

Here is how it works.

LIBOR is calculated for 10 currencies and 15 maturities. For example, one of the most important LIBOR rates is the 3-month dollar LIBOR.

A select panel of 18 major banks report how much they believe it would cost to borrow money in dollars for 3 months at 11 a.m. on a particular day.

The top four estimates and bottom four estimates are discarded, and the remaining rates are averaged to calculate LIBOR. LIBOR is published every day at 11 a.m., and companies across the world use this rate to set interest rates for consumers.

So why would the major banks want to manipulate LIBOR?

The simple answer is profit. And greed.

Many of the major banks that help set LIBOR stand to lose or gain millions of dollars each day based on the smallest change in LIBOR.

As the leading trader of derivatives in 2007, it has been estimated that Barclays stood to lose or gain \$40 million per day.

The settlement between regulators and Barclays lays bare a scenario where traders not only regularly attempted to manipulate LIBOR, but they didn't even try to hide it.

Once the financial crisis hit in 2008, manipulating LIBOR was also about survival.

Banks were under intense scrutiny. If it cost a bank more to borrow money, it could be an indicator that other banks thought lending to the bank was risky.

In Barclays' settlement with regulators the bank admitted that it underreported the cost of borrowing during the financial crisis to mislead regulators and the public about the true financial health of the firm.

Unfortunately, it seems as if the Barclays settlement is just the tip of the iceberg.

Lawsuits worth billions of dollars have been filed against banks alleging wrongdoing. Regulators in the U.S., Canada, Japan, EU, Switzerland, and Britain are reportedly investigating.

U.S. regulators should be fully engaged in investigating the LIBOR process and any wrongdoing by U.S. banks.

However, U.S. financial regulators can't conduct the necessary investigations into claims of wrongdoing or enforce new laws meant to rein in Wall Street if they don't have the people, software, and resources necessary to do the work.

Congress passed Wall Street reform because the largest financial institutions in this country took advantage of loopholes and the unregulated swap markets.

They drove our country into the worst economic recession in our lifetime.

In the aftermath, we said we are not going down that road again. No more too big to fail, no more bailouts. We are going to have transparency and accountability when it comes to swaps.

We gave the job to the Commodity Futures Trading Commission and the Securities and Exchange Commission.

With the recent approval of final rules defining swaps, the CFTC and the SEC have now triggered the implementation of an array of other rules to finally bring the swaps market out of the shadows and into the light.

This is a huge step forward.

But now, just when the financial regulators have the rules in place to oversee the \$300 trillion market that nearly destroyed our economy, the Republicans are trying to cut the agencies off at the knees.

Their philosophy is if you can't repeal reforms by passing legislation, you can undermine the agency's ability to enforce the law.

Let me put this in perspective. The \$37 trillion futures market has historically been policed by the CFTC. That is an enormous market to oversee, by anyone's calculation.

But it pales in comparison to the complex and previously unregulated \$300 trillion swaps market now under CFTC's purview because of Dodd-Frank. That is eight times the size of the futures markets.

Common sense tells you that it is impossible for an agency to increase its responsibility eight-fold while its resources are cut by 41 percent.

Yet, that hasn't stopped the Republicans in the House. They recently reported out of Committee a bill that cuts funding requested in the President's fiscal 2013 budget by \$195 million for the SEC and \$128 million for the CFTC.

That's a 41 percent cut for the CFTC and a 12 percent cut for the SEC—from the President's request.

Keep in mind that while Congress sets the level of funding for the SEC, it is largely funded through fees on trading volumes. So the cuts to the SEC aren't about concern for saving taxpayer dollars—it is simply a way to remove the regulators' ability to properly function.

When financial tragedies befall people—think of missing customer funds at MF Global or Peregrine—we want investigators to find out what happened and seek recovery of money to the families and farmers who trusted those companies. Those are the jobs the Republicans want to cut.

This tells firms such as Peregrine that while we have laws on the books they must follow, we aren't going to give the regulators the resources to enforce them.

The funding levels for the CFTC and SEC reported out of the House promises we will face another situation like MF Global or Peregrine in the future because we won't have enough cops on the beat.

A mere 4 years after the worst financial crisis in our lifetime and just several weeks after the latest scandal where farmers lost their hard earned money, this is simply irresponsible.

We are still struggling to dig our way out of a recession that resulted in mil-

lions of jobs lost and \$17 trillion of lost retirement, personal and household wealth.

Yet, instead of working together to ensure that never happens again, Republicans are doing everything they can to stop the regulators from implementing laws that would have prevented that crisis and could prevent the next crisis.

DODD-FRANK ANNIVERSARY

Mr. DURBIN. Mr. President, on July 21, we marked the 2-year anniversary of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

This landmark law has taken important steps to rein in the Wall Street abuses that nearly drove our economy off the cliff in 2008.

Two of its reforms were particularly important to me. One was the creation of the Consumer Financial Protection Bureau—the only agency in the Federal Government solely dedicated to looking out for consumers' financial interests.

This agency has already been a game-changer when it comes to curbing the tricks in consumer financial products. It is bringing transparency and fairness to mortgages, private student loans, and credit cards.

Last week, the CFPB announced its first ever enforcement action. It directed Capital One to pay about \$150 million to more than 2 million consumers who had purchased deceptively marketed add-on products to their credit cards.

This is a big step forward. It shows there is a real cop on the beat when it comes to consumer protection.

I am proud of what this agency has accomplished so far, and I look forward to seeing it continue its important work for years to come.

Another important provision in the Wall Street Reform bill was the provision I drafted to reform debit card swipe fees.

The swipe fee is a fee that a bank receives from a merchant when the merchant accepts a credit or debit card that the bank issued. This fee is taken as a cut of the transaction amount.

Now, the vast majority of bank fees are set in a transparent and competitive market environment, with each bank setting their own fee rate and competing over them. That is not the case with swipe fees.

With swipe fees, the big banks decided they would designate the two giant card companies, Visa and MasterCard, to set fees for all of them. That way each bank could get the same high fee on a card transaction without having to worry about competition.

And swipe fees are anything but transparent. Most consumers and even most merchants have no idea what kind of swipe fee is being charged when they use a debit or credit card.

The swipe fee system became an enormous money-maker for Visa, MasterCard, and the banks. They were

collecting an estimated \$16 billion in debit swipe fees and \$30 billion in credit fees each year.

Those billions are paid by every merchant, charity, university, and government agency that accepts payment by card, and the costs are passed on to American consumers in the form of higher prices.

By 2010, the U.S. swipe fee system was growing out of control with no end in sight. U.S. swipe fee rates had become the highest in the world—far exceeding the actual costs of conducting a debit or credit transaction.

And there were no market forces serving to keep fees at a reasonable level. Merchants and their customers were being forced to subsidize billions in windfall fees to the big banks.

I stepped in and introduced an amendment to the Wall Street reform bill that for the first time placed reasonable regulation over debit swipe fees.

My amendment said that if the Nation's biggest banks are going to let Visa and MasterCard fix swipe fee rates for them, then the rates must be reasonable and proportional to the cost of processing a transaction. No more unreasonably high debit swipe fees for big banks.

The regulatory steps that my amendment proposed were modest. Most other countries have gone much further in regulating swipe fees.

But the banks and the card companies screamed bloody murder.

My amendment passed the Senate with 64 votes, and it was signed into law with the rest of Wall Street reform. And the swipe fee reforms took effect last October.

As it turns out, debit swipe fee reform is working pretty well.

So far, reform has led to an estimated \$7 to \$8 billion in annual debit swipe fee savings for merchants.

That savings is a real shot in the arm for American businesses that have been crushed by ever-rising swipe fees.

Consumers are also benefitting as savings are passed along from merchants through competition.

After reform took effect in October, we saw a massive level of retailer discounting that extended beyond the usual holiday season discounts.

And according to a USA TODAY article from May 11, a number of individual merchants are offering debit card discounts for items such as gas, furniture, and clothing. This trend is expected to continue and to grow.

Furthermore, the banking industry had claimed that small banks and credit unions would be hurt by debit swipe reform—even though all institutions under \$10 billion in assets were exempted from fee regulation.

As it turns out, small banks and credit unions have thrived since reform took effect.

Why? Because under my amendment, small banks and credit unions can continue to receive the same high interchange rates from Visa and MasterCard

far higher than the rates that their big bank competitors receive.

In May, the Federal Reserve confirmed that exempted banks and credit unions were receiving the same average interchange rates they had gotten before reform.

The American Banker newspaper has noted that the “Small Banks’ Durbin Shield Worked” and prominent card industry analyst Andrew Kahr noted that the “Durbin Doomsday Never Came.”

Credit unions in particular are doing well after swipe reform. Last year 1.3 million Americans opened new credit union accounts, up from about 600,000 the year before. And credit unions now have a record number of members—almost 92 million overall.

Now, it is important to note that there should be even more savings from swipe fee reform to merchants and consumers.

When the Federal Reserve was writing its final rule, the banks lobbied them to weaken the final rule and raise the debit swipe cap from 12 to 24 cents. Then Visa and MasterCard promptly jacked up any swipe fee rates that were below 24 cents so that this 24 cent ceiling became a floor.

Basically, the banks and card companies lobbied the Fed for a loophole, and when they got one, they ran through it.

This needs to be fixed going forward, and I am confident it will be fixed.

The bottom line, though, is that the swipe fee reform that Congress enacted in 2010 has gotten off to a good start. It is working, and it is laying a solid foundation for further reforms to improve the credit and debit systems.

I am afraid, however, that while swipe fee reform has made important strides in Congress, the big banks and card companies are trying to undercut that reform in the courts.

Recently a proposed settlement was announced in a long-running class action lawsuit. This lawsuit had been filed back in 2005 by a number of merchants against Visa, MasterCard, and the big banks that issue most of their credit cards.

The lawsuit was over credit card interchange fees and the associated rules that Visa and MasterCard impose on merchants. The suit alleged that these fees and rules violate the anti-trust laws in the way that they are set.

This lawsuit had the potential to bring about important changes to the credit card system that would have promoted transparency, enhanced competition, and helped consumers.

But the proposed settlement does not do that. In fact, I believe this proposed settlement represents a capitulation to the Wall Street banks and credit card giants. It is a sweetheart deal for them and a bad deal for merchants and for consumers.

The settlement was negotiated in secret between Visa, MasterCard, the big banks, and the attorneys representing a small number of merchants. The vast majority of merchants had no idea what was in the proposed settlement until it was unveiled.

The terms of the settlement include a \$6 billion dollar payout from Visa, MasterCard and the banks to the plaintiff merchants. That is a large number—it is nearly twice as much as the previous record payout in an antitrust case. And it is a clear sign that the card companies knew that their fees were unreasonably high.

But, \$6 billion is only 2 months worth of credit card interchange fees. And the settlement does not prevent Visa and MasterCard from simply jacking up their fees even higher than before.

The settlement does nothing to change the anticompetitive fee-fixing that Visa and MasterCard do on behalf of their member banks. In fact, it gives Visa and MasterCard broad and permanent legal immunity to continue doing exactly that in the future.

Also, the settlement not only binds the merchants who are parties to it, but it also binds every single American merchant, charity, university, and State or local agency that accepts a Visa or a MasterCard today or in the future.

It bars all of them from ever bringing a legal claim in the future against Visa, MasterCard, or the big banks relating to any swipe fee, other merchant fee, or network rule, no matter how unfair or unreasonable the fees or rules may be.

And this settlement gives Visa and MasterCard legal immunity not just for credit cards, but also for debit cards, and prepaid cards and mobile payment systems.

The extent of the free pass Visa and MasterCard would get under this proposed settlement is breathtaking. No wonder the banks and cards were so quick to come out in favor of this settlement. And no wonder Visa's stock hit an alltime high the next business day.

Now, the proposed settlement would make some temporary changes to Visa's and MasterCard's rules. But in my view, these proposed changes will be ineffective in reining in Visa and MasterCard's unreasonable fees.

The bottom line is that this proposed settlement does not make our credit card system better.

Instead, it gives Visa and MasterCard free reign to carry on their anticompetitive swipe fee system with no real constraints and no legal accountability to the millions of American businesses that are forced to pay their fees.

This is a stunning giveaway to Visa and MasterCard, all for a payout of a mere 2 months worth of swipe fees.

This is a bad deal, but it is not a done deal. The merchant plaintiffs still have to decide if they will support it, and the court must approve it. Several plaintiffs—the National Association of Convenience Stores, the National Grocers Association and the National Community Pharmacists Association—have already rejected the deal.

Now, I am not a party to this lawsuit, but I care deeply about making

the credit and debit card systems in this country more transparent, more competitive, and more fair.

I have worked hard over the years to make sure that merchants and consumers do not get nickled and dimed to death with hidden and unreasonable fees from Visa and MasterCard, and we have made great strides.

That is why I am speaking out about my concerns with this proposed settlement. I know that Visa, MasterCard, and the banks are thrilled with this settlement, but this is not a settlement I would agree to.

I hope that the remaining merchant plaintiffs will review the proposed settlement carefully and think hard about whether it will be good for the future of our credit and debit card systems. They should not be anxious to sign away that future and settle for a bad deal.

TRIBUTE TO JOE MATAL

Mr. KYL. Mr. President, I want to take a moment to recognize the service of one of my longtime legal counsels on the Judiciary Committee, Joe Matal. Joe will be leaving the Senate in a few weeks after 12 years of Senate service, and I wanted to say a few words of thanks.

Joe is well-known on Capitol Hill as a sharp, tenacious, and principled lawyer who fights hard for principle and the public good. It is frankly remarkable to reflect on the breadth of issues where Joe has played a major role in his years of service, but I will list a few.

Joe was intimately involved in our efforts to grapple with post-9/11 realities, in particular through the Military Commissions Act and the Detainee Treatment Act and the reauthorizations of the USA Patriot Act.

Joe has been instrumental in efforts to ensure appropriate DNA testing of criminals and to ensure that the rape-kit backlogs are cleared. He worked on the Adam Walsh Act and the Internet SAFETY Act. He is a go-to lawyer on criminal sentencing issues. Very recently, he has been an essential adviser on negotiations relating to the cybersecurity legislation.

I could go on and on. Joe has worked on the animal crush video law I sponsored, on False Claims Act amendments, on open government laws, and on legal reform bills such as asbestos litigation reform, the Class Action Fairness Act, and Bankruptcy Reform. He is also an expert on Indian Law and has been an indispensable counsel on my work that relates to Indian Country in Arizona, but also on Indian policy nationwide.

Finally, and most obviously, in recent years Joe has justly earned the respect of the legal and policy community nationwide as a major force in the development of the patent reform bill that Congress passed a year ago. In fact, when Joe leaves my office, he will remain in government service and

begin work as an assistant solicitor in the U.S. Patent and Trademark Office. Joe's service there will be essential given that the agency is continuing to implement the patent reform bill that Joe did so much to create.

I would be remiss if I did not also note that some of Joe's important service has been in the bills he helped ensure did not become law. Our job as legislators is not to jump at every shadow, but to exercise caution when others seek to rush ill-considered legislation through the body. Joe's counsel and his strategic guidance have been essential in protecting the Nation from many, many bills that would have been contrary to good public policy.

So I want to thank Joe and wish him the best as he leaves for the PTO. I also want to thank his wife, Maren, and his three children, John, Liddy, and Margaret, for supporting him in these years of public service. I appreciate Joe's hard work and patriotic service and wish him the best in his new position.

CULTURE DOES MATTER

Mr. KYL. Mr. President, Governor Romney suggested on a recent trip to Israel that the culture of a society plays a role in its prosperity. Some took offense to these remarks, and others disagreed with his premise. During the last few days, a debate has ensued about how culture promotes prosperity.

I believe Governor Romney made an important point. In a National Review piece entitled, "Culture Does Matter," he asks, "What exactly accounts for prosperity if not culture?"

After all, U.S. culture emphasizes freedom, equality, hard work, meritocratic excellence, upward mobility, the rule of law, and a devotion to family, education, and a purpose higher than oneself. These cultural values, and others, have made America the world's leading superpower—a beacon of prosperity, freedom, and strength. Millions of people have left their homes over the centuries to come to America and be part of our way of life.

As Governor Romney writes, Israel is also a telling example of the role of culture and prosperity. Like the United States, Israel's culture is based on freedom and the rule of law. He writes that Israel's embrace of political and economic freedom:

... has created conditions that have enabled innovators and entrepreneurs to make the desert bloom. ... In the face of improbable odds, Israel today is a world leader in fields ranging from medicine to information technology.

Of course other factors, such as economic policies, contribute to a country's prosperity. But the evidence shows that the role of culture shouldn't be marginalized or dismissed.

I ask unanimous consent that Governor Romney's entire article, "Culture Does Matter," be printed in the RECORD. I urge my colleagues to read it.

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

[From the National Review Online, July 31, 2012]

CULTURE DOES MATTER

(By Mitt Romney)

During my recent trip to Israel, I had suggested that the choices a society makes about its culture play a role in creating prosperity, and that the significant disparity between Israeli and Palestinian living standards was powerfully influenced by it. In some quarters, that comment became the subject of controversy.

But what exactly accounts for prosperity if not culture? In the case of the United States, it is a particular kind of culture that has made us the greatest economic power in the history of the earth. Many significant features come to mind: our work ethic, our appreciation for education, our willingness to take risks, our commitment to honor and oath, our family orientation, our devotion to a purpose greater than ourselves, our patriotism. But one feature of our culture that propels the American economy stands out above all others: freedom. The American economy is fueled by freedom. Free people and their free enterprises are what drive our economic vitality.

The Founding Fathers wrote that we are endowed by our Creator with the freedom to pursue happiness. In the America they designed, we would have economic freedom, just as we would have political and religious freedom. Here, we would not be limited by the circumstance of birth nor directed by the supposedly informed hand of government. We would be free to pursue happiness as we wish. Economic freedom is the only force that has consistently succeeded in lifting people out of poverty. It is the only principle that has ever created sustained prosperity. It is why our economy rose to rival those of the world's leading powers—and has long since surpassed them all.

The linkage between freedom and economic development has a universal applicability. One only has to look at the contrast between East and West Germany, and between North and South Korea for the starkest demonstrations of the meaning of freedom and the absence of freedom.

Israel is also a telling example. Like the United States, the state of Israel has a culture that is based upon individual freedom and the rule of law. It is a democracy that has embraced liberty, both political and economic. This embrace has created conditions that have enabled innovators and entrepreneurs to make the desert bloom. In the face of improbable odds, Israel today is a world leader in fields ranging from medicine to information technology.

As the case of Israel makes plain, building a free society is not a simple task. Rather, it is struggle demanding constant courage and sacrifice. Even here in the United States, which from our inception as a nation has been blessed with freedom, we faced monumental challenges in harmonizing our ideals with our institutions. We fought a bloody civil war against slavery and it took a non-violent civil-rights movement to bring political and social equality to all Americans. In these epic struggles we changed our "culture" and vastly improved it.

I have just returned from a trip abroad. I visited three lands—Israel, Poland, and Great Britain—which are defined by their respective struggles for freedom. I met with some of the greatest heroes of those struggles. I am always glad to return to American soil. On this occasion, I am only strengthened in my conviction that the pursuit of