 1 year, but it doesn't set an effective date for the revised rules. There is no telling when, if ever, these rules will go into effect. This delay could be significant, and from the banks' point of view, the longer the delay, the better, because it is worth \$1.3 billion a month for every month they can delay it. And how long would they like to delay it? Forever.

Then there is this idea of needing a study after the Federal Reserve put 12 months into reviewing this issue, considering thousands of comments to promulgate this rule. The amendment sets up a study of the interchange system that only takes into account the views of the banking regulators. Search the amendment—the Tester-Corker amendment—for one indication there will be anyone sitting in the room representing the consumers or small businesses of America for this study. They are not invited. Not welcome. Not part of the conversation. Is this another compromise—a compromise that just involves banking regulators sitting down to decide what is in the best interest of consumers? Would you want your fate left to their hands as a consumer? Not me.

The study, incidentally, is loaded—the so-called triggers in the study, if you take a look at them. If the bank regulators deem that any of the triggers are met, they have to throw out what the Federal Reserve has done and start over. Well, guess what, the triggers are written in a way that this is a foregone conclusion. These triggers will be met. As each trigger mirrors public statements the public regulators have already made about the Fed's

draft rules, this is loaded. There is nothing objective or unbiased about this whatsoever.

The amendment essentially mandates a complete rewrite of the Federal rules by the banking regulators for the banking industry in favor of the banks.

Let me mention something else I think is outrageous about this. What the banks have said is, we don't want to measure the reasonable and proportional cost of a debit transaction to establish the fee we are going to impose. We want to include every variable and incremental cost we can consider. This amendment goes on for more than a page with all the possibilities.

The amendment provides the Fed must rewrite the rules under a very different standard than the law which currently exists. The new standard is one the big banks have been begging for. The Durbin amendment says the fee set by Visa and MasterCard, on behalf of the big issuing banks, has to be reasonable and proportional to the costs incurred that are "specific to a particular electronic debit transaction." The Tester-Corker amendment would require the Fed to let Visa and MasterCard fix fee rates to cover bank costs that are not specific to any debit transaction. The Tester-Corker amendment requires the Fed to allow interchange fees to cover "all fixed and incremental costs associated with debit card transaction and program operations, including incentives."

This is a truck-size loophole the banks are begging for, because they know they can get up to 44 cents and beyond if they can add everything in from the cost of an ATM machine to executive compensation and executive bonuses. So honestly, are we going to stand here and say we cannot protect small businesses across America, struggling to survive, from outrageous price-fixing by the credit card companies so we can reward the issuing banks with bonuses? Is that what this is about? If it is, it is a pretty stark choice.

This amendment is a big bank windfall. The amendment has been described as an effort to help small banks, but it would undoubtedly be a windfall for the Nation's largest banks. It would give them a free pass to continue their anticompetitive practices for at least another year, and then it would require the Fed to write rules in a way that would enable big banks to justify the fees they are charging today. It is a no-change amendment.

If you believe, as a Member of the Senate, the current system is fair to businesses across America and we shouldn't change it, then voting for this amendment will guarantee your position will be enshrined in law. This proposed amendment is a gift to the big banks that will keep on giving and deny swipe fee relief to small businesses and consumers who desperately need it.

Madam President, I ask unanimous consent to have printed in the RECORD

these three letters I have received from the Armed Forces Marketing Council, the American Council on Education, and Public Citizen U.S. PIRG.

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

ARMED FORCES MARKETING COUNCIL,  
Manassas, VA, June 7, 2011.

Hon. RICHARD J. DURBIN,  
U.S. Senate, Washington, DC.

DEAR SENATOR DURBIN: On behalf of the member companies of the Armed Forces Marketing Council, I want to offer our sincere appreciation for your efforts to curb the skyrocketing costs to retail business through debit card fees.

Our particular concern about debit card fees is the adverse impact the fees are having on the pocketbooks and the quality of life of military families through the military exchange systems.

As you are aware, the military exchanges provide a non-pay compensation benefit to military families and support military families' financial readiness by offering name brand products at an average savings of over 20%. Additionally, the profits generated by the military exchanges are given back to the military community through dividends that support quality of life programs on military bases, including childcare centers, movie theaters, gyms and swimming pools, to name a few.

Currently, the three military exchange systems—Army-Air Force Exchange System, Navy Exchange Command and the Marine Corps Exchange—are having to pay well over \$100 million per year combined in interchange fees and interchange fees are the fastest growing uncontrollable expense to the military exchange systems.

As interchange fees continue to increase, the military exchange systems must either absorb the costs, thus reducing the dividends that support essential military quality of life programs, or they must pass the cost of the fees on to the military family by raising prices. Either way, military families lose because of interchange fees.

The debit card interchange fee restrictions that you authored will help save the military exchange systems tens of millions of dollars per year, reducing the adverse impact that interchange fees are having on the pocketbooks and quality of life of military families.

We are hopeful that you will be successful in maintaining the law that you authored to curb debit card interchange fees and preventing any delays in its implementation.

Sincerely,

TOM GORDY,  
President.

OFFICE OF THE PRESIDENT,  
AMERICAN COUNCIL ON EDUCATION,  
Washington, DC, June 7, 2011.

U.S. Senate,  
Washington, DC.

DEAR SENATOR: I write on behalf of the higher education associations listed below to oppose the Tester Amendment, which would significantly delay regulatory implementation of the debit card swipe fee reforms enacted last year in the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). We reiterate our support for these needed reforms, which will provide real relief to students, their families and colleges and universities across the country, and urge that they be implemented in a timely manner consistent with the Dodd-Frank Act.

Debit card swipe fees are a hidden expense for students and families paying for college for which they receive no benefit. As a result

of the Dodd-Frank Act and the Federal Reserve's proposed rule, we believe colleges and universities will see reduced debit card costs which they will be able to pass on to students through lower costs as well as increased resources for institutional grant aid and student services. In addition, implementing this reform will create an opportunity for institutions to offer discounts to students for payments made with checks and debit cards.

During this time of economic insecurity, steps like those undertaken in swipe fee reform will help students and their families manage the costs of college with increasingly strained budgets.

We urge the Senate to reject the Tester Amendment and stand with students and the colleges and universities that serve them by ensuring that these debit card swipe fee reforms be fully implemented in a timely manner.

Sincerely,

MOLLY CORBETT BROAD,  
President.

On behalf of: American Association of College Registrars and Admission Officers; American Association of Community Colleges; American Association of State Colleges and Universities; American Council on Education; Association of American Universities; Association of Community College Trustees; Association of Jesuit Colleges and Universities; Hispanic Association of Colleges and Universities; National Association of College and University Business Officers; National Association of College Stores.

PUBLIC CITIZEN, U.S. PIRG, FED-  
ERATION OF STATE PIRGS,

June 6, 2011.

Re Opposition to Tester, S. 575, To Delay  
Swipe Fee Reform.

DEAR SENATOR: We, the undersigned consumer groups, write to reinforce our continued support for the Durbin amendment to reform debit card swipe fees that passed as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The Federal Reserve Board of Governors has conducted enough research and has adequate authority to issue a fair final rule in this matter without the delays that would be imposed by Senator Tester's proposal, S. 575, no matter how it might be modified for the floor.

All consumers, whether they pay with cash or plastic, pay more at the store and more at the pump due to the current non-transparent interchange fee system, which is tantamount to a wealth transfer from the poor to the rich. Recent Federal Reserve research has shown that lower-income cash consumers subsidize the rewards cards of more affluent customers. Yet, retail is a highly-competitive industry where cost savings are routinely passed along to consumers. There is no reason to expect that retailers, in a marketplace where numerous sellers routinely compare and change their prices on a daily basis, would fail to pass along the savings from the unfair anticompetitive interchange system. Yet, as the non-profit and non-partisan American Antitrust Institute said in a recent letter to Congress:

[The Durbin amendment] limits the amount of fees that can be charged through a price-fixing network regime and allows banks to charge unregulated fees if they simply compete on their prices rather than set them centrally. If the limits set by the Fed are low, that aids competition by giving a large incentive for banks to actually compete by lowering their fees. Banks with less than \$10 billion in assets would not have to compete, however, because they are exempt. Certainly, banks with more than \$10 billion in assets can compete in the free markets by

setting their own prices rather than hiding behind the cartel process overseen by Visa or MasterCard. What the Fed is doing is to substitute competition for administered prices. (March 14, 2011)

As Senator Tester's legislation to delay implementation of the Durbin amendment and the final Federal Reserve regulations comes up for a vote on the Senate floor, we urge your opposition to it or other efforts to weaken or delay the Durbin amendment through Congressional action. Thank you for your consideration of our views. If you or any of your staff have any questions, please contact Ed Mierzewski at U.S. PIRG (202-461-3821 or edm@pirg.org).

Sincerely,

PUBLIC CITIZEN,  
U.S. PIRG.

Mr. DURBIN. Madam President, the groups that stand behind me on this effort know what we are up against. When we take a look at the most powerful special interest groups in Washington, we have to put the banking industry near the top, if not on the top, of the ladder. Throughout my career I have tackled them on the floor. I can recall many years ago, brandnew to the Senate, when I said we ought to change the banking laws so we would put an end to the so-called subprime mortgages. I was in a debate with Phil Gramm of Texas, who said at that time that if the Durbin amendment passed, it would be the end of the subprime mortgage business. I lost by one vote. If I would have prevailed, history might have been a little different. The subprime mortgage mess created an economic downturn from which we still suffer.

I stood up as well when it came to this foreclosure crisis and said that at some point these banks have to be reasonable. You just can't take homes away from people, board them up, and watch them deteriorate into nothing. You have to give people a fighting chance to stay in their homes. I said at the end the bankruptcy court should have the last word on that. The banking industry, the credit unions, the community banks opposed me. Take a look across America today at the foreclosed homes, in Chicago, in Aurora, in Springfield, all across my State, and across this Nation. The outcome, years after I lost that battle, certainly does not speak to a stronger America because of these foreclosures. The banking industry beat me on that.

Last year, fighting for these small businesses, retailers, I stood up and said: Somebody has to step up here and argue that there ought to be fairness in the fees they charge to businesses and consumers across America. We rallied 64 Senators—a bipartisan group—in support of that.

The banks want a second run at this. They want to take this game into overtime. They want to come back today and count their friends here and hope they can come up with 60 in the hopes that if the big banks and credit card companies can win this battle, we will leave them alone, we will not ask hard questions about the interchange fees that are charged. I am asking my col-

leagues in the Senate not to give the banks this overtime, extra-time victory. Give the victory to consumers. They have precious few on the floor of the Senate. Stand up for small businesses that do create jobs across America, and give them a chance to create jobs in this country by not being overcharged by the credit card networks and the biggest banks in America.

How many of us have come to the floor and said small business is the key to economic recovery? If you believe it, if you mean it, vote against the Tester-Corker amendment. That amendment is a blow to small and large businesses alike, large retailers and merchants alike, all across America. They stand in support of my effort to have a reasonable interchange fee on debit card transactions and to make sure they have a fighting chance to be profitable, to expand their businesses, and to hire more employees. That would be good for economic recovery. A vote for the Tester-Corker amendment unfortunately would be a win for the banks at the expense of an economy that desperately needs our help and support today.

I yield the floor.

#### RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

Mr. MCCONNELL. I am going to proceed on my leader time.

The ACTING PRESIDENT pro tempore. The Senator has that right.

#### ENERGY POLICY

Mr. MCCONNELL. Madam President, yesterday and the day before, I came to the floor and noted the many troubling signs of a persistently weak economy and how I believe the actions of Democrats here in Washington are seriously undermining the recovery Americans desperately want. I proposed some things that could be done about it right now.

The President says he wakes up every morning asking himself what he can do to create jobs and help businesses succeed. Let me offer a few suggestions. It is not that difficult, really. I am sure the job creators and the workers the President meets with are telling him the same thing they tell all of us every day. Most people think Washington is too intrusive, that it imposes too many job-stifling regulations and sends too many mixed signals today for anybody to plan for tomorrow. We know that many who would hire right now are actually holding back because they do not know what else to expect in terms of regulations, in terms of taxes, in terms of mandates, and in terms of fees. In fact, we just learned that a significant percentage of businesses plan to drop their employee health coverage—something the administration assured us repeatedly

people did not have to fear. Unexpected jolts such as these are causing confusion and anxiety, and they are freezing job creators and entrepreneurs in place.

Beyond that, many Americans are also seriously concerned about a government in Washington that spends trillions more than it takes in and a national debt that this year will exceed our entire national economy. Many people are also understandably outraged by the fact that the party that occupies the White House and runs the Senate has not even taken the time to put together a budget or any other kind of plan to get our Nation's fiscal house in order. After all, if the government does not plan ahead, how can job creators? If the White House does not have a plan to pay down the debt or preserve entitlements, why should people have any confidence that something will be done?

None of this is news to the President or to the Democrats in Congress. The fact is, the President and Democrats in Congress know as well as I do what employers and workers need to prosper and to create prosperity and jobs. They just don't seem to want to do it, and that is the problem. To be blunt, people wonder whether the President is really focused on jobs when so many of his policies seem to be aimed at destroying them and where there is so much he can do right now to create tens of thousands of good American jobs.

Yesterday, I spoke about trade and how, even though the President admits that pending trade agreements with South Korea, Panama, and Colombia have the potential to create tens of thousands of new jobs and boost American businesses, he refuses to move on them in an apparent favor to his union allies.

This morning, I would like to focus on the two sides of the President's energy policy in which he publicly claims to support greater domestic production and the jobs that come with it even as he seems to do everything he can behind the scenes to block production and to kill energy-related jobs right here at home.

The President says he is a proponent of domestic energy production, but, let's be honest, he has not shown it. This should not surprise anyone. This is an administration, after all, that appointed an Energy Secretary who, a month after the President's election, said, "Somehow we need to figure out how to boost the price of gasoline to the levels in Europe." Since then, the administration's policies have helped us get there. Not only have gas prices skyrocketed, but the administration's policies are also hindering the creation of thousands of good private sector jobs that so many Americans desperately need. Let's look at just a couple.

Everyone knows that in the aftermath of the oilspill in the gulf last year, the President imposed a 6-month moratorium on new deepwater drilling. We can dispute the wisdom of a temporary ban for purposes of a safety and