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# Swiped: Banks, Merchants And Why Washington Doesn't Work For You

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WASHINGTON -- Charlie Chung runs Cups & Co., a coffee and sandwich shop in the basement of the Russell Senate Office Building. Known on Capitol Hill simply as “Cups,” the shop -- a rickety 20-second train ride away from the elevator to the Senate floor -- is always swarmed with lobbyists, staffers and the [occasional senator](#).

If customers flash an American Express card to buy a banana, Chung waves them off: “Just take the banana. Don’t give me the card.”

Chung has run Cups for about a decade and says that plastic has allowed him to better serve a hurried and harried clientele. But Chung is still routinely frustrated with the card networks -- Visa, MasterCard and American Express -- that dictate the fees storeowners like himself must pay to process credit and debit card transactions. Why charge for a banana when card fees make it a losing proposition?

Fees are annoying, Chung says, but not debilitating. “They’re just like a phone company,” he says. “Delivery surcharge. Paper charge. Equipment charge.” There’s an additional fee for using cards from banks outside his contract, but Chung says he has no way of knowing until he’s gotten his bill how much of that pricier plastic has been swiped.

The fees Chung pays are a tiny fraction of Wall Street’s swipe fee windfall; banks take in a combined \$48 billion a year from these “interchange” fees on debit and credit cards, according to analysts at The Nilson Report. [That money comes out of the pockets of consumers as well as merchants](#), as stores pass on whatever costs they can to their customers.

Major retailers -- the Walmarts, Home Depots and the Targets of the world -- complain that card fees are one of their biggest annual expenses, and they’ve entered into a Capitol Hill battle royale against card companies to roll back the lucrative fee regime. Last year’s financial reform bill ordered the Federal Reserve to crack down on debit card swipe fees, a \$16 billion pool of money from which \$8 billion flows to just 10 banks. As a concession to Wall Street, credit card fees were left unscathed.

But the clock never ticks down to zero in Washington: one year’s law is the next year’s repeal target. Politicians, showered with cash from card companies and giant retailers alike, have been moving back and forth between camps, paid handsomely for their shifting allegiances.

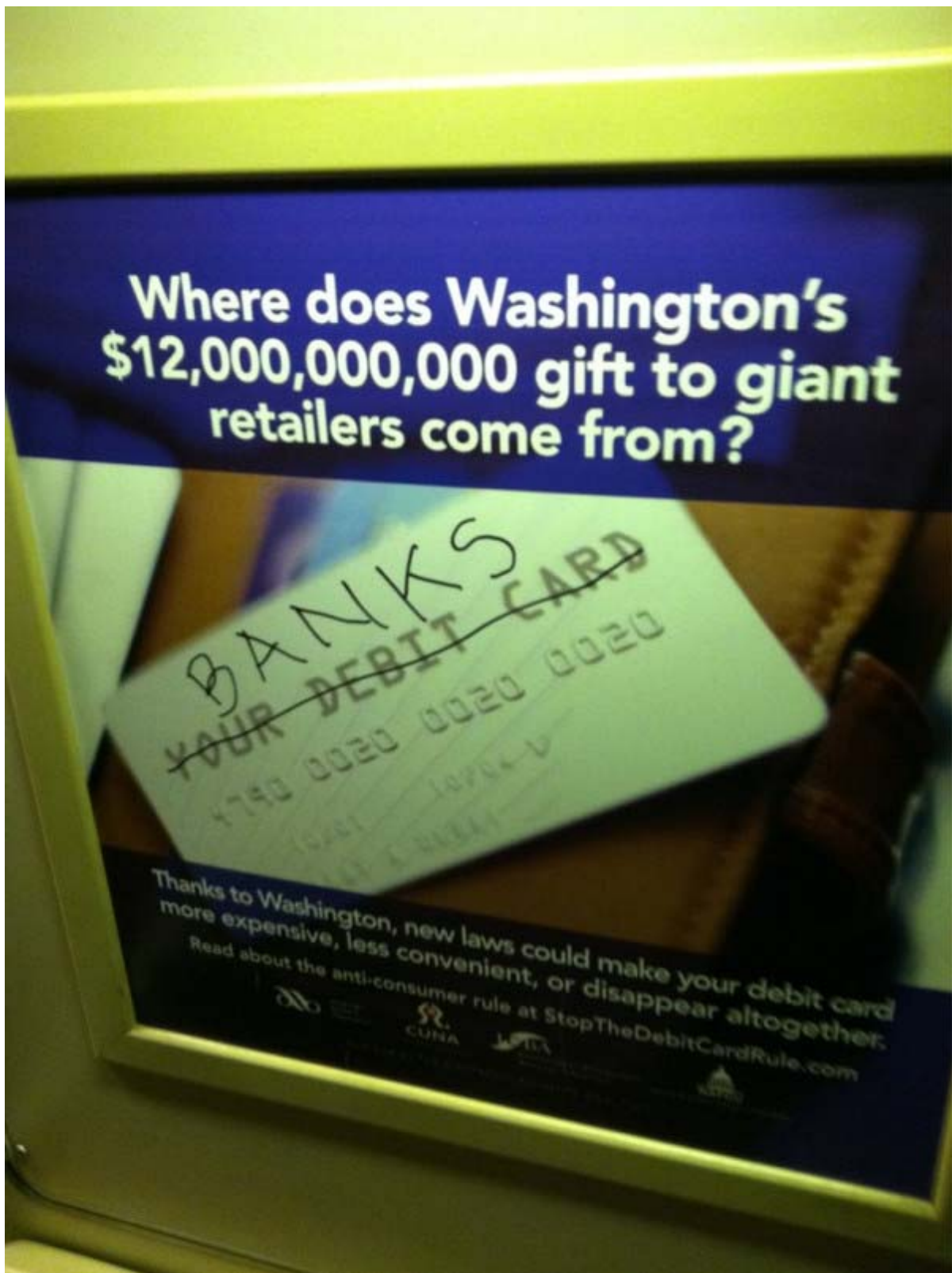
The swipe fee spat is generating huge business for K Street: A full 118 ex-government officials and aides are currently registered to lobby on behalf of banks in the fee fight, according to data compiled for this

story by the Sunlight Foundation, a nonpartisan research group. Retailers have signed up at least 124 revolving-door lobbyists. And at least one lobbyist has switched sides during the melee. Republican Thomas Shipman of Cornerstone Government Affairs registered to lobby for the merchant's leading player, Walmart, in 2010, only to move over to Visa in 2011. (The firm's executive vice president, Fred Clark, says that while Cornerstone is [registered to lobby](#) for Visa on "electronic payments," the shop told the card company it wouldn't lobby on interchange fees specifically, because of the appearance of a conflict of interest. He also says that while Shipman was [registered to lobby](#) on behalf of Walmart in 2010, he never specifically lobbied on the interchange issue.)

"Oh man, this is unbelievable. You've got the banking community, the financial community, pitted against the retail community," says Sen. Mike Johanns (R-Neb.). "They've both been in my office and I'm a clear yes vote on this ... so you can only imagine those who are trying to figure this out or are still on the fence. They must be getting flooded."

The flood fills the hallways with lobbyists and deluges the airwaves with ads. For weeks, Washington's Metro system has been papered with pro-plastic ads on trains and station walls. It's a way for card networks to flex their muscles, to put lawmakers and lobbyists on notice that they're willing to spend big to win. "Where does Washington's \$12 billion gift to giant retailers come from? YOUR DEBIT CARD," blares one ad. This being Washington, a poster on the Metro was hacked by a swipe fee reform supporter, who crossed out "YOUR DEBIT CARD" and penned in "BANKS."

A senior Senate Democratic Banking Committee aide, Peter Bondi, spotted the defaced ad and snapped a [Twitpic](#). He sent it out on March 31, the day that a bill sponsored by Sen. Jon Tester (D-Mont.) was coming up for a floor vote. The Tester bill called for a two-year delay on proposed debit card fee caps that Assistant Senate Majority Leader Dick Durbin (D-Ill.) had pushed through Congress last summer.



“#Durbin supporters strike back against #Tester supporters on #metro ad campaign in swipe fee/interchange fee battle,” Bondi tweeted.

The swipe fee debate, as mundane as it may appear, is emblematic of how Washington works today -- and helps explain why Congress hasn't passed an appropriations bill in years, can't write an annual budget, is flirting with defaulting on the country's debt and effectively gave up on job-creation efforts in the midst of a brutal economic downturn. There are, to be sure, a variety of reasons that Congress is zombified, but one of the least understood explanations is also one of the simplest: The city is too busy refereeing disputes between major corporate interest groups.

As swipe fees dominate the Congressional agenda, a handful of other intra-corporate contests consume most of what remains on the Congressional calendar: [a squabble over a jet engine](#), industry tussling over health-care spoils and the never-ending fight over the corporate tax code.

The endless meetings and evenings devoted to arbitrating duels between big businesses destroy time and energy that could otherwise be spent on higher priorities. [In America today](#), over 13 million people are out of work and millions more are underemployed. [One out of every](#) seven is living on food stamps. [One out of every](#) five American children lives in poverty. Yet the most consuming issue in Washington -- according to members of Congress, Hill staffers, lobbyists and Treasury officials -- is determining how to slice up the \$16 billion debit-card swipe fee pie for corporations.

“Every time we go in to an office and tell them we’re here to talk about interchange, they cringe,” says Dennis Lane, who makes regular lobbying trips to Washington and has owned a Massachusetts 7-Eleven for 37 years. “I think there’s been more lobbying -- there’s been more hours and minutes spent on Capitol Hill discussing interchange reform -- than there has been talking about a shutdown of the government.”

The combination of high financial stakes and scant public attention to the faceoff between card companies and retailers has blurred party lines. Dozens of unlikely and influential figures have rushed to random sides of the swipe fee trough: Anti-tax advocate Grover Norquist, hip-hop mogul Russell Simmons, the Christian Coalition, teachers unions, Koch-funded think tanks, the NAACP, Karl Rove, Dick Morris, Walmart and Google. Even Mickey Mouse has made an appearance.

In Washington, the easiest way to derail somebody else’s good idea is to suggest delaying it while experts conduct a study. In the Senate, Tester is joined by Bob Corker, a Republican from Tennessee, in pushing the plan to postpone Durbin’s fee caps. West Virginia Republican Shelley Moore Capito is carrying a similar bill in the House, cosponsored by Florida Democrat Debbie Wasserman Schultz. When corporate interests are at stake, such bipartisanship tends to be much easier to secure.

President Obama recently tapped the Wall-Street friendly Wasserman Schultz to head the Democratic National Committee, a position generally reserved for party figures with the best fundraising ability. In the first quarter of 2011, members of the [Electronic Payments Coalition](#) -- the bank lobby fighting swipe fee reform -- gave more than \$2 million to members of Congress and the two parties and more than \$250,000 to cosponsors of Capito’s bill, according to an analysis done by the Sunlight Foundation for this story.

And that’s just direct contributions. Both sides have spent lavishly on TV and radio ads and face-to-face lobbying. After all, a mere month of swipe fee revenue amounts to more than the total sum a presidential campaign will spend between now and next November. Many of the ads openly attack big business, while giving no hints about their own corporate backing.

While cable news was recently overwhelmed by coverage of budget negotiations and a possible government shutdown, many of the nation’s most powerful political players were focused instead on the Tester amendment -- and on a lobbying scrum that even boggles the minds of seasoned politicians. “It’s the biggest issue in Washington right now,” says a senior Treasury official who’s grateful it doesn’t fall within his scope of responsibility.

“Everybody and their grandmother’s lobbying on this,” says Sen. Lindsey Graham (R-S.C.). Graham, who supported Durbin last year, hasn’t made up his mind on the Tester bill, but says the ongoing swipe-fee fight is one of the “top 10” most brutal and well-funded battles he’s seen in the Senate.

Not all of the interests in the fee fight are powerful. But small business owners like Chung who might benefit from swipe fee reform would be sharing in a victory that the big-box retailers are funding. This, in the end, may be the best little guys can hope for in Washington: to have their interests roughly align with those of powerful players.

One frustrated moderate Democratic senator asks to remain anonymous so he can speak freely about his legislative education. “I’m surprised at how much of our time is spent trying to divide up the spoils between various economic interests. I had no idea. I thought we’d be focused on civil liberties, on education policy, energy policy and so on,” the senator says. “The fights down here can be put in two or three categories: The big greedy bastards against the big greedy bastards; the big greedy bastards against the little greedy bastards; and some cases even the other little greedy bastards against the other little greedy bastards.”

## Time Is Money

Although a hotly contested issue in Washington, swipe fees barely register as a concern to most Americans. [A merchant-sponsored poll](#) last month of the issue found that nearly half of respondents were completely unfamiliar with it. Once it was explained to them, however, 70 percent backed Fed action to cut the fees.

In December, the Fed proposed to reduce the average debit card swipe fee by nearly 75 percent -- down from an average of 44 cents per swipe to just 12 cents. The rule was supposed to be finalized on April 21 and take effect July 21, but the Fed missed its deadline last week.

For every month the law is postponed, banks will make \$1.35 billion on debit cards, according to Nilson Report data. That makes for a very motivated lobby. “The merchants had the advantage last year of caring only about this in the bill while the banks were worried about trying to kill the consumer bill and the other stuff,” says Rep. Barney Frank (D-Mass.), former chairman of the House Financial Services Committee. “This is now as important to the banks -- in fact, it’s more important to the banks than to the average merchant, which is what shifted this.”

Indeed, the American Bankers Association, JPMorgan Chase and Regions Bank count a total of eight new lobbying shops working on swipe fees in 2011, according to lobbying disclosure forms.

Banks began issuing cash cards in [the 1970s](#) as a tactic to automate services and cut labor costs -- more ATMs meant fewer bank tellers and check processing costs. When swipe machines were first introduced in stores, banks actually paid some merchants to accept debit cards. Later, swipes became free, and once debit cards had become ingrained in consumer culture, banks began charging merchants, and [the costs keep going up](#).

The fees incense many merchants. Sheetz Corp. operates nearly 400 gas stations and convenience stores from Ohio to North Carolina, and CEO Stan Sheetz is pressing lawmakers hard to lower swipe fees. But unlike most retailers, Sheetz also serves on the board of a small bank that makes a fortune from fees. “From the bank’s standpoint ... it’s all gravy,” says Sheetz. “It’s a cash cow.”

Credit and debit swipe fees cost Sheetz \$5 million a month, second only to labor costs among the company’s top executives, he says. “I am a die-hard capitalist pig,” Sheetz tells HuffPost. “That’s why Visa and MasterCard piss me off. ... They treat us like shit. The arrogance is unbelievable.”

Target Corp. spokesperson Morgan O’Malley says interchange is its second-biggest expense after labor, amounting to “hundreds of millions of dollars a year.” The retailers have taken the banks to court over the fees at least four times with little success. But one merchant has done more for the cause than any other.

Richard Niemann is the owner of the non-union Illinois grocery chain Niemann Foods and has been a Durbin confidante since the early ‘80s. When Durbin learned of the swipe fee issue, he immediately checked in with Niemann, who then lit into the banks.

“All along, my North Star in all of this was Rich Niemann, who would tell me the stories about how his business was affected by swipe fees,” Durbin says. Niemann’s support came with a price, however: In March, his record of workplace-safety and child-labor violations became political fodder for banks and their allies and the HuffPost Hill, a newsletter, reported on the matter. Durbin took to the Senate floor to lash out at the banks for targeting Niemann. “Some folks on the other side decided to go after and attack Rich Niemann as a businessman,” said Durbin. “I am going to stand with him.”

Banks argue that merchants like Niemann are not required to accept debit cards and that multiple judges have found that the companies are not violating antitrust laws. The merchants will pocket the money they’ll save rather than pass it on to customers, the banks say, insisting that there is no justification for government intervention.

For a flavor of the case the banks are laying out, look no further than a colloquy between freshman Rep. Sean Duffy (R-Wis.) and a top bank executive at a recent hearing.

Money flows freely around the fee battle. Political action committees organized by members of the Electronic Payments Coalition, a cadre of banking trade groups, dumped more than \$500,000 into

campaign coffers during January and February alone, according to data compiled by the nonpartisan Sunlight Foundation. During those same months, PACs for Walmart and Home Depot gave a total of \$75,000 to 26 senators, along with \$45,000 to political parties, while Target dropped an additional \$54,000.

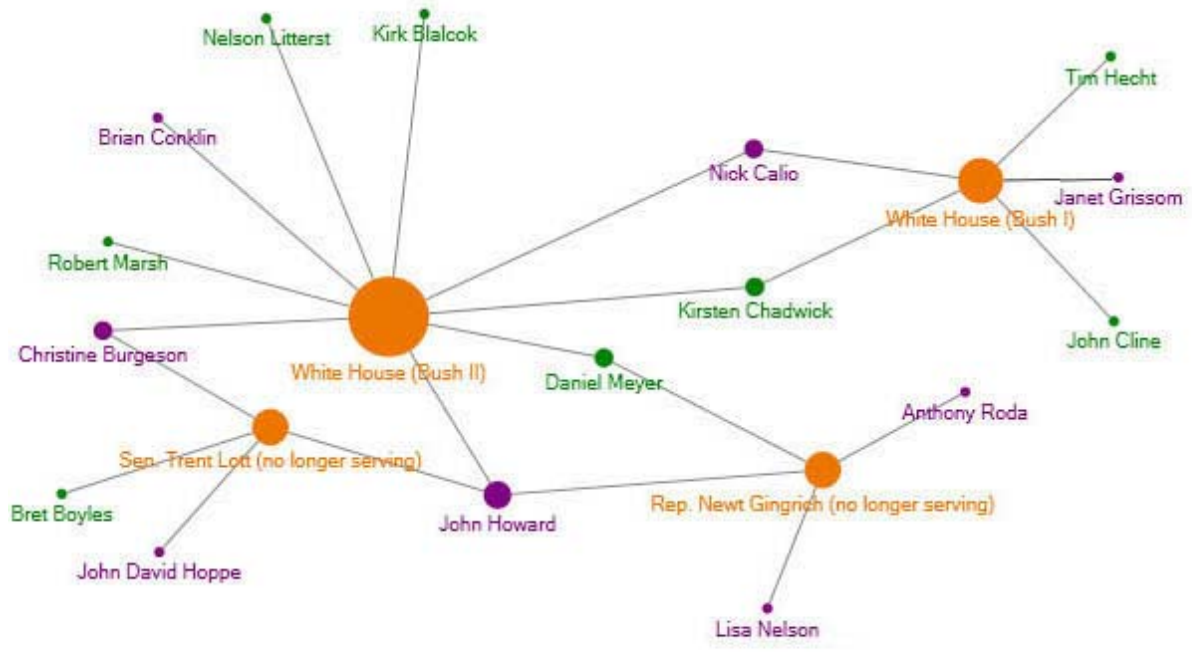
# Government Employers With Four or Greater Lobbyist Connections

**Node Type**

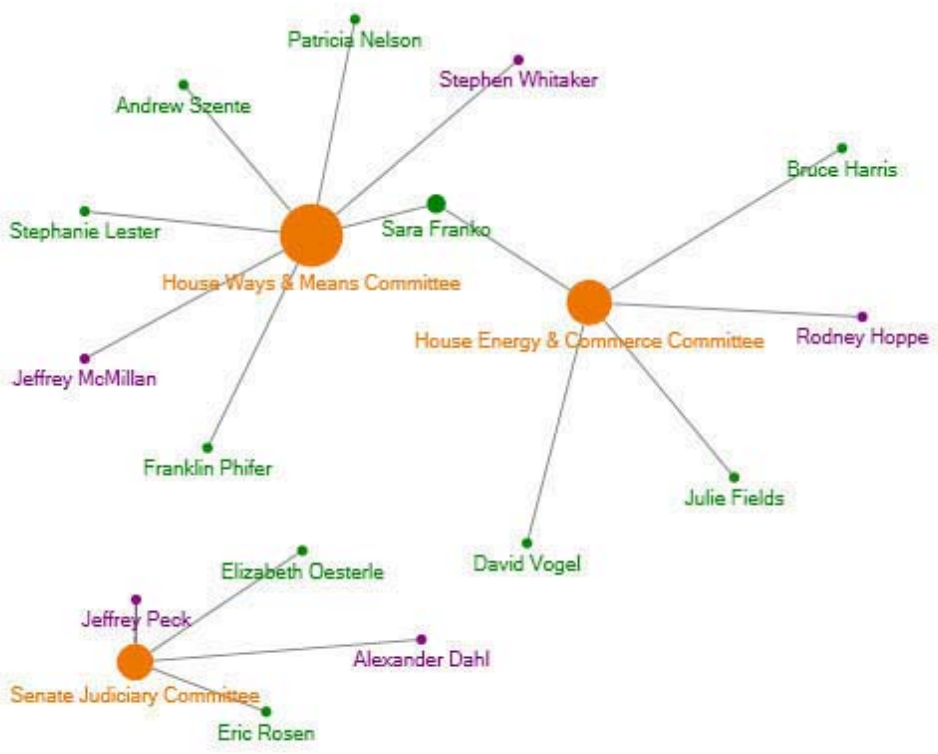
- Former Government Employer
- Bank Lobbyist
- Credit Card Lobbyist

The Huffington Post examined the government connections of the 242 lobbyists involved in the swipe fee debate. The graph below shows government employers with four or more swipe fee lobbyist connections. The lobbyists are broken into two groups: bank lobbyists and credit card lobbyists.

## Cluster 1



## Cluster 2



*Chart created by HuffPost, with research provided by Sunlight's Paul Blumenthal*

The National Franchise Association, the Society of Independent Gasoline Marketers of America, the Society of American Florists, the Petroleum Marketers Association of America and the Food Marketing Institute -- all traditionally small-time players in Washington -- contributed a combined \$78,500 in the first two months of 2011.

But that's just the money groups have to disclose. In the wake of the Supreme Court's controversial *Citizens United* decision, an enormous share of corporate money in politics is now spent secretly, moving through anonymous front groups with vague names. like "Americans for Job Security."

### **Karl Rove And The Tea Partiers**

Tea Party freshman Rep. Renee Ellmers (R-N.C.) must not have realized she was asking for intraparty trouble when she added her name to a bill seeking to delay swipe fee caps for a year.

Her political calculus seemed obvious: [RedState](#), the conservative blog that serves as a kingmaker in the South, is strongly behind the legislation, and Ellmers represents North Carolina, a state whose politics are dominated by Bank of America, the nation's top debit card issuer. New fee caps are the Fed's responsibility, and if there's one thing the Tea Party hates more than the central bank, it's price controls.

But the Senate swipe fee vote never happened and Ellmers eventually requested that her name be removed from the bill. Ellmers, who declined to comment at length, said her name was added to the bill mistakenly and that she remains undecided on swipe fees.

Still, Ellmer's Congressional campaign was bolstered by an advertising effort by a Karl Rove-linked group called Americans for Job Security, one of a constellation of robustly-funded campaign organizations that works on behalf of the GOP. In 2010, AJS spent more than four million dollars targeting 10 House Democrats and pumped more than \$350,000 into Ellmers' district, airing a devastating ad against her opponent.

AJS was founded by Republican power players Mike Dubke and Dave Carney. The pair now run Crossroads Media, which handles the advertising operations for Rove's American Crossroads, the biggest gun in the massive campaign arsenal that Rove assembled in 2010. Americans for Job Security, meanwhile, is currently led by a young operative named Stephen DeMaura, who works out of Crossroads Media's Alexandria office.

[In a lawsuit](#) against the Federal Election Commission filed last Thursday, Rep. Chris Van Hollen of Maryland, last year's chairman of the Democrats' House campaign arm, names AJS as a major recipient of

But that's about as much as anyone knows about AJS. "We don't have clients. We have members," says AJS head DeMaura. "Like all organizations of our type, we're not required to disclose or discuss our members." Demaura says that any politician, Democrat or Republican, who backs delaying the swipe fee rules is simply "carrying water for the banks."

In the past few months, with no election in sight for a year and a half, AJS has spent over half a million dollars on ads that mostly target Republicans on swipe fees, a radical departure from the Rovian partisanship that had been its hallmark.

"I didn't know Rove was involved in this," says Durbin. "I'm surprised and confused. I have no idea where these guys are. When we turn the lights out you never know who's going to be sitting in the chairs when the lights come back on."

### **"The Banks Aren't Happy"**

Plenty of lawmakers are anguished about their swipe fee position, but largely because they're worried about falling out of favor with good friends in the corporate world.

"I've got friends on both sides of it and, you know, it is what it is," says a visibly anguished Sen. Saxby Chambliss (R-Ga.) when asked about the bill to delay swipe fee reform. Home Depot, headquartered in Atlanta, is a leading player on the merchant side, and both the company and its co-founder, Bernard Marcus, have invested heavily in Chambliss' Senate career. "I voted to support it and I'm gonna continue to support it."

HuffPost asks what he says to the bankers. "I've voted. And I'm sticking with it," he says. "Oooh, the bankers aren't happy."

Chambliss' fellow Georgia Republican Sen. Johnny Isakson is also staying with Home Depot. "It's part of the job," Isakson says of resisting the bank pressure. "That's why they pay us the big bucks."

Mike Lux, a vocally liberal Democrat who is doing PR on behalf of the merchants, has written on [the issue for HuffPost](#).

"I figured I'd rather have mainstream businesses, even if some are ones I don't like, like Walmart, have the [swipe fee] money than the big six banks," he says.

He also sees a broader threat. "Barney Frank and other folks who are inclined to see the swipe fee adjusted, they're playing with fire. There's the potential to add in bigger changes," warns Lux. Republicans, he says, "would like to reopen the whole financial reform bill and they're debating whether to use the swipe fee bill to do it."

But while Walmart won over Lux, the Arkansas-based mega-retailer is having a harder time corralling lawmakers from its home state. Republican Sen. John Boozman, Democratic Sen. Mark Pryor and Democratic Rep. Mike Ross all tell HuffPost they're undecided on rolling back the swipe fee laws, in spite of the retailer's enormous lobbying push.

"Walmart's a huge employer in our state. It's a consideration, but it's one of many considerations," says Pryor, who is known on the Hill as one of two "senators from Walmart."

What kind of consideration could be a bigger concern for an Arkansas senator than Walmart? "We have a lot of banks and credit unions in our state as well," he explains.

Walmart declined multiple opportunities to participate in this story.

### **"I Know The Zip Code For Wall Street"**

Jon Tester defeated his gaffe-prone opponent by fewer than 3,000 votes in 2006, a year that saw popular

national support for Democrats. He was recruited by Dick Durbin's longtime housemate, Sen. Chuck Schumer (D-N.Y.), who was then the head of the Senate Democratic campaign operation. And like Schumer, Tester has become a Wall Street courtier. He's hauled in over \$821,000 from the finance, insurance and real estate industries since entering office, according to the Center for Responsive Politics. In the first quarter of 2011, he raised total funds of \$1.16 million -- double his GOP opponent -- including more than \$100,000 from PACs representing the finance, insurance and real estate industry (That total only counts PAC money, not contributions from executives).

Tester, who is one of the top pickoff targets for Republicans in 2012, has become a pawn in a proxy leadership game between Durbin, the second-ranking Democratic Senator, and Schumer -- a contest with major implications for the future funding of the Democratic Party.

Schumer has largely refrained from operating too visibly on behalf of the banks in the swipe fee fight. But bank lobbyists tell HuffPost he had made it clear from the beginning he was on their side and was working behind the scenes to gather support for the Tester bill that seeks to undermine Durbin's fee-capping effort.

That suspicion was confirmed at a "Politico Playbook Breakfast" sponsored by Bank of America on April 6, when Schumer was asked about the Tester effort to delay Durbin's reform.

"Well, you know, it was passed rather quickly," began Schumer. The Durbin amendment "didn't have all the hearings and everything else that lots of the rest of the [financial reform] bill" did, Schumer went on. "On this particular issue, because there wasn't study, there is some momentum, led by Senator Tester, who's done a great job, to at least delay it." He predicted a vote on Tester's amendment before the end of the year.

Durbin doesn't hold back on his longtime housemate when asked by HuffPost about Schumer's remark. "Listen, I know the zip code for Wall Street and I know what state it's in," he says.

The swipe fee faceoff is a major test of whether Wall Street's post-crash power has any limits. It's one thing for a few large corporations to run roughshod over consumer groups on Capitol Hill. It's quite another to take on a team of deep-pocketed corporate opponents with well-established relationships,

armed with strong pro-consumer arguments. Wall Street isn't just targeting guileless subprime borrowers on swipe fees -- it's taking on what economists call "the real economy" -- the world beyond complex financial dealmaking where actual goods are bought and sold.

But there has been little serious attention paid to the effects swipe fees have beyond the corporate world. Only one major economic study has attempted to quantify how much swipe fees cost U.S. consumers in terms of higher prices-- [a February 2010 paper](#) by respected economist Robert Shapiro and analyst Jiwon Vellucci, which found that 56 percent of all swipe fees are passed on to consumers, raising costs for the average household by about \$230 a year.

That extra \$230 isn't a burden for affluent families accustomed to paying for convenience. Still, for families living below the poverty line, that money translates into two weeks worth of groceries or the monthly heating bill.

Yet the poor have no voice in Washington. Even the Shapiro and Vellucci study would never have been conducted without major corporate backing -- it was funded by Consumers for Competitive Choice, a [front group](#) for telecommunications giants, which tried to kill last year's financial reform bill at the same time it was pushing for the swipe fee crackdown included in the bill. Consumers for Competitive Choice President Robert Johnson tells HuffPost that he commissioned the study in order to shed light on how much swipe fees were costing consumers, and insists that the group had never worked with big retailers on the issue.

Whatever the ultimate cost of swipe fees for consumers, there's no question that the resulting higher prices hit the poor hardest of all. Affluent consumers are more likely to pay with plastic, and both credit cards and debit cards frequently come with rewards programs that bestow frequent flyer miles, amazon.com discounts, trips to Disney World and a host of other benefits upon card users. So while swipe fees cause higher prices for everyone, affluent consumers get some of that money back in the form of rewards. The result is an effective transfer of wealth from poor shoppers to wealthier consumers: stores charge higher prices for goods in order to cover higher swipe fees, and those higher swipe fees are converted into rewards programs. According to an [August study](#) by the Boston Federal Reserve, the perks associated with plastic lead to an average wealth transfer of \$771 from families making less than \$20,000 a year to households earning \$150,000 or more.

### **The Russians Are Coming!**

Outside of Washington, companies have started pleading their fee case before their own customers and some haven't shied away from statistical hysterics to argue their cases. Earlier this month, Walmart sent an email to shoppers warning of dire economic fallout, citing "US Federal Reserve" estimates that a two-year delay of swipe fee caps would cost consumers \$24 billion and kill 200,000 jobs.

All very scary, of course. But the Fed hasn't made any such estimates, according to a central bank spokeswoman. Walmart declined to comment on the bogus statistics.

Big banks have been deploying similar tactics. In January 2010, TCF Bank, which pioneered free checking in the 1980s, announced it would begin charging a monthly fee in response to Federal Reserve rules restricting overdraft charges. The move was regularly cited during the 2010 swipe fee fracas as evidence of the harm that would befall consumers if Durbin didn't back off. It's the argument that forms the basis of the bank-sponsored movement to "Save My Debit Card." This January, TCF brought back free checking after losing customers.

In October, Bank of America responded to the passage of the Durbin amendment by taking a [\\$10.4 billion](#) writedown on its card business, a move that many political observers saw as a political gesture. While the sheer size of the writedown generated headlines in the business press, it had very little actual impact on BofA's operations; no cash actually went out the door. Instead, the company merely revised its estimate of what its card business is worth, something that won't matter unless BofA decides to sell it off -- and there aren't many companies clamoring to buy it up right now.

Brian Dodge, a lobbyist for retailers, slams the move as a political gesture, calling it representative of "a pattern where the big banks make wildly speculative statements, with little or no foundation in reality, in an effort to generate sympathy, frighten consumers and influence politics."

Banks are even blasting the Internet with ads warning of “the Soviets” and asking whether Congress will “take away” the debit card. There is, of course, no risk that banks will stop issuing debit cards, however the swipe fee fracas ends.



One day before the Senate was expected to vote on delaying reform, Chase went nuclear: Thanks to the Durbin amendment, thousands of Chase customers were warned, your kid can forget about that trip to Disney World. “Congress recently enacted a new law known as the Durbin Amendment that significantly impacts debit cards,” reads the letter. “As a result of this law, we will be changing our debit rewards program. After July 21, 2011 you will no longer earn Disney Dream Reward Dollars when you use your Disney Rewards Debit Card.”

Investors get the same treatment. JPMorgan Chase’s CEO, Jamie Dimon, [singled out](#) the Durbin amendment in an April 5 speech before the Council of Institutional Investors, saying it was “downright idiotic” and “passed in the middle of the night and had nothing to do with the crisis.”

Durbin blasted back in a letter to Dimon, which the senator asked to be sent to the company’s shareholders, ripping Dimon’s eye-popping paydays and the financial excess on Wall Street that pushed the economy into a deep recession.

“Last year Chase had \$17.4 billion in profits -- up 48 percent from the previous year -- and a 15 percent profit margin,” Durbin wrote Dimon, noting that Dimon’s own personal compensation “jumped nearly 1,500 percent to \$20.8 million in 2010.”

“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,” Durbin continued. “And there is no need to make such threats in response to reform that simply tries to spare consumers.”

With a vigor that would make Tom DeLay proud, Durbin has confronted just about anybody who is taking the other side of his swipe fee issue, including lobbyists, civil rights organizations, editorial boards and public interest groups. Even the NAACP was on the receiving end of his ire, an official there says. An assistant Senate majority leader lobbying interest groups to switch sides may seem backward, but it reflects a Washington reality in which lobbyists, not politicians, frequently wield the real power.

“If you scratch the surface, guess what you’re going to find? They have other causes but they’re also debit card issuers,” Durbin says of the NAACP and many of the other progressive groups siding with the banks. “They have a financial interest in keeping the status quo.”

The NAACP doesn’t have its own debit card, but does have a relationship with Visa and U.S. Bank through its credit card. And its [top corporate donors](#) include [players on both sides](#) of the debate -- Bank of America, Walmart, Wachovia, Best Buy and Target have all given generously [in recent years](#). And like Ellmers, the NAACP has changed its position on swipe fee reform multiple times and is having a hard time explaining it.

In recent weeks, NAACP Washington Bureau Director Hilary Shelton has been besieged by lobbyists on swipe fees, meeting with as many as four groups about the issue in a single day. After backing the Durbin amendment throughout 2010, Shelton penned a letter to House Speaker John Boehner (R-Ohio) in March, saying the NAACP supported a study on the Fed's swipe fee rule to ensure that it would have no harmful effects on consumers.

Immediately after the letter became public knowledge, Shelton says he got a call from Durbin's office. Two days later, he was meeting with an official from Walmart. In April, Shelton clarified his letter to Boehner, insisting that the NAACP continues to support swipe fee reform, but wants to see a study completed prior to July 21.

Shelton says his organization faces no conflicts of interest on the swipe fees, and insists that the NAACP has never in fact changed its position on the issue.

"We have relationships and friends with Walmart, we have relationships and friends with Bank of America and Wachovia. We have friends at McDonald's, the hamburger people," Shelton says, before emphasizing that their concern is first and foremost for consumers. "Sometimes," he says, "you have to do things your friends don't like."

### **Human Shields**

With the general public unsympathetic to the plight of Walmart and Wall Street, players like the NAACP are critical for lawmakers seeking to justify their votes to citizens outside the Beltway. Giant corporations do not want to be the public face of the swipe fee melee -- television ads, for example, feature friendly middle-class moms, and they're sponsored by groups with opaque names like "The Electronic Payments Coalition," rather than "JPMorgan Chase," or the "Merchants Payments Coalition," rather than "Walmart."

Wall Street stands to lose the most from the new rules, but the most visible players in the swipe fee debate have been their small bank competitors. When government shutdown negotiations reached a fever-pitch on Thursday, April 7, Sen. Pat Roberts (R-Kan.) took to the Senate floor, opting not to speak out about protecting the paychecks of military families, reducing the deficit, or even pinning blame on Democrats. Instead, Roberts wanted to talk about swipe fees, appealing to other lawmakers to protect bank profits.

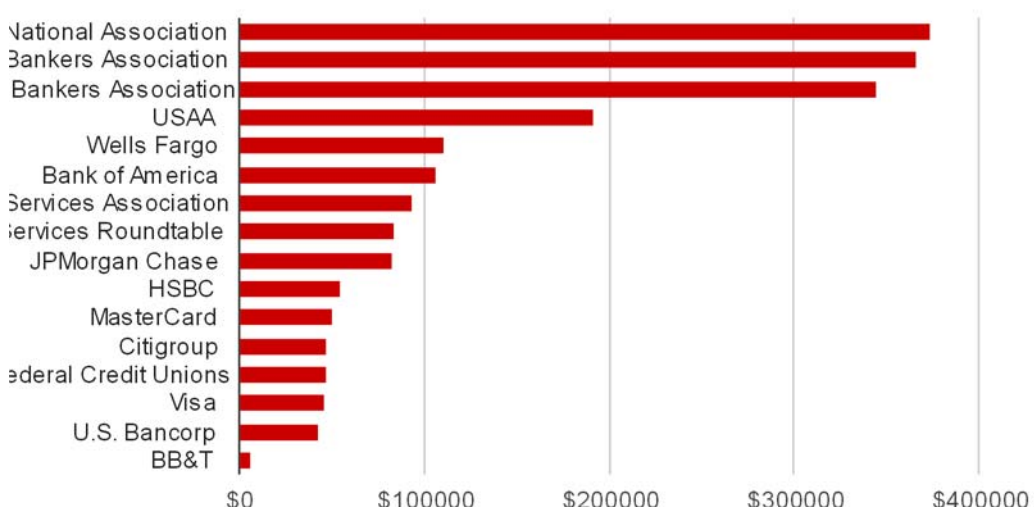
"One community banker in a town of just 1,000, whose bank began offering debit cards a few years ago, tells me the cost of the interchange proposal will cost his bank \$19,000 a year," Roberts said. "Two other banks that serve multiple rural communities will see increased costs per year of more than \$46,000 and \$100,000 respectively. Other banks, including banks in my state, estimate the cost to be in the millions."

Barney Frank credits the work of the small banks with giving Wall Street a shot at winning. And every other lawmaker HuffPost spoke to who supports the bank position, on both sides of the aisle, specifically cited sympathy for credit unions and community banks as a justification for their vote.

When the American Bankers Association, which represents banks of all sizes, held its mid-March meeting at in Washington, swipe fees were the group's top legislative target. ABA COO Michael Hunter coached a packed hotel ballroom of small bankers about ways to plead their case on Capitol Hill -- focus on staffers, Hunter said, noting that actual members of Congress might not remember their names or be fluent on the swipe fee issue.

But here's the rub: Banks with less than \$10 billion in assets are [explicitly exempted from the new swipe fee rules](#) anyway -- they will continue to be able to charge whatever they want once the Fed's new rules go into effect. It's the mega-banks that issue most of the cards and stand to lose the most from swipe fee caps, but given the atmospherics around the battle they appear to be more than happy to let hundreds of community bankers be the face of their cause.

**Total Electronic Payment Coalition PAC Contributions By Organization (Jan-Mar)**



*Chart by Sunlight's Paul Blumenthal*

**"The Best Of Intentions"**

Sen. Tom Carper (D-Del.) is a cosponsor of Tester's bill, voted against the original Durbin amendment and is working to persuade his fellow Democrats to roll it back. Carper is also a case study in Washington's penchant for verbal gymnastics. In the District, when lobbyists and politicians find themselves on the wrong side of public opinion, they inevitably fall back on the most over-used phrases on K Street: things like "best of intentions" and "unintended consequences." In a brief interview with HuffPost, Carper uses both phrases three times each.

"More times than I want to think about, I've had the best of intentions on trying to do something and I create unintended consequences. What our colleagues need to know is despite the best of intentions there are unintended consequences. And despite the best of intentions, the unintended consequences merit hitting the pause button," he says of the need to delay Durbin's rules.

The strategy to persuade undecided members unmoved by unintended consequences, Carper and bank lobbyists say, is to reduce the delay in adopting fees from two years to one. Several senators from both parties tell HuffPost that such a change would probably be enough to secure their vote.

Tester already tried to lock down the matter last month when he made it clear he planned to bring his amendment up for a vote while the Senate was debating a small business bill. The target day was Thursday,

March 31. It was the last day of the first quarter, good timing for members of the Senate looking to pad their fundraising totals. Tester began the day on CNBC's "Squawk Box," promising that he had more than enough votes while fuming that "the unintended consequences could be disastrous, particularly for rural America," if Wall Street lost the fight against Durbin.

Tester was bluffing. He didn't yet have the votes and never called up his amendment, leaving the floor to Durbin to lecture Wall Street about attacking his friend Rich Niemann. That evening, Renee Ellmers went to the House floor to take her name off the Tester companion bill.

Wall Street regrouped, attacking the next day from the right, [sending around a letter](#) signed by anti-tax advocate Grover Norquist; leading Tea Party groups Freedom Works and Americans for Prosperity; the Christian Coalition; and a host of other eclectic conservative groups, all calling for Congress to delay implementation of Durbin's amendment.

Bob Corker, Tester's Republican companion on the bill, says that though the climate last year was favorable to the merchants, times have changed. "People kind of got caught up in the moment," says Corker of the 64 yes votes on the Durbin amendment, as if voting to restrict swipe fees was like smoking pot in the '70s. But the banks are building momentum. "I do think there's more and more awareness of how bad of a policy it was," he says, "especially hearing from the regulators, when the regulators are saying, 'Please don't make us do this!'"

Corker concludes: "The more people understand the actual policy and the unintended consequences, the better it is for the actual bill."

Most members of Congress who say they're either on the fence or siding with the banks cite Federal Reserve Chairman Ben Bernanke's February comments indicating that small banks may not be exempted from swipe fee caps. Regulators at the FDIC, including its head, Sheila Bair, who is generally unsympathetic to big-bank carping, have also said that small banks may not ultimately be exempted.

Durbin is furious with the regulators. "All I can say is that Bair and Bernanke, who I respect, have spent a lifetime around banks and bankers," he says, taking unusually direct aim at the motivations of the nation's top central banker. "I'd met with him early on, and he never said one word to me that this couldn't be done." Durbin says he sent Bernanke a letter to challenge his position and also spoke with him personally about it.

Bernanke very nearly failed to be reconfirmed as Fed chairman last year, having overseen the worst financial disaster since the Great Depression. Durbin's last-minute support of Bernanke, which brought in progressive votes that helped push him over the top, came because the chairman promised to put more Fed

focus on consumers and less on banks.

“Bernanke was having a tough time going through the process in the Senate for reappointment. He sat in my office and told me, ‘We’re going to be more focused on consumers,’” Durbin recalls. “Here comes this issue right out of the box and the first thing he does is side with the big banks and credit card companies.”

Barney Frank gave the banks a major bump with his response to Bernanke’s pessimism. “I support legislative action to postpone the deadline so that we can revisit it,” he said in a statement that went out on April 5, which also cited the Fed’s position -- a position the chairman has [since softened](#), citing new credit card company-issued rules that create a two-tiered market to exempt small banks.

Frank’s statement stunned Dennis Lane, the 7-Eleven owner. Lane had stood beside Frank in the Capitol at a celebratory press conference after the financial reform bill passed last summer. He was invited by the White House to the signing ceremony. And he was back in Washington on March 30, trying to make sure the banks didn’t roll back the law he’d helped pass. He and a handful of retailers met in a room in the Capitol with Frank, who told them in clear terms he “did not support delay or repeal,” Lane says in an account confirmed by Frank.

Lane and other retailers met with Frank again on April 7 to find out what had changed. This time, in Frank’s office, the congressman told them that as a result of Bernanke’s comments, he was open to some delay, an account that Frank again confirms. “That really shocked me, because I believed this was the Dodd-Frank Act,” says Lane. “He said he wanted to make it crystal clear that he did not support repeal... the essence of what he said is that he was concerned that the Federal Reserve needed more time.”

Frank says that Bernanke and Bair’s hesitation have made them the driving forces behind the push for delay. “Once Bair and Bernanke said they didn’t think the small banks and the credit union exemption would work, they’ve become the major players,” he says.

“I want to take the Fed at its word and give them three months and a broader mandate. I don’t want to see it totally disappear,” Frank adds. Asked about his meeting with the merchants, he confirms what he said to Lane, but acknowledges that the details matter less than the fact he’s supporting some type of delay.

Durbin is as exasperated by Frank as he is by Bernanke. “I don’t understand it,” he says. “I wrote him a letter and asked him, what are you-- asked him, ‘What are you doing?’ We had long talks when we were writing this thing, worked on it together.”

Bank lobbyists think that having Frank on the side of delay will allow them to push the bill through the Financial Services Committee -- whose chairman, Rep. Spencer Bachus (R-Ala.), is the leading recipient of bank money this year -- with overwhelming support sometime in the spring. On the floor, the banks are confident they have the votes, working the Tea Party freshmen with twin anti-Fed, pro-free market arguments.

The fight for the remaining votes is hand-to-hand combat. Frank says that community bankers tend to be more effective than the Wall Street guys, but nobody’s better than an entrepreneur. “That’s why the realtors always beat the bankers,” [Frank said](#) in an interview during the Wall Street reform fight. “The bankers sit and they go [Frank makes a dour face, leans back in his chair and tightly folds his arms, miming an aloof posture]. The realtors are out there joining the Kiwanis and sponsoring little league.” That’ll give them momentum going to the House floor, they hope, for a vote timed for late July, the deadline for implementation of the rule.

In the runup to this vote, both banks and merchants have swarmed Hill staffers with a seemingly endless barrage of meetings on swipe fees.

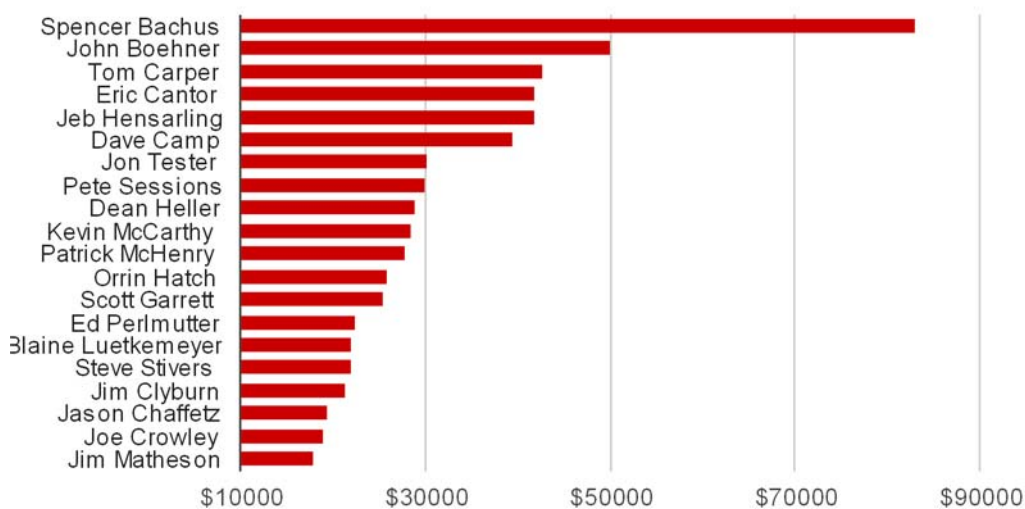
In February, BofA Associate General Counsel Karl Kaufman held a private briefing for staffers on the Financial Services Committee. The Merchant Payments Coalition, a retailer group, gave their own briefing. House staffers were also treated to a separate private briefing that included both sides debating each other.

On the Senate side, things could move more quickly, as Carper noted. When the Senate returns next week, the climate may be right for a vote. Even if banks come up short, the vote will give them a firmer count of just who is on their side and who still needs to be worked.

Durbin acknowledges that Tester is gaining traction. “It is true that Tester’s picked up a few votes, there’s no question about it,” he says. Asked about bank lobbyist claims that they have close to 60 votes, he pushes back. “We started at 64, and some members are gone now but the starting point on this is strong. I’m not gonna sit here and boast about where we are, [but] the banking side of this equation tends to exaggerate their position.”

And while Durbin holds the advantage, he’s also hemorrhaging votes. Since he’s defending existing law, he only needs to keep 41 votes in his pocket to filibuster any change. Based on Capitol Hill interviews, however, at least 11 Democrats who backed Durbin are now either undecided, voting with Tester, or have been replaced by members who may vote differently. An additional seven Durbin-voting Republican supporters are also now explicitly on the fence and an eighth, John Ensign of Nevada, is resigning in disgrace. His likely replacement, Rep. Dean Heller, has been a top recipient of bank money. Losing them all would take Durbin down from [64 votes](#) to 45 -- meaning that a few more GOP defections could give Wall Street the win.

Top 20 Recipients of PAC Contributions from Electronic Payments Coalition Members |



*Chart produced by Sunlight's Paul Blumenthal*

Democrat Joe Manchin (D-W.Va.) could wind up being the deciding vote on the swipe fee bill. On the morning of April 14, Manchin booked a big room in the Senate Hart Office Building more often used for hearings than for lobbying -- a symbol of how thoroughly business fights have come to dominate the agenda, that they now must be waged in hearing rooms with the doors closed. Manchin was undecided as the meeting broke up.

On April 18, while Congress was in recess, credit unions flooded Hill staffers with scripted phone calls from customers worrying that the Durbin amendment will kill their rewards points. The [bank lobby](#) named April 21, the deadline the Fed missed, "Save My Debit Card Day" and launched a [Twitter campaign](#) using the hashtag #savemydebitcard. The mid-March ABA convention in Washington prompted the type of personal glad-handing that lands cosponsors for bills. It was one of at least three major bank fly-ins since February.

The merchants have been everywhere, too. Five-hundred restaurant owners flew in last week; 7-Eleven owners, [a Hill staple](#) during the initial fight, came the week before that. Grocers and beer wholesalers have also visited.

The next few weeks and months could mean millions for merchants like Rich Niemann if Durbin can hold back the banks. But just how much of that money his customers will see in lower prices is in dispute. On the Senate floor, he boasts of having the backing of a major consumer group. “You see, our reform efforts are not just supported by the businesses. They are supported by the Consumer Federation of America, the

largest consumer advocacy group in the United States,” he said on the Senate floor March 30. “CFA does not support delaying implementation of the new law.”

That wording was artful. CFA doesn’t support Tester’s bill. [But it doesn't oppose it either.](#) “CFA did not take a position on the ‘Durbin Amendment’ to the Dodd-Frank Wall Street Reform and Consumer Protection Act and has also not supported or opposed legislation introduced in Congress to delay the law.”

Whatever happens the next few weeks or months, Charlie Chung of Cups & Co. isn’t confident that he’ll wind up paying less money to the banks. He guesses that the banks will find a way to increase unregulated fees: “It’s like, you’d scratch your head, ‘I thought they were going to charge me two cents per transaction?’”

Mark Pryor, one of the senators from Walmart, is equally pessimistic that consumers will see any benefit. “Either way, the consumer probably ends up paying for it,” he says. “They’ll get you. You’re going to pay for it one way or another.”

*Elise Foley contributed reporting*

*This story was updated to clarify the role of Cornerstone Government Affairs*