SWIPE FEES

Mr. DURBIN. Mr. President, 2 weeks ago, we considered the Wall Street reform bill, and the occupant of the chair was a key player in the activities of the Banking Committee that led up to the floor consideration.

I offered an amendment during the course of that debate on the Wall Street reform bill. I knew that the basic reason for Wall Street reform was twofold: holding big banks accountable for how they operate and empowering consumers to make good financial choices.

The bill Senator DODD and the committee brought to the floor was a strong one. In the process of taking up and voting on amendments, in many ways the Senate made the bill even stronger. Now a conference with the House is underway, and I look forward to seeing the best Wall Street reform bill possible signed into law by President Obama.

During the course of that debate, I offered an amendment to the bill that attracted a lot of attention—more than I anticipated. My amendment sought to give small businesses and merchants and their customers across America a real chance in the fight against the outrageously high swipe fees charged by Visa and MasterCard credit card companies.

Nearly $50 billion in credit and debit card interchange fees are collected each year, and this interchange system is entirely unregulated.

To explain the process, if I go to my favorite restaurant in Chicago tomorrow night with my wife and receive my bill and hand over my credit card to that restaurant—and let's say the bill is for $100—the credit card company will honor the bill, pay it to the restaurant, but then charge the restaurant as much as 3 percent of the bill for the use of my credit card, and that is known as a swipe or interchange fee.

You might say, well, doesn't the restaurant negotiate with the credit card company about whether it is 3 percent, 2 percent, or 1 percent? The answer is no. Those fees are dictated by the credit card companies. Merchants and businesses have little power in even challenging, let alone changing, the so-called interchange and swipe fees.

Other than my credit card, I could present something known as a debit card, which more and more people use every day. A debit card, instead of allowing the Visa company to pay my bill, and then I pay them, actually would deduct the money from my checking account, so the money moves directly from my bank through to the bank of the restaurant to pay the bill.

In that situation, the credit card company is not on the hook very much because the money is moved directly from the checking account to the account of the restaurant. It is not a question of whether I pay my monthly bill or whether I pay the interest on that bill; there is very little risk associated with the so-called debit card.

Yet what we are finding is that the credit card companies are charging the same fees for debit cards they are charging for credit cards. Merchants and businesses across America say there is not as much risk associated with them, so why are they charging more? That is the basic mechanism that I approached with my amendment, which was adopted on the floor with 64 Senators voting in favor.

Visa and MasterCard dominate the credit and debit card industry in America. They establish the interchange rates that all merchants—and by extension, their customers—pay to banks whenever a card is swiped or used. There is no one watching out in the process for businesses and consumers. There is no agency of government with the authority to ensure that these fees charged by the credit card companies are reasonable. Visa and MasterCard just set the fees as they see fit and tell the merchants to take it or leave it. But how easy would it be to run a restaurant or major business in America today if you didn't accept credit and debit cards?

Visa and MasterCard envision an American economy where ultimately all sales are conducted electronically across their networks, where they and the card-issuing banks receive a cut of every sale and transaction in America.

It is no surprise they want as big a cut as possible. They want to maximize their profits. Right now, they have the market power to make that happen. They can raise their fees whenever they want.

Who ends up paying the highest interchange fees charged by these credit card companies such as Visa and MasterCard? Small businesses. Many of them are literally driven out of business by these high fees they cannot control and cannot negotiate. They don't have the market power to do it. Those who stay in business have to raise the prices on customers to pay the fees.

My amendment requires debit card fees to be reasonable, and it cleans up some of the worst abuses by Visa and MasterCard.

Yesterday, we had a hearing in the Senate Judiciary Committee and present was an Under Secretary in the Department of Justice, Christine Varney. She is in charge of the antitrust section. I asked her whether the recent reports that had been published in many newspapers across America that the major credit card companies are being investigated by the antitrust division were true. She said she could not comment on the case other than to say they have verified the fact that an antitrust investigation is underway against Visa and MasterCard.

I applaud that. I understand why she could not go into detail. I applaud that investigation. These major credit card companies have become so big and powerful and coordinate their activities so much that I think such an investigation is long overdue.

My amendment requires that debit card fees be reasonable, and it cleans up some of the worst abuses. The amendment was adopted with 64 Senators voting in favor, including 17 Republicans. It was a major victory for small business and merchants and consumers across America. It will help small businesses grow and create jobs, which we definitely need in this economy, and it will put us back on sound economic footing. It will help American families, each of whom pays an estimated $427 a year, to subsidize this $50 billion interchange fee system for Visa and MasterCard.

I thank each of my colleagues who joined me in that vote, including the Presiding Officer.

I know my amendment has earned me the wrath of Wall Street, the wrath of the big banks, and the wrath of Visa and MasterCard. Even before the last votes were counted on my amendment, Visa and MasterCard and lobbyists for the big banks were already plotting a way to kill this amendment. Financial industry lobbyists are swarming the Halls of Congress as we speak. You can hear the stampede of the Gucci loafers around every corner. They are arguing that reducing debit card interchange fees to a reasonable level, as my amendment would require, is unacceptable. In their view, there is absolutely nothing wrong with charging unreasonably high fees in a business where there is virtually no competition.

I urge my colleagues to consider the enormous benefits of the amendment that was adopted. Our language will help every single Main Street business that accepts debit cards keep more of their money, which is a savings they can pass on to their consumers. Every grocery store, convenience store, flower shop, and every restaurant will be able to reduce the fees they paid to the big banks for debit card transactions.

This is a real boost for that industry and, believe me, they know it. They are fighting hard to convince Members of the House now that what we did in the Senate is the right thing for small business across America. It has led the Merchants Payments Coalition, this group that came together in support of my amendment—2.7 million merchants, representing 50 million American employees—to endorse this bill—the overall bill—and to work for its passage because of this amendment.

It is not just businesses that benefit from the amendment. Charities will benefit. Think about that. Charities that accept donations by debit cards will see a savings. Universities will save money on card fees, and so will public agencies, such as your local motor vehicle commission in your home State, public transit agencies, and even the U.S. Postal Service.

Also, under my amendment fewer taxpayer dollars will be spent by local, State, and Federal Government agencies for the payment of these interchange fees.

I am going to hold a hearing next week in my appropriations subcommittee about the amount of money paid by American taxpayers each year to Visa and MasterCard for interchange fees. It is an enormous amount of money. It is an amount that I think is unwarranted because, basically, the Federal Government is going to pay these bills. No question about it. Yet some of the interchange fees charged to our government are much higher than the fees charged to businesses.

Last year, the city of Chicago paid $7.5 million in interchange fees. The Illinois Tollway authority paid $11.6 million in interchange fees. Our cities' transit agencies and units of government could put this money to better use than paying Visa and MasterCard.

Next week, this hearing will bring out the amount of money paid by the Federal Government. Consumers will benefit from the amendment as well. Debit interchange fee reductions will lead to lower consumer prices at grocery stores, convenience stores, and other retailers that, unlike Visa and MasterCard, have to vigorously compete with one another on price. They will have an incentive to pass the savings on to their consumers.

My amendment explicitly allows merchants to provide discounts when a customer pays by cash, check, or debit, instead of credit.

I told a story on the Senate floor before, and I think it illustrates perfectly what we are up against. When you go to the airport to leave town, there are places where you can buy magazines, newspapers, chewing gum, and the like. I was standing in line at a register while somebody in front of me took a package of chewing gum, put it on the counter, and handed over a credit card.

I noticed as she rang up the $1.50—whatever it was—and started running the credit card through that the cashier was doing this routinely. I asked her afterward, when I was next up: Is that the lowest amount anyone put on a credit card while you have worked here?

She said: No. Thirty-five cents is the lowest amount.

I guarantee that merchant lost business, probably on the $1.50, certainly on the 35 cents, because they have to pay the credit card company regardless of the amount of the purchase, and the credit card company forbids, prohibits the merchant, the business from saying: You can't use a credit card for something, for example, that is under $5. They cannot do it.

What we are trying to do is create some sense where we do not penalize merchants and small businesses. I know Visa and MasterCard are throwing a lot of money into their campaign against my amendment. It is one of the most fiercely lobbied provisions I have seen since I have served in the Congress. I have heard their arguments, and they just do not hold water.

They argue that there have been no hearings in Congress on the issue of interchange fees prior to my amendment. Actually, in the last 5 years, there have been six congressional hearings specifically on interchange fees, plus two reports from the General Accountability Office.

The second myth they have been pushing is that my amendment will hurt small banks and credit unions. Mr. President, we discussed this after the amendment passed, when you were on the floor. As a result of my amendment, which I changed at the last moment, it says that any institution issuing a credit card with less than $10 billion in assets is not covered by the provisions of my amendment—$10 billion. That means that out of 8,000 credit unions across America, exactly 3 would be governed by my amendment. Yet the credit union industry and all of their representatives are roaming all over Capitol Hill saying: This is going to kill us. In fact, they are specifically exempted from this amendment.

When it comes to banks, the $10 billion asset threshold would mean that out of about 8,000 banks in America, only about 90 will end up being covered by this amendment.

You say to yourself: DURBIN, why did you go through all this trouble for 90 banks and 3 credit unions? It turns out that these 90 banks and 3 credit unions do 65 percent of the credit card business in America. The big boys are the ones who will be touched by this amendment, as they should be.

I heard this line from the Independent Community Bankers of America and the Credit Union National Association, that they are the ones who are going to be hurt. Three credit unions, 80 banks, or 90 at the most, will be affected by it.

I just sent a letter to these organizations telling them what I have been telling small banks and credit unions in my home State of Illinois—that my amendment will not disadvantage them. In fact, we went to great lengths to protect them. We exempt 99 percent of the banks and 99 percent of the credit unions.

Visa and MasterCard cannot come here and lobby and expect anybody to believe them because we know what credit card companies do to you. They do not have a lot of friends on Capitol Hill. The big banks, the ones that issue the credit cards, cannot come around either, basically because the Wall Street reform bill was focused on these banks and some of their nefarious activities, at least questionable activities. Whom do they have fronting for their arguments? The little credit unions that come in and say this is going to be terrible. What they do not tell Members of Congress is that the Durbin amendment specifically exempts them from any coverage of this amendment.

My amendment does not allow merchants to discriminate against cards issued by small banks or credit unions. That is another argument they make: If the Durbin amendment goes through, a lot of businesses and restaurants will not take the credit cards issued by the small institutions. There are specific provisions now that prohibit discrimination against the issuer of the credit card. Those are not changed by the Durbin amendment.

Credit unions fear the card networks will reduce their fees if this provision is enacted. Imagine—think this through. Since the Durbin amendment will not change the fees small banks issuing credit cards will receive, they are afraid that out of spite Visa and MasterCard will unilaterally cut their fees. I have news for them: Visa and MasterCard can do that today even without the Durbin amendment. They have the power to dictate these interchange fees to small banks and credit unions alike. That is what is fundamentally unfair, and that is the situation facing merchants and businesses across America today.

I hear small banks say that even though the Durbin amendment reduces the interchange fee rates, Visa and MasterCard are threatening that if the amendment becomes law, they are going to go ahead and reduce the rates they set for small banks. That is certainly in their power today, but it is certainly against the economic interests of Visa and MasterCard.

Small banks have to understand—credit unions as well—that Visa and MasterCard want more credit cards out there, more people using them. Discouraging the use of credit cards is certainly not in their business model. Visa and MasterCard only get paid if the card is actually swiped or the interchange fee is charged. They would lose that revenue if they cut small bank interchange fees so much so that the banks would stop issuing credit cards.

The only reason Visa and MasterCard might decide to reduce small bank debit interchange rates is if the big banks told Visa and MasterCard not to let the small banks get more interchange revenue than they do. Big banks hate the thought of small banks getting higher interchange rates because the small banks could use that money to eat into the big banks' share of the debit card issuer market.

Many have long suspected that Visa and MasterCard operate primarily to serve the big banks. We are certainly going to find out.

I say to those who have come to lobby me for over 25 years from the credit union industry, I am really troubled by the pattern of conduct I have seen on this legislation. I saw it before when we were dealing with the issues of bankruptcy and foreclosure, when we specifically exempted the credit unions, and yet they refused to break from the biggest bankers—the American Bankers Association—in their position on this issue. We are seeing it again today. We specifically exempt all but three credit unions, and the credit unions are doing the bidding of the big banks and the credit card companies.

I think of the origin of credit unions, which came to be when people across

America decided they wanted to have a fighting chance against banks, that they would come together, pool their savings, and loan to one another with reasonable interest rates. We rewarded this credit union model by saying we would not consider them for-profit banks. We would exempt them from certain Federal taxation because they were different—different in their goals, different in their principles, different in their business models.

But the more I watch them on issue after issue, there is not a dime's worth of difference between the big banks and the credit unions when it comes down to the really tough issues. As soon as the big banks snap, the Credit Union Association jumps. That is what is going on here. It is unfair to those who honor the credit union movement and what it stands for, and it is unfair that their leaders do not have at least the vision to understand that this kind of approach is at the long-term expense of the reputation of a fine association which has served so many millions of Americans, including my family, for a generation.

The banks also argue that because my amendment requires debit fees to be reasonable and proportional to the cost of processing a transaction, they will not be able to cover the possible risk of fraud. That is a pretty bold argument for them to make.

Visa, MasterCard, and the banks for years have been urging consumers to use payment methods that run higher fraud rates. On April 21, an article ran in the American Banker entitled ''Counterintuitive Pitch for Higher-Fee Debit Category.'' The article discusses how JPMorgan Chase, one of the Nation's largest debit card issuers, has urged all its customers to sign for its debit transactions rather than enter a PIN number. As the article points out, entering a PIN number greatly reduces the risk of fraud. The reason JPMorgan Chase urged its cardholders to use signature debit cards is the interchange fees for signature cards are higher. They make more money when you sign than when you use a PIN number. They are willing to absorb the possibility of fraud in a signature rather than in a PIN number, which is more secure. The banks do not appear to be nearly as concerned about lower fraud as they are about higher fees.

Visa, MasterCard, and the banks have also been blocking the introduction of fraud-proof card technology in the United States, again because they want to keep interchange rates high. For example, many countries have chip and PIN cards where a card has a microchip that can only be activated by the use of a PIN number. The banks and card companies in this country have stifled that technology.

When debit fraud does happen today, the big banks usually try to charge back the fraud loss to the merchants on the grounds that the merchants somehow violated Visa's and MasterCard's operating rules.

As long as big banks are guaranteed the same interchange revenue no matter how much or how little fraud they have, the banks have no incentive to keep fraud costs low. My amendment will give big banks a real incentive to reduce fraud.

Finally, I hear the banks argue that by reducing debit interchange fees, my amendment would force the banks and card companies to raise fees on customers. I try not to laugh when I hear this one because when were the banks and card companies not raising fees on their customers? Didn't we just see them fall all over themselves to gouge cardholders before last year's Credit CARD Act took effect? I cannot tell you how many letters I received in the mail during the grace period before the law went into effect announcing higher interest rates on the credit cards my family uses. It is not as if banks and card companies were reducing fees to cardholders as interchange rates were being hiked over the last few years. Rather, they ratcheted up fees on both the cardholder side and on the merchant side. They try to take advantage of both sides whenever they can.

We need to ensure that this system works fairly both for consumers and for small businesses. And last year's Credit CARD Act and my amendment will work together to do so.

In conclusion, I call on my colleagues to stand up for the merchants and small businesses across America, to push this amendment across the finish line in the conference committee on Wall Street reform. This amendment represents one of the biggest wins for small businesses and consumers in years. It will help small businesses grow and create more jobs. Do not let the Wall Street lobbyists and the friends of the credit unions who are working for them fool you. This is all about big bank profits. Do not let them kill this amendment. Do not let them bring down this broad, bipartisan effort to give small businesses a fighting chance against Visa and MasterCard.

Mr. President, I yield the floor. I see my colleague from North Dakota is with us.

The PRESIDING OFFICER. The Senator from North Dakota.

BP'S RESPONSIBILITY

Mr. DORGAN. Mr. President, I come to the floor to speak about the START treaty briefly. Before I do, let me mention, as I have previously, that I have been sending messages to the Justice Department and others. I was pleased with the Attorney General's comments today about the oilspill in the gulf, the gusher of oil that continues in the gulf, and about BP's responsibility.

There is no question that BP has said they pledged to cover legitimate costs as a result of this oilspill. The question I have is, Is that a binding agreement? And the answer from the Justice Department at a hearing recently was, no, it is not binding. If that is the case, if it is not binding—and I believe it is not—we need to move to take steps to make that pledge binding.

There are people today who are trying to figure out how on Earth do they get through this situation. In addition to oil spilling out into the gulf—and it has been doing that I think for 52, 53 days—there are people on a dock in a small town somewhere who are fisher men and women. They have a boat and they fish for a living. But their boat is idle at the end of the dock because they cannot fish. Yet they have to make a payment on that boat at the end of the month. Up and down the gulf, there are significant consequences of this situation. The question is, Who is going to reach out to help those folks? They did not cause these problems.

I think it is important for BP to be asked to put a significant amount of money into a fund, a recovery fund of sorts, and that fund be handled by a special master and perhaps by a counselor from BP.

In any event, it is important to turn this from a pledge into a binding commitment and to do so soon so that money begins flowing to those who are substantially disadvantaged by what has happened and this disaster that has occurred in the Gulf of Mexico.

START TREATY

Mr. DORGAN. Mr. President, let me speak for a moment with respect to the New START treaty. Strategic arms reductions are very important. We do not think about them very much. We deal with big issues and small issues in the Senate. Sometimes the small issues get much more attention than the big issues. But one is coming for sure to the floor of the Senate that is a very big issue; that is, the Strategic Arms Reduction Treaty that was negotiated with the Russians. This is really a big issue and very important. I want to describe why and describe why I feel so strongly about it. I have spoken on the floor previously about this, but I want to do it again, describing a Time magazine article from March 11, 2002. The March 11, 2002, Time magazine article referred back to 2001, right after 9/11—It said this:

> For a few harrowing weeks last fall, a group of U.S. officials believed that the worst nightmare of their lives—something even more horrific than 9/11—was about to come true. In October, an intelligence alert went out to a small number of government agencies, including the Energy Department's top-secret Nuclear Emergency Research Team, based in Nevada. The report said that terrorists were thought to have obtained a 10-kiloton nuclear weapon from the Russian arsenal and planned to smuggle it into New York City. ''It was brutal,'' a U.S. official told Time. It was also highly classified and closely guarded. Under the aegis of the Whitehouse's Counterterrorism Security Group . . . the suspected nuke was kept secret so as not to panic the people of New York. Senior FBI officials were not in the loop.