

Congress of the United States
House of Representatives
Washington, DC 20515

May 22, 2012

Mr. Thomas Donohue
President and CEO
U.S. Chamber of Commerce
1615 H Street, NW
Washington, DC 20062

Dear Mr. Donohue:

We are investigating allegations that top Wal-Mart executives “orchestrated a campaign of bribery to win market dominance” in Mexico.¹ As part of this investigation, we sent you a letter on April 25, 2012, raising concerns about reports that two high-level Wal-Mart executives were on the board of the U.S. Chamber of Commerce’s Institute for Legal Reform (ILR), which has advocated changes that would weaken the Foreign Corrupt Practices Act. On May 4, 2012, you sent a response to our letter, which failed to answer any of our questions and provided no information about the relationship between Wal-Mart executives and your organization’s push for changes to the Foreign Corrupt Practices Act.

A new analysis by our staff reveals that Wal-Mart is not the only company represented on the ILR’s board that has faced allegations that it violated the Foreign Corrupt Practices Act. Our review of ILR’s tax filings from 2007 to 2010, member companies’ filings with the U.S. Securities and Exchange Commission (SEC), and other documents reveals that 14 out of 55 ILR board members—almost one in four—were affiliated with companies that were reportedly under investigation for violations or had settled allegations that they violated the Foreign Corrupt Practices Act.²

We are concerned about these apparent conflicts of interest. ILR is a not-for-profit advocacy organization affiliated with the U.S. Chamber of Commerce. In October 2010, it issued recommendations to change the Foreign Corrupt Practices Act that would significantly undermine the law. For example, ILR recommended limiting a company’s liability for the actions of a company it has acquired; adding a “willfulness” requirement for corporate criminal liability; and limiting a parent company’s liability for the acts of its subsidiary.³ Yet nowhere

¹ *Vast Mexico Bribery Case Hushed Up by Wal-Mart After Top-Level Struggle*, New York Times (Apr. 22, 2012).

² *See also Wrangling Over Anti-Bribery Law Rages On, with Top Firms Facing Investigation*, Washington Post (May 8, 2012) (reporting that at least ten firms represented on ILR’s board have been the subject of FCPA probes).

³ U.S. Chamber Institute for Legal Reform, *Restoring Balance: Proposed Amendments*

did ILR disclose that over a dozen of the corporations represented on its board have violated or have been under investigation for violating the Foreign Corrupt Practices Act.

In order to better understand the relationship between ILR and its board members, our staffs reviewed IRS 990 filings for ILR from 2007 to 2010, and identified 55 individuals who served on the ILR board, and compared them to SEC filings, Justice Department announcements, and news reports. These documents indicate that at least 8 ILR board members were affiliated with companies that have been under investigation for potential Foreign Corrupt Practices Act violations. An additional 6 ILR board members were affiliated with companies that have entered into settlements for violating the Foreign Corrupt Practices Act.⁴

For example, Johnson & Johnson, which had company executives on ILR's board from 2007 to 2010, recently agreed to pay penalties of \$70 million to resolve allegations that it paid bribes to "publicly-employed health care providers in Greece, Poland and Romania," dating back to 1998, and paid kickbacks to Iraqi officials under the United Nations Oil for Food program.⁵

In January 2011, Citigroup, which had executives who served as ILR board members from 2005 to 2008, received letters of inquiry from the SEC about potential violations of the Foreign Corrupt Practices Act.⁶ Press reports indicate that the letters were focused on whether

to the Foreign Corrupt Practices Act (Oct. 2010).

⁴ *Pfizer Near Settlement on Bribery*, Wall Street Journal (Nov. 21, 2011); *SEC Probes Banks, Buyout Shops Over Dealings With Sovereign Funds*, Wall Street Journal (Jan. 14, 2011); *Vast Mexico Bribery Case Hushed Up by Wal-Mart After Top-Level Struggle*, New York Times, (Apr. 22, 2012); *SEC Probes Financial Firms on Sovereign Fund Bribes*, Bloomberg News (Jan. 14, 2011); *SEC Eyeing ExxonMobil's Ties to Libyan Sovereign Fund*, Wall Street Journal (June 20, 2011); U.S. Securities and Exchange Commission, *SEC Charges General Electric and Two Subsidiaries with FCPA Violations* (July 27, 2010); U.S. Securities and Exchange Commission, *SEC Files Settled Enforcement Action Against The Dow Chemical Company for Foreign Corrupt Practices Act Violations* (Feb. 13, 2007); U.S. Securities and Exchange Commission, *SEC Files Settled Books and Records and Internal Controls Charges Against Chevron Corporation for Improper Payments to Iraq Under the U.N. Oil for Food Program—Company Agrees to Pay a Total of \$30 Million* (Nov. 14, 2007); Department of Justice, *Three Vetco International Ltd. Subsidiaries Plead Guilty to Foreign Bribery and Agree to Pay \$26 Million in Criminal Fees*, (Feb. 6, 2007); Department of Justice, *Foreign Corrupt Practices Act Review Opinion Procedure Release No. 04-02* (July 12, 2004).

⁵ Department of Justice, *Johnson & Johnson Agrees to Pay \$21.4 Million Criminal Penalty to Resolve Foreign Corrupt Practices Act and Oil for Food Investigations* (Apr. 8, 2011); U.S. Securities and Exchange Commission, *SEC Charges Johnson & Johnson with Foreign Bribery* (Apr. 7, 2011).

⁶ *SEC Probes Banks, Buyout Shops Over Dealings with Sovereign Funds*, Wall Street Journal (Jan. 14, 2011).

they “paid placement agents to win access to the state-owned money” and whether they provided “benefits, including entertainment or travel ... to secure investments or sell securities.”⁷

In late 2011, Pfizer announced that it would pay more than \$60 million as part of an agreement with the Department of Justice and the SEC on behalf of itself and Wyeth, which it acquired in 2009, to settle allegations that it violated the Foreign Corrupt Practices Act by making improper payments in Eastern Europe.⁸

There may be additional board members associated with privately held companies that are not required to report potential violations and generally do not confirm or deny the existence of ongoing investigations. One such company is Koch Industries, which has had a representative on the ILR board since 2007. According to news accounts, Koch Industries reportedly acknowledged that it paid bribes to secure business in Algeria, Egypt, India, Morocco, Nigeria, and Saudi Arabia from 2002 to 2008.⁹

In light of these revelations, we ask that you provide us with a complete response to the questions in our initial letter, as well as the following additional information:

1. All ILR board meeting minutes and other documents discussing the Foreign Corrupt Practices Act;
2. Any ILR guidance or policies relating to board members’ potential conflicts of interest with regard to Foreign Corrupt Practices Act violations, including policies related to recusal where a potential conflict of interest may exist;
3. All communications about potential Foreign Corrupt Practices Act violations or investigations involving board members of either the Chamber or the ILR; and
4. All documents relating to companies that have provided funds to the Chamber or the ILR for work related specifically to the Foreign Corrupt Practices Act.¹⁰

If you have any questions about this request, please contact Una Lee of the Oversight Committee staff at (202) 225-5051 or Tiffany Benjamin of the Energy and Commerce Committee staff at (202) 226-3400. We ask that you respond to this letter by June 4, 2012.

⁷ *SEC Probes Financial Firms on Sovereign Fund Bribes*, Bloomberg.com (Jan. 14, 2011).

⁸ *Pfizer Near Settlement on Bribery*, Wall Street Journal (Nov. 21, 2011).

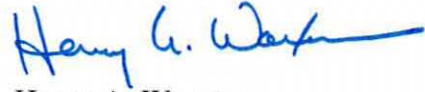
⁹ *Koch Brothers Flout Law Getting Richer With Secret Iran Sales*, Bloomberg Markets Magazine (Oct. 3, 2011).

¹⁰ *Top Corporations Aid U.S. Chamber of Commerce Campaign*, New York Times (Oct. 21, 2010) (reporting that member companies have sent donations to the Chamber in furtherance of targeted advertising or lobbying campaigns on specific individual issues).

Sincerely,



Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform



Henry A. Waxman
Ranking Member
Committee on Energy and
Commerce

cc: The Honorable Darrell E. Issa, Chairman
Committee on Oversight and Government Reform

The Honorable Fred Upton, Chairman
Committee on Energy and Commerce