

simply stopped production. They decided it was not profitable enough to keep producing them.

Instead of low price, and lower profit, generic drugs, companies are looking at more expensive brandname drugs. Mergers in the drug industry have narrowed the focus of product lines. As a result, some products are discontinued or production is moved to different sites, leading to delays. When drugs are made by only a few companies, a decision by one drug company can have a huge impact on the market.

To help correct a poor market environment or to prevent gray market drugs from contaminating our medication supply chain, we must address the drug shortage problem at its root. The early notification system that would be established under the Preserving Access to Life-Saving Medications Act and the President's Executive order that is advanced today will help the FDA take the lead in working with pharmacy groups, drug manufacturers, and health care providers to better prepare for impending shortages, more effectively manage shortages when they occur, and minimize their impact on patient care.

Just so you know, the FDA already does this with orphan drugs. When there is only one drug and the drug manufacturer thinks they are going to run out of the drug they do tell the FDA so the FDA can step in and maybe look internationally for another drug. You saw that happen with the H1N1 virus. When we had a short supply they went to other countries. They are allowed to do that now, but manufacturers are not required to do it in some of the situations we are encountering now with those 178 drug shortages. That is what our bill does. It basically says if you see a drug shortage coming down the pipe because one or a number of these factors is present, you have to let the FDA now know. You have to work with the FDA because they have successfully averted dozens of drug shortages this year.

We do not pretend this is going to solve everything, but at least it is something we can do right now which will give the FDA the power to go in there and work with the drug manufacturers and try to find other sources so the person who is doing that is not the parent of a 4-year-old kid with leukemia or a pharmacist who is trying to serve customers at his pharmacy, or a doctor trying to treat patients and she has to get on the phone and call a bunch of hospitals to try to find a drug. It simply does not make any sense at all. This is a national problem, not a problem for a 4-year-old boy.

Our legislation would also direct the FDA to provide up-to-date public notification of any actual shortage situation and the actions the agency would take to address them.

Additionally, the bill requires the FDA to develop an evidence-based list of drugs vulnerable to shortages and to work with the manufacturers to come

up with a continuity of operations plan to address potential problems that may result in a shortage.

The bill would also direct the FDA to establish an expedited reinspection process for manufacturers of a product in shortage. This would allow them to get inspected sooner so we can get the drugs to market. With manufacturers providing early notification, the FDA's drug-shortage team, which already exists, can then appropriately use their tools to prevent shortages from happening. As I mentioned, in the last 2 years the FDA, with early notification and more information, has successfully prevented 137 drug shortages. So this is something that actually works.

While the President's Executive order takes steps toward advancing these goals, he has made it clear we must pass this bill in order to protect patients and ensure consumers they have access to the lifesaving medications they need and deserve. So the Executive order helps, but we still need to pass this bill.

I understand this may be a short-term solution to a long-term problem. That is why I have also been working with several of my colleagues on a bipartisan basis to come up with a broad, permanent solution, one that includes methods to address the root causes of drug shortages. This includes Senator MCCAIN, Senator CORKER, and Senator BURR. I also see Senator BLUMENTHAL here, who has been working on this issue. We have Senators—including Senator CASEY and others—working with the HELP Committee who have been working to get this done. At the urging of this bipartisan working group, the FDA held a public workshop in September that brought together patient advocates, consumer groups, health care professionals, and researchers to discuss the causes and the impact of drug shortages and possible strategies for preventing or mitigating future shortages.

In addition to the working group, I have been speaking with a broad range of stakeholders to try to discover why we have seen such a large number of drug shortages that we have not seen in the past. The facts don't lie, and the numbers don't lie. There has been an enormous increase in the number of drug shortages. This current explosion of shortages appears to be a consequence of a lack of supply of certain products to keep up with a substantial expansion in the scope and demand for these products.

Due to the complex nature of these drug shortages, there is no single or simple solution that would solve all problems. A solution will require everyone involved to play a role in mitigating future drug shortages. We must ensure we have the manufacturing capabilities to keep up with demand. One solution may be to provide tax incentives to manufacturers to continue to make drugs that are on the shortage list or to provide other market incentives, such as including exclusivity

pricing similar to that which we give to manufacturers that make orphan drugs. In addition, I have urged the FDA to improve its communication with patients and providers. This will ensure patients and doctors are not the last to know when there is a shortage. I also favor permanent reimportation of drugs from safe countries, such as Canada. Not everyone involved in this issue thinks that is a good idea, but I can tell you, if we were to allow that, that little 4-year-old boy would not have to look at flights to Canada.

One thing is clear: This is a national public health crisis that must be addressed. The President's actions today will provide additional tools to address drug shortages, but more must be done. I will continue to work with my colleagues in the bipartisan working group for a broad permanent solution. I will also continue to work with Senator CASEY, with the Presiding Officer, and with all of the other Senators involved in this, including Senator SUSAN COLLINS, to get our legislation passed. It is common sense. It is not over the top. It simply takes a tool that is used now to avert drug shortages for orphan drugs and expands it so that other drug manufacturers, when they have drugs that are going to experience a shortage, are required to notify the FDA. It gives the FDA that little extra time, whether it is 1 month, 6 months, or 1 year, to look for the drug in other locations. I think it would give us some insight into what is actually going on here so we can fix this.

I yield the floor.

The PRESIDING OFFICER (Mr. BLUMENTHAL). The Senator from Nebraska.

#### HONORING OUR ARMED FORCES

PETTY OFFICER FIRST CLASS CALEB NELSON

Mr. JOHANNNS. Mr. President, I rise today to honor a fallen hero, Petty Officer First Class Caleb Nelson of Omaha, Nebraska. Petty Officer Nelson died on October 1, 2011, when his vehicle was struck by an explosive device in Afghanistan. He was on combat patrol with fellow SEAL team members when the attack occurred. His desire to succeed and help others led him to military service.

For Caleb, it had to be the best. For him, that was the Navy SEALs. Military commanders trusted Petty Officer Nelson's judgment and his commitment. He was typically assigned a leading role on search missions, placing the lives of many SEALs in his capable hands. Caleb was in the lead position when he was killed.

The decorations and badges earned during his distinguished service speak to his dedication and to his skill—The Bronze Star with Valor, the Purple Heart, the Navy and Marine Corps Achievement Medal, the Combat Action Ribbon, the Good Conduct Ribbon, the National Defense Medal, the Iraq Campaign Medal, the Afghanistan Campaign Medal, the Global War on

Terrorism Medal, the Sea Service Ribbon (2 awards), the NATO Service Medal, the Expert Rifle Ribbon, and the Expert Pistol Ribbon.

Although Caleb's life was cut short, he had a wide circle of friends and touched the lives and hearts of many. His dynamic and energetic personality caused people to look to him as a motivator and as a mentor. Those who knew him recall his deep faith in Christ, his strong interest in physical fitness, and a focus on getting things done. Throughout his life, Caleb grew in his Christian faith and quickly became a rock of support for others. No problem was too small to lay before Caleb.

There was also an unrelenting love for family dwelling inside this tough, physically fit SEAL. His wife Anna and his sons, David and Kyle, meant everything to him. When Caleb wasn't training or on assignment, he was with them. Caleb also benefited from a strong relationship with his loving parents, Larry and Barb, his nine siblings, and a faithful community of fellow believers who admired his strength, his compassion, and his leadership.

Today, I ask that God be with the family and friends of Caleb Nelson and bring them comfort during this very difficult time. Their faith is strong, so I know they will join me in seeking God's blessings on those currently serving in uniform, especially those involved in combat operations.

May God bless our servicemembers and their families and bring them home safely.

The PRESIDENT. The Senator from Illinois.

#### SWIPE FEE REFORM

Mr. DURBIN. Mr. President, we are at a significant moment in the relationship between the banking industry on Wall Street and businesses and consumers on Main Street all across America. This could be, in the words of Malcolm Gladwell, a "tipping point," and it could lead to a much more balanced relationship in the future.

It is interesting how we reached this point. There was a time not that long ago when Wall Street and Main Street both played by the same rules. Banks and businesses sold goods and services to consumers in a competitive market environment with transparent prices. Banks performed and still perform a valuable function in our economy, providing capital and liquidity. Businesses, of course, in the sale of goods and services are generating the activity that fuels our economy. They were complementary. They worked with one another.

The successful banks and businesses were the ones that were more efficient than their competitors. They offered better products, better prices. This system, characterized by transparency, competition, and choice worked well for everyone: consumers, banks, businesses, all their customers. It was the

basis for a free market economy and a great nation.

In recent years, and particularly after the repeal of Glass-Steagall, though, things changed. Banks started moving to a new role beyond capital and liquidity. The level of profitability and the activities of the banks started moving in many different directions. Instead of practicing transparency and competition, many banks started cutting corners, imposing fees, raising interest rates, and basically creating policies that were very difficult for even their most loyal customers to follow. That was a situation which had gotten out of hand.

We saw hidden fees pop up left and right, such as overdraft fees on checking accounts that went completely beyond any reasonable penalty for a person who is guilty of that conduct, and sudden interest rate changes on credit cards. Consumers many times did not even know they were being charged the fees until it was too late, and the banks figured if all the banks did it consumers would have no choice. They had to live with it.

Perhaps no fee better characterized the absence of transparency and competition than the interchange fee, or the swipe fee. This is a fee that banks receive from merchants and retailers each time a person uses a debit card or a credit card. It is a fee unlike any other. With most fees we see one fee rate charged by one bank, such as Bank of America, another rate by another bank, Wells Fargo or Chase or whatever it happens to be. But with interchange fees, all banks receive the same fee rate. There is no competition.

The banks realized that competition holds fee rates down. So they went to Visa and MasterCard—and on debit cards Visa has around 80 percent of the debit card business—and said to them: You can set, you can dictate the interchange fees the banks will collect. And they did.

This duopoly, these two major credit card giants, Visa and MasterCard, set fees for all of the banks issuing their cards across America. This has been a huge moneymaker for the banks. Banks make an estimated \$50 billion a year in debit and credit card interchange fees, and because there is no competition and no negotiation with the retailers Visa and MasterCard reward their big bank allies with higher fee rates every single year, even as the cost of processing these transactions continues to go down.

Swipe fees have become a huge and growing burden for Main Street businesses and customers, and American families ultimately pay the price in the form of higher costs for groceries and gasoline.

I think of Potash Supermarket. I have talked about it on the Senate floor many times. Art Potash has become a buddy of mine, second or third generation owning this supermarket near North Chicago. He is not as big as the big boys, Dominicks, Jewel, and

the others, but, boy, what a nice store he has.

Art came to me years ago and said: They are killing me. The debit card sweep fees are killing me. It is the second or third most expensive item when I put together the cost of my business, and it is out of control. I have no control over it.

Art was one of the people, he and Rich Neimann down at Quincy, IL, retailers, businessmen who got me started on this. Well, it is interesting. Something is happening out there in America. It could be that the era of some of these banking practices is coming to an end. Maybe we are reaching a tipping point.

In 2009, Congress passed credit card reform that reined in sudden interest rate changes, and regulators placed curbs on abusive overdraft fees. Of course, the credit card companies and the banks screamed bloody murder: Too much government. Too much regulation.

We did not listen to them. We listened to American families and consumers. Last year, Congress passed a Wall Street reform bill, and we created a new Consumer Financial Protection Bureau and placed reasonable limits on Visa and MasterCard swipe fee price fixing. No surprise. The banks cried bloody murder. They do not want to make a penny less than they made in the last quarter, even if their past profits were inflated by hidden fees and anticompetitive practices.

So now big banks are looking for new ways to squeeze their customers in order to maintain their record profits and ten-figure executive bonuses. But in the past week, something interesting has happened in America. After years of raising fees on the customers without much resistance, several of the biggest banks tried to stick it to their customers again with a new monthly debit card fee. The consumers of America noticed, stood up, and said: No way.

After Bank of America, Wells Fargo, and several other big banks announced these new debit fees, their customers began voting with their feet. New account openings at credit unions and community banks surged in many cases by 20 to 50 percent.

I am sure that is good news to my colleague from Iowa to know that there is more business at the community banks and credit unions of Iowa, leaving the Wall Street banks and coming home to Iowa. It is good news in Illinois.

Consumers have been emboldened. They are now saying they will only do business with banks that care about serving them instead of squeezing them. This has been a great development for consumers. It has also been great for those small banks and credit unions which we value so much in the Midwest who have never stopped playing by the rules and have always valued their customers and their communities.

Now, November 5 is coming. It turns out to be a day I was not previously