

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