

Testimony of
Amy Isaacs
on behalf of
Americans for Democratic Action
before the
House Committee on Financial Services
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My name is Amy Isaacs. I appreciate the opportunity to testify in my capacity as national director of Americans for Democratic Action representing our more than 65,000 members.

Unlike my colleagues on this panel, I am not an expert in banking. I am, however, a consumer as are the members of my organization and we have deep concerns about the impact granting an Industrial Loan Companies charter to any commercial enterprise will have on individual consumers and small business. It is, therefore, with great pleasure that we endorse HR 698, The Industrial Bank Holding Company Act of 2007.

Although the Industrial Bank Holding Company Act of 2007 is not specifically about Wal-Mart, I will focus the bulk of my remarks on Wal-Mart as perhaps the most pernicious example of the problems which can arise when banking and commerce are irrevocably intertwined. A bright line between the two must be firmly drawn.

We applaud Wal-Mart's decision not to pursue an ILC charter, if not its reasons. We opposed the granting of the charter for a number of reasons which could apply far beyond the Wal-Mart example.

Wal-Mart's application for a charter to enter the banking business was fraught with risk -- risk which, in the end, would have been guaranteed by the American taxpayer. A bank tied to one of the world's largest retailers would face unique commercial and reputational risks. We believe that the regulatory agencies charged with supervising these risks lack the experience or capacity to understand how to evaluate or minimize this risk.

One giant retailer after another has been forced into chapter 11 or has disappeared altogether because of sudden changes in the commercial environment. K-Mart, Woolworth, and Montgomery Ward are all examples of dominant retailers who lost their way, have been reorganized or have disappeared. Business models change as do consumer preferences. The changes are frequently rapid and unexpected. The federal government is not and should not be in the business of understanding the risks of large-scale retailing. It should not have to worry about the safety and soundness of a global retail business dependent on complex global supply systems.

For example, if a sudden shift in our trade relations with China should occur, Wal-Mart could face serious economic distress. Other business disasters are quite possible and each of them has little to do with the traditional process of bank examination. The reality is that if the retail operation faces disaster so will the bank. Depositors will flee and regulators will be in the business of a rescue.

Wal-Mart faces another kind of risk – the risk of social ostracism for its routine anti-social behavior. Wal-Mart, despite attempts to sugar coat its image, has an established pattern of irresponsible – some might say – unethical practices. It shorts employees on health care, it has flouted wage and hour laws, it has been involved in multiple cases of alleged discrimination. The company has been accused of using undocumented workers and has had a senior executive say he padded his expenses to conceal anti-union expenditures.

Anti-social behavior carries with it the risk of a damaged reputation and with it a run on the bank. The government cannot be in the position of insuring against that risk. There are many examples of anti-social behavior leading to the demise of financial institutions, the late Riggs Bank being just one example.

The record of Wal-Mart's anti-social behavior does not provide the picture of a company that is anxious to provide public service and meet community needs. It is the record of a company that could, as the result of some unforeseen incident, be the subject of public outrage when the outrage becomes public.

We are deeply concerned that Wal-Mart and other similar commercial enterprises will misuse their market power. As state chartered Industrial Loan Companies, the Wal-Mart Bank, or any other such entity, would not be subject to the stricter regulations of bank-holding companies. In this instance, we believe the world's largest retailer would quickly move to use its position in the market place and its control of prime real estate to become one of the largest banks in the United States.

We are also concerned about issues of privacy. Retailers already work hard to gather personal information about their customers. Examples of their efforts include

supermarket discount cards which allow the company to keep a record of everything you buy and credit card companies which sell information about customers purchasing patterns to direct mail marketers. The law allows individuals to opt out, but the law is weak indeed. It is bad enough that banks market other financial service products using customer information. What will Wal-Mart or others do with their customers' financial information? I submit that our imaginations are not adequate to the task of understanding the abuses that lie ahead.

Despite its claim that the Wal-Mart Bank would be used solely to process credit card, debit card and electronic check transactions from its retail outlets, it has made clear, in the past, its desire to become a full-service commercial bank. In fact, if Wal-Mart had been granted an Industrial Loan Company charter, it would have been able to offer everything an ordinary bank could: savings accounts, checking accounts, mortgages, and a variety of loans for everything from home improvement, to car purchases, to small business loans.

The potential for conflict of interest is obvious. Will Wal-Mart, for example, make loans to competitors? Should it have access to credit information about its competitors? Throughout its history, Wal-Mart has operated with the goal of dominating markets. It works to control competition in the areas where it operates. The result has been the extinction of many long-term community small businesses. There is no reason to believe that Wal-Mart's proposed foray into the banking industry would have been held to a different standard. In such instances, consumer protections would need to be stringent.

On March 15, 2006 Utah Governor John Huntsman, Jr. signed into law a bill that will allow lenders to protect themselves against class action suits in Utah and elsewhere. This bill appears to be an effort to make the Utah charter even more favorable for a bank that is likely to draw litigation and complaint from customers and employees. An institution proposing to meet community needs and provide important financial services should not need this kind of protection.

We reject the view that Wal-Mart is offering services to save customers money on transactions. The company, and other similar ones, is not a charity – it is in business to make money. Make no mistake; these companies want to use their retail power to muscle their way into the financial services industry in a big way. Such companies already offer paycheck cashing, money order purchases, money transfers, on-line credit reports and check printing. Wal-Mart has an entire subsidiary to promote and coordinate its financial services and leases space in many of its stores to other banks. Had it been granted a charter, it would have used its power to muscle past community banks and credit unions which really do care about their own communities.

Among the seven factors the law requires be considered in accepting an application for an ILC charter is “the convenience and needs of the community to be served.” Mixing retail commerce and banking would make it impossible to meet that standard. The conflict of interest and the push for market dominance argue against a charter serving any need or convenience other than the retailers’. Existing institutions leasing space in a Wal-Mart or other similar store could just as easily serve the customers. Today, many banks have arrangements with supermarket chains. These bank branches meet the needs of customers and the needs of the community.

Another of those seven factors is “The general character and fitness of the management of the depository institution.” By any objective review, Wal-Mart fails to meet that standard. There are many examples:

- Wal-Mart has proven its own inability to maintain accountability. They claim that their former Vice Chair Thomas Coughlin “misappropriated hundreds of thousands of dollars in corporate assets to pay for personal expenditures ranging from the petty to the extravagant.” Coughlin subordinates have been implicated as well. Coughlin’s defense is that he submitted false invoices to obtain reimbursement for secret anti-union activities which, if true, is in itself a serious violation of the federal labor law. Although Wal-Mart has submitted the case to a federal grand jury for investigation, it also fired the vice president who reported Coughlin’s actions bringing into serious question its application of whistleblower protections.
- In addition, Wal-Mart repeatedly has been found systematically to hire undocumented workers. The federal government says they have wiretaps showing that Wal-Mart executive knew their company was using illegal workers and Wal-Mart was forced to pay an \$11 million settlement to avoid prosecution. In an ironic twist, many of these workers were nightshift janitors who subsequently sued Wal-Mart alleging that the company knowingly coordinated their exploitation. Some of the plaintiffs earned a mere \$325 for 60-hour weeks. Included in the lawsuit are

charges that Wal-Mart locked the janitors in stores overnight (a violation of safety laws) and sometimes refused to pay them at all.

- Over the years, Wal-Mart's record on discrimination has been appalling. The EEOC, in 1997 brought and won four cases involving race, gender and disability discrimination. Court records indicate Wal-Mart turns a blind eye to instances of sexual harassment. A suit was brought seeking class action status on behalf of more than 100 African American truck drivers denied employment by Wal-Mart. Yet, this is the same company applying for an ILC in a state which just enacted a law forbidding class action suits against lenders.
- Similarly, Wal-Mart is the nation's largest employer of women but it is falling far behind in promoting women. A committee to promote diversity was formed in 1998 but, subsequently, was disbanded with none of its recommendations implemented. In 2001, a class action suit was filed against Wal-Mart in California claiming gender discrimination in pay and promotion. The lawsuit, which began with six women, expanded to include as many as 1.6 million current and former female employees. Patterns of discrimination in promotion and pay were found in all regions where Wal-Mart operates.
- Further areas of concern, include repeated instances of violating child labor laws, wage and hour violations, and a combative approach to worker compensation claims that resulted in the state of Washington ordering the

company to relinquish control of its workers' compensation claims handling.

By any measurable standard, "The general character and fitness of the management of the depository institution" should have been found wanting and resulted in the rejection of Wal-Mart's application for an ILC charter bank. Wal-Mart clearly saw the handwriting on the wall when it withdrew its application. But, until and unless, the Industrial Bank Holding Company Act of 2007 is enacted and signed into law, we cannot be guaranteed that a Wal-Mart type problem or similar problem will not recur with a less auspicious outcome.

Americans for Democratic Action is an organization which stands for liberal values. We see bank regulation as an area where true conservative values should prevail. By granting a charter, and with it deposit insurance, the government should not be taking the risk of regulating a business it does not understand. It should not insure depositors against a corporation's anti-social behavior and the attendant reputational risk. It should leave banking to real bankers.

For these and other reasons, Americans for Democratic Action strongly urges you the passage of H.R. 698. Thank you for your consideration.

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