

June 23, 2010

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The undersigned organizations representing the spectrum of American business are writing to oppose the legislation introduced as the Democracy Is Strengthened by Casting Light on Spending in Elections Act, H.R. 5175 (the “DISCLOSE Act,” or “Schumer – Van Hollen”). This legislation is a threat to the First Amendment rights of businesses across the country. It represents a significant departure from past campaign-finance legislation, which sought to treat unions and corporations comparably and was framed in a genuinely bipartisan manner.

Our organizations are among the nation’s leading trade associations and business groups. Together we represent virtually the entire range of American industry, including thousands of small and medium-sized businesses. We provide a variety of services to our member companies, including apprising them of important legislative and regulatory developments, and giving voice to their views on matters of public importance.

The Schumer – Van Hollen bill and the manager’s amendment expected to be offered on the House floor have been crafted to disadvantage a specific category of speaker: for-profit corporations and the associations that represent them. The legislation places onerous restrictions on corporate free speech while ignoring unions’ immense political influence. Like the “card check” bill, this legislation changes election rules to give one side the upper hand.

The legislation’s sponsors admit that the bill’s purpose is to deter corporations from participating in the political process. Senator Schumer has said the bill will make corporations “think twice” before attempting to influence election outcomes, and that this “deterrent effect should not be underestimated.”

This is a direct assault on rights protected by the First Amendment, which the Supreme Court has said “has its fullest and most urgent application” to speech uttered during a campaign for political office.” *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989). The Supreme Court repeatedly has recognized that voluntary associations are vital participants in our public debate, and that government attempts to curb participation in associations to stifle their voice violate the First Amendment. *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214 (1986); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). The Court also has recognized that it violates the First Amendment for the government to engage in “differential treatment” of speakers based on their identity or the content of their message. *Citizens United v. FEC*, 130 S. Ct. 876, 906 (2010).

Schumer – Van Hollen flouts all of these principles through a thicket of new regulatory requirements that are intended to stifle corporate speech but will have no meaningful impact on labor unions. Its provisions include a blanket prohibition on election-related speech by certain government contractors. Thousands of corporations regularly participate in contracts with the federal government; under Schumer – Van Hollen, many of them are categorically barred from making their political views known. That prohibition on core political speech is flatly unconstitutional and directly inconsistent with the Supreme Court’s holding in *Citizens United*

that Congress can prohibit political speech only where it has evidence of *quid pro quo* corruption. *Citizens United*, 130 S. Ct. at 910. There is no such evidence.

The bill imposes no comparable restrictions on labor unions that receive federal grants, negotiate collective bargaining agreements with the government, or have international affiliates, even though unions and their political action committees are the single largest contributor to political campaigns and claim to have spent nearly \$450 million in the 2008 presidential race.

The bill's drafters also have carefully calibrated the donor-disclosure requirements to ensure that union members can continue to speak anonymously, while corporate donors will be "outed." The legislation would require corporations and labor unions to report donors who have given as little as \$600 during the year. § 211(a). Because the average union member pays annual dues beneath that threshold—the average dues of the fifteen largest U.S. labor unions were less than \$400 in 2004—most unions would not be required to disclose donors' identities even when they spend millions of dollars on political advertising. The bill's so-called "stand by your ad" requirements for television and radio are an additional, onerous mechanism for people in power to intimidate corporations and silence criticism.

Schumer – Van Hollen's discriminatory treatment of corporations stands in stark contrast to prior campaign-finance legislation, such as McCain-Feingold, in which Congress went to great lengths to treat corporations and unions equally. As noted, this discriminatory treatment is also impossible to reconcile with Supreme Court precedent proscribing "differential treatment" of speakers. *Citizens United*, 130 S. Ct. at 906.

Supporters of the bill claim these provisions are necessary for voters to know who is paying for political advertising. But our organizations and the interests we represent are no secret; we already identify ourselves in political advertisements under current law. The real intent is to force concerned corporations out in the open so they cannot express views about an incumbent member of Congress without fear of reprisal. To quote a 1996 article by the President's nominee for the Supreme Court, Elena Kagan, "Campaign finance laws . . . easily can serve as incumbent-protection devices, insulating current officeholders from challenge and criticism. When such laws apply only to certain speakers or subjects, the danger of illicit motive becomes even greater" That is the case here.

By attempting to silence corporations' voice in the political process while enabling unions to retain their enormous influence, Schumer – Van Hollen is a patently unconstitutional threat to the elections process. Its partisan intent is also clear. The bill's principal sponsor in the House is head of the Democratic Congressional Campaign Committee; its other principal sponsor held the equivalent position in the Senate until recently. The sponsors have openly admitted their intent to enact the bill quickly to influence the fall elections.

Schumer – Van Hollen is a direct attack on the rights of the business community and the role our organizations play in the national political dialogue. We urge you to oppose this unconstitutional legislation.

Sincerely,

Affiliated Chambers & Business Organizations of Hawaii

Agricultural Retailers Association

Airforwarders Association

Albany Area (GA) Chamber of Commerce

Albany Area (OR) Chamber of Commerce

Alexander City Chamber of Commerce

American Apparel & Footwear Association

American Architectural Manufacturers Association

American Association of Exporters and Importers

American Bakers Association

American Chamber of Commerce Executives

American Chemistry Council

American Council of Engineering Companies

American Foundry Society

American Frozen Food Institute

American Gas Association

American Hotel and Lodging Association

American Insurance Association

American Lighting Association

American Meat Association

American Moving & Storage Association

American Petroleum Institute

American Trucking Associations

American Watch Association

Anaheim Chamber of Commerce

Arizona Chamber of Commerce & Industry

Arizona-New Mexico Cable Communications Association

Arkansas State Chamber of Commerce/Associated Industries of Arkansas

Associated Builders & Contractors of Western Washington

Associated Builders and Contractors, Inc.

Associated Equipment Distributors

Associated Food Stores, Inc

Associated General Contractors

Associated General Contractors of California (AGC)

Associated Industries of Massachusetts

Associated Oregon Industries

Associated Wire Rope Fabricators

Association Benefits Corporation

Association of Commerce & Industry of New Mexico

Association of the Nonwoven Fabrics Industry

Association of Washington Business
Automotive Parts Remanufacturers Association
Barrington Area Chamber of Commerce
Bismarck Mandan Chamber of Commerce
Boise Metro Chamber of Commerce
Brawley Chamber of Commerce
Brea Chamber of Commerce
Brick Industry Association
Buckeye Valley Chamber of Commerce
Buffalo Niagara Partnership
Builders Exchange Inc.
Building Owners and Managers Association International
Bullhead Area Chamber of Commerce
Business Coalition for Fair Competition
Business Council of Alabama
Business Roundtable
Cabarrus Regional Chamber
California Chamber of Commerce
California Retailers Association
Camarillo Chamber of Commerce
Canandaigua Chamber of Commerce
Catoosa County Chamber of Commerce
Cedar City Area Chamber of Commerce
CenTex Chapter IEC
Central Alabama Chapter IEC
Central Indiana IEC
Central Louisiana Chamber of Commerce
Central Missouri IEC
Central Ohio AEC/IEC
Central Ohio Chapter Associated Builders & Contractors, Inc.
Central Pennsylvania Chapter IEC
Central Washington IEC
Centre County IEC
Cerritos Regional Chamber of Commerce
Clovis Chamber of Commerce
Columbus Area Chamber of Commerce
Construction Industry Round Table (CIRT)
Consumer Electronics Association
Crop Protection Association of North Carolina
Destination Marketing Association International

Direct Marketing Association
Draper Utah Chamber of Commerce
East Tennessee IEC
Eastern Washington Chapter, IEC
Eau Claire Area Chamber of Commerce
Edison Electric Institute
El Centro Chamber of Commerce & Visitors Bureau
Equipment Marketing & Distribution Association
Federation of American Hospitals
Flagstaff Chamber of Commerce
Florida Chamber of Commerce
Florida Fertilizer & Agrichemical Association
Foundry Association of Michigan
Fremont Area Chamber of Commerce
Fullerton Chamber of Commerce
Futures Industry Association
Gateway Chambers Alliance
Georgia Industry Association
Georgia Mining Association
Gillette Chamber of Commerce
Greater Durham Chamber Chamber of Commerce
Greater Effingham Chamber of Commerce & Industry
Greater Fresno Area Chamber of Commerce
Greater Irving-Las Colinas Chamber of Commerce
Greater Montana IEC
Greater New Haven Chamber of Commerce
Greater Phoenix Chamber of Commerce
Greater Springfield Chamber of Commerce
Green Bay Area Chamber of Commerce
Gwinnett Chamber of Commerce
Hampton Roads Chamber of Commerce
HARDI - Heating, Airconditiong & Refrigeration Distributors International
Henderson Nevada Chamber of Commerce
Hilton Head Island – Bluffton Chamber of Commerce
Howard County Chamber of Commerce
Huntington Regional Chamber of Commerce
Huron County Chamber of Commerce
IEC Atlanta Chapter
IEC Chesapeake
IEC Dakotas, Inc.

IEC Dallas Chapter
IEC Florida West Coast
IEC Fort Worth/Tarrant County
IEC Georgia Chapter
IEC Greater St. Louis
IEC Hampton Roads Chapter
IEC National
IEC NCAEC
IEC New England
IEC of Arkansas
IEC of East Texas
IEC of Greater Cincinnati
IEC of Idaho
IEC of Illinois
IEC of Kansas City
IEC of Northwest Pennsylvania
IEC of Oregon
IEC of Southeast Missouri
IEC of Texoma
IEC of the Bluegrass
IEC of the Texas Panhandle
IEC of Utah
IEC Southern Arizona
IEC Southern Colorado Chapter
IEC Southern Indiana Chapter-Evansville
IEC Texas Gulf Coast Chapter
IEC Western Reserve Chapter
IEC, Inc. El Paso Chapter
IEC, Inc. Lubbock Chapter
IEC, Inc. San Antonio Chapter
IEC, South Florida Chapter, Inc.
IECA Kentucky & S Indiana Chapter
IECA of Arizona
IECA of Nashville
IECA of Southern California, Inc.
IEC-OKC, Inc.
Independent Electrical Contractors, Inc
Indiana Cast Metals Association
Indiana Chamber of Commerce
Inland Pacific Chapter Associated Builders & Contractors

International Association of Amusement Parks and Attractions
International Dairy Foods Association
International Foodservice Distributors Association
International Franchise Association
International Housewares Association
ISSA - The Worldwide Cleaning Industry Association
Johnson City Chamber of Commerce
Johnson City-Jonesborough-Washington County Chamber of Commerce
Kailua Chamber of Commerce
Kankakee Regional Chamber of Commerce
Kansas Chamber of Commerce
Kansas Food Dealers Association
Kentucky Chamber of Commerce
Kingdom of Callaway Chamber of Commerce
Lake Havasu Chamber of Commerce
Laredo Chamber of Commerce
Little Rock Regional Chamber of Commerce
Los Angeles Area Chamber of Commerce
Louisiana Association of Business and Industry
Lubbock Chamber of Commerce
Lynchburg (VA) Regional Chamber of Commerce
Management Association for Private Photogrammetric Surveyors
Marine Retailers Association of America
Maryland Chamber of Commerce
McLean County (IL) Chamber of Commerce
MEC IEC of Dayton
Metals Service Center Institute
Michigan Chamber of Commerce
Middle Tennessee Chapter - Associated Builders and Contractors, Inc.
Mid-Oregon Chapter IEC
Mid-South Chapter IEC
Midwest IEC
Mississippi Chapter - Associated Builders and Contractors, Inc
Missouri Chamber of Commerce and Industry
Mobile Area Chamber of Commerce
Modesto Chamber of Commerce
Montana Chamber of Commerce
Montana IEC
Montgomery Area Chamber of Commerce (AL)
Montgomery County (PA) Chamber of Commerce

Morrisville Chamber of Commerce
Mount Vernon-Lee Chamber of Commerce
National Association of Chemical Distributors
National Association of Home Builders
National Association of Manufacturers
National Association of Mutual Insurance Companies
National Association of Printing Ink Manufacturers, Inc.
National Association of Wholesaler-Distributors
National Federation of Independent Business
National Grain and Feed Association
National Marine Distributors Association
National Marine Manufacturers Association
National Mining Association
National Paper Trade Association
National Poultry & Food Distributors Association
National Ready Mixed Concrete Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
National Stone, Sand, and Gravel Association
Nebraska Agri-Business Association
New Jersey IEC
New Jersey Motor Truck Association
Niagara USA Chamber
North American Equipment Dealers Association
North Dakota Chamber of Commerce
North Las Vegas Chamber of Commerce
Northern Kentucky Chamber of Commerce
Northern New Mexico IEC
Northern Ohio ECA
NW Washington IEC
Ohio Cast Metals Association
Oklahoma Agribusiness Retailers Association
Oshkosh Chamber of Commerce
Otsego County Chamber
Outdoor Power Equipment and Engine Service Association
Oxnard Chamber of Commerce
Palm Desert Chamber of Commerce
Pennsylvania Chamber of Business and Industry
Pennsylvania Foundry Association

Perry Area Chamber of Commerce
Petroleum Equipment Institute
Plattsburgh-North Country Chamber of Commerce
Printing Industries of America
Public Service Research Council
Puerto Rico Chamber of Commerce
Puget Sound Washington Chapter IEC
Pullman Chamber of Commerce
Regional Black Chamber of Commerce SFV
Renewing American Leadership
Reno Sparks Chamber of Commerce
Retail Grocer's Association of Kansas City
Retail Industry Leaders Association
Rhode Island Chamber of Commerce Coalition
Rio Grande Valley IEC, Inc
Rocky Mountain Agribusiness Association
Rocky Mountain Chapter - Associated Builders and Contractors, Inc.
Rocky Mountain Chapter IEC
Rome Area Chamber of Commerce
Rowan County Chamber of Commerce
Salisbury Area Chamber of Commerce
San Jose Silicon Valley Chamber of Commerce
Schuylkill Chamber of Commerce
Scottsdale Area Chamber of Commerce (AZ)
Small Business & Entrepreneurship Council
Society of American Florists
South Carolina Fertilizer & Agrichemicals Association.
Southeast Pennsylvania Chapter - Associated Builders and Contractors, Inc.
Southeast Texas Chapter - Associated Builders and Contractors, Inc.
Southern Crop Production Association
Southern New Mexico IEC
St. George Area Chamber of Commerce
Tempe Chamber of Commerce
Tennessee Chapter, Associated Builders and Contractors, Inc.
Texarkana USA Chamber of Commerce
Texas Association of Business
Texas State IEC
Textile Care Allied Trades Association
The American Financial Services Association
The Business Council of New York State, Inc.

The Business Council of Westchester
The Chamber of Commerce of West Alabama
The Chamber of Commerce serving Middletown, Monroe, and Trenton (OH)
The Chamber of Medford/Jackson County
The Colorado Association of Commerce and Industry
The Greater Elkhart Chamber of Commerce
The Greater York Region Chamber of Commerce
The Lodi District Chamber of Commerce
The Remanufacturing Institute
The State Chamber of Oklahoma
Transportation Intermediaries Association
Tri State IEC
Tri-City Regional Chamber of Commerce
Truck Renting and Leasing Association
Tucson Metropolitan Chamber of Commerce
U.S. Chamber of Commerce
U.S. Travel Association
Warren County Regional Chamber of Commerce
Washington Automotive Wholesalers Association
WECA IEC
Western Colorado IEC
Wichita Chapter IEC
Winston-Salem Chamber of Commerce
Wisconsin Crop Production Association
60 Plus Association