

May 27, 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 has been crafted to disadvantage a specific category of speaker: for-profit corporations and the associations that represent them. It places onerous restrictions on corporate free speech while ignoring unions’ immense political influence. Like the “card check” bill, it 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,

Agricultural Retailers Association
American Apparel & Footwear Association
American Architectural Manufacturers Association
American Bakers Association
American Chamber of Commerce Executives
American Chemistry Council
American Council of Engineering Companies
The American Financial Services Association
American Foundry Society
American Gas Association
American Hotel and Lodging Association
American Insurance Association
American Lighting Association
American Meat Association
American Petroleum Institute
American Trucking Associations
American Watch Association
Arizona Chamber of Commerce & Industry
Arizona-New Mexico Cable Communications Association
Arkansas State Chamber of Commerce/Associated Industries of Arkansas
Associated Builders and Contractors, Inc.
Associated Builders & Contractors of Western Washington
Association Benefits Corporation
Associated Equipment Distributors
Associated Food Stores, Inc
Associated General Contractors
Associated General Contractors of California (AGC)
Association of Washington Business
Associated Oregon Industries
Automotive Parts Remanufacturers Association
Bismarck Mandan Chamber of Commerce
Boise Metro Chamber of Commerce
Brick Industry Association
Business Roundtable
Business Coalition for Fair Competition
Builders Exchange Inc.
California Retailers Association
CenTex Chapter IEC
Central Alabama Chapter IEC
Central Indiana IEC
Central Missouri IEC
Central Ohio AEC/IEC
Central Pennsylvania Chapter IEC
Central Washington IEC
Centre County IEC
Central Ohio Chapter Associated Builders & Contractors, Inc.

Construction Industry Round Table (CIRT)
Destination Marketing Association International
East Tennessee IEC
Eastern Washington Chapter, IEC
Edison Electric Institute
Equipment Marketing & Distribution Association
Federation of American Hospitals
Florida Fertilizer & Agrichemical Association
Foundry Association of Michigan
Futures Industry Association
Georgia Industry Association
Georgia Mining Association
Greater Irving-Las Colinas Chamber of Commerce
Greater Montana IEC
HARDI - Heating, Airconditioning & Refrigeration Distributors International
Hilton Head Island – Bluffton Chamber of Commerce
Huntington Regional 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
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-Jonesborough-Washington County Chamber of Commerce
Kansas Chamber of Commerce
Kansas Food Dealers Association
Kentucky Chamber of Commerce
Los Angeles Area Chamber of Commerce
Little Rock Regional Chamber of Commerce
Management Association for Private Photogrammetric Surveyors
Marine Retailers Association of America
Maryland Chamber of Commerce
MEC IEC of Dayton
Metals Service Center Institute
Mid-Oregon Chapter IEC
Mid-South Chapter IEC
Middle Tennessee Chapter - Associated Builders and Contractors, Inc.
Midwest IEC
Mississippi Chapter - Associated Builders and Contractors, Inc
Mobile Area Chamber of Commerce
Montana IEC
National Association of Chemical Distributors
National Association of Home Builders
National Association of Manufacturers
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 Association of Mutual Insurance Companies
National Paper Trade Association
National Poultry & Food Distributors Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
Nebraska Agri-Business Association
New Jersey IEC
New Jersey Motor Truck Association
Northern New Mexico IEC
Northern Ohio ECA
North American Equipment Dealers Association
NW Washington IEC
Ohio Cast Metals Association
Oklahoma Agribusiness Retailers Association
Outdoor Power Equipment and Engine Service Association
Palm Desert Chamber of Commerce
Pennsylvania Chamber of Business and Industry
Pennsylvania Foundry Association
Petroleum Equipment Institute
Public Service Research Council
Puerto Rico Chamber of Commerce
Puget Sound Washington Chapter IEC
Renewing American Leadership
Retail Grocer's Association of Kansas City
Retail Industry Leaders Association
Rio Grande Valley IEC, Inc
Rocky Mountain Agribusiness Association
Rocky Mountain Chapter - Associated Builders and Contractors, Inc.
Rocky Mountain Chapter IEC
Small Business & Entrepreneurship Council
Society of American Florists
South Carolina Fertilizer & Agrichemicals Association.
Southern Crop Production Association
Southern New Mexico IEC
Southeast Pennsylvania Chapter - Associated Builders and Contractors, Inc.
Southeast Texas Chapter - Associated Builders and Contractors, Inc.
Tennessee Chapter - Associated Builders and Contractors, Inc.
Texas State IEC
Textile Care Allied Trades Association
Tri State IEC
The Remanufacturing Institute
Truck Renting and Leasing Association
U.S. Chamber of Commerce
U.S. Travel Association
Washington Automotive Wholesalers Association

WECA IEC
Western Colorado IEC
Wichita Chapter IEC
Wisconsin Crop Production Association
60 Plus Association