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Before a Hearing of the
SENATE BANKING COMMITTEE

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Thank you Chairman Dodd, Ranking Member Shelby, and Members of the Committee for holding this hearing and for the opportunity to testify. In particular, I would like to thank my Senator, the Honorable Sherrod Brown of Ohio. I am here today representing the United Food and Commercial Workers International Union (UFCW) and Local 1099 from the great states of Ohio, Indiana and Kentucky. Local 1099 represents almost 20,000 members and UFCW represents more than 1.3 million members in the United States and Canada. UFCW represents workers in every state in the U.S., and is the largest private sector union in North America. Our members work in grocery stores, the meatpacking and food processing sectors, as well in the health care industry, in the chemical industry, in department stores, in garment manufacturing, in the production of distillery products and in the textile trades.

I am proud to represent UFCW and our members in Ohio, Indiana and Kentucky to discuss the important issue of regulating Industrial Loan Companies (ILC). I am especially proud to represent Ohio, home of the late U.S. Representative Paul Gillmor,

who sadly, recently passed away. Representative Gillmor was the original cosponsor of the Gillmor-Frank ILC legislation in the House, along with Chairman of the House Financial Services Committee, Representative Barney Frank. This was a very important issue for Congressman Gillmor and I am pleased to be here to carry on the Ohio tradition of fighting to close the ILC loophole and keep banking and commerce separate.

The UFCW recognized the problems with the ILC loophole years ago and our union was one of the founding members of a diverse group of organizations known as the Sound Banking Coalition. In addition to the UFCW, the members of the Coalition include the Independent Community Bankers of America, the National Association of Convenience Stores and the National Grocers Association. The Coalition was created early in 2003 when there were few commercial applicants for ILC charters

Together with the members of the Sound Banking Coalition, UFCW has analyzed Industrial Loan Companies (ILCs) – their growth, their regulation, and their use by commercial entities for several years. If ILCs are not properly regulated – and we believe that today they are not – the financial safety of working people and all Americans is put at risk. This is particularly true for ILCs owned by commercial entities, which are not subject to consolidated oversight by the Federal Reserve. The growth of commercial ownership of ILCs only makes these risks more acute. The list of risks is long, including everything from reduced consumer protections to insolvency, which can directly affect all of us.

The Sound Banking Coalition is firmly united in our strong support for separating banking and commerce in the United States. Separation of the financial from the commercial spheres has proven to be sound economic policy and it has benefited consumers and workers who might otherwise find themselves at the mercy of a single large firm for not only the goods and services they need, but for their very financial welfare. It has also allowed for the development of a vibrant and competitive financial services industry that offers a multitude of products and services to consumers. The fact that so many commercial firms are now trying to circumvent this bedrock economic policy through a loophole in the law is extremely troubling. We should not allow decades of good policy to be undone through an inadvertent backdoor mechanism.

Commercial ownership of banks creates the potential for two specific and very troubling problems. First, ILCs and their parent companies are not subject to consolidated supervision at the holding company level. Holding companies that own banks in this country are subject to consolidated regulation by the Federal Reserve Board. The Fed examines a bank holding company and all of its subsidiaries to ensure that neither the holding company nor any of the subsidiaries create solvency risks for the bank. More than simply avoiding risk, however, a bank holding company is supposed to be a source of financial strength for its bank subsidiaries, which can be a critical factor for banks that face financial difficulties. The Fed oversees bank holding companies whether the bank itself is a state-chartered bank or a national bank. Non-U.S. bank holding companies can be an exception to this rule, but only if those foreign firms are subject to similar, consolidated supervision in their home countries.

Why should we be such sticklers about this type of regulation in the banking world? Because we have seen bank failures in the past – the savings and loan scandal of the 1980s, for example, as well as many others. And when banks fail people get hurt and we all end up paying for it one way or another. The savings of real people and real businesses are in these institutions, and it is appropriate that we take seriously our obligation to protect people's money. As we have learned over the course of the past century, we are far better off with prudent financial oversight of the entire bank holding company, enabling a strong regulatory agency to understand the institution and to address any problems before they become too big to solve.

We should not hold ILCs to standards lower than those required of bank holding companies and foreign banks. Our obligation to protect people's funds should be the same. Indeed, on one level it is the same: ILC funds are, after all, protected by the same FDIC insurance that covers deposits in all other banks. And the problems with a failure can be just as devastating. During the savings and loan crisis, no one who lost money was comforted by the fact that the institution that failed was called an S&L rather than a bank. For the same reason, calling something an ILC should not change prudent financial regulatory policy. If consolidated supervision is needed for other banks – which we endorse and current law requires – then it should be required for ILCs.

This is a particular concern to us in the state of Ohio. Unlike Indiana, Ohio does not have an ILC charter. So, our commercial companies cannot acquire a bank. But we allow banks from other states to branch into Ohio. This includes state chartered banks

such as ILCs. Some states, including Kentucky, have passed legislation taking different approaches to stop ILCs from branching into their states but Ohio has not. We are concerned that an ILC from another state with inadequate holding company regulation may be able to branch into Ohio unless Congress acts.

The other key regulatory concept that is tremendously important here – and is also something we'd like to protect against in the state of Ohio – is the mixing of banking and commerce. Banks are supposed to be neutral arbiters of capital, providing financing to customers on an unbiased basis, unencumbered by commercial self-interest and competition. If those banks are owned by commercial companies, the conflicts of interest can skew loan decisions and lead to systemic problems. Imagine local businesses having no alternative but to go to a bank owned by a competitor for a loan. This conflict of interest could force local retailers to essentially provide their business plans to their competition. It could also lead local retailers to change business plans, pricing structures, and markets in order to secure financing. These changes might be required by the "lender" and thus inherently suspect, or they might be steps taken by the small business in order to smooth the way to secure financing. Either way, it would be a distortion of the market and potentially very harmful to the business prospects for the small business.

Banks are also an important source of economic opportunity. For individuals who need a loan - including starting and expanding a business - a bank is typically the first place to start. If local banks disappear due to the scorched earth tactics of commercially-owned ILCs, similar to the disappearance of local commercial businesses in recent years,

we are all in for a rude awakening.

This is a large part of the reason Wal-Mart's attempt to buy an ILC was such a threat. We have watched Wal-Mart come into town after town and decimate Main Street, business by business. Studies have documented the impact on employment, wages, benefits, and tax revenue. One area least affected is financial services where access to capital and credit offer lifelines in many communities. Local community banks and other financial institutions are critical to economic vitality. If the capital is there, then new businesses can spring up and the ones that may still be hanging on can reinvent themselves and find ways to compete. Yet, if the local banks are forced out of business and there is no local source of capital, than that community is on life support until, for example, a large multinational retail chain headquartered in Arkansas makes a decision about that local community and its small businesses. And, they know just how to do it, by closing locations and opening regional "superstores."

If Wal-Mart had secured its bank and turned its standard slash and burn tactics against local banks, its economic control in these small communities would have been almost complete. Despite the company’s protestations to the contrary, it is abundantly clear that the ILC charter was simply a stepping-stone for Wal-Mart to full consumer banking.

Despite its withdrawal from the ILC market, Wal-Mart continues to loom large over the ILC debate. Although we are pleased that the company withdrew its ILC

application, its bid for a bank put the spotlight on ILCs in general and on the separation of banking and commerce, specifically. This is not surprising given the company's size - and market dominance. Although we have been concerned about the ILC loophole for years, the impact of granting Wal-Mart a charter could not be overstated. It is absolutely certain that if the company had secured a bank through a loophole in the law, the ILC loophole would have been larger than the rule.

Additionally, the withdrawal of one application does not resolve this issue – even with respect to Wal-Mart. If the Congress does not pass the Industrial Bank Holding Company Act of 2007 (S.1356), Wal-Mart can and most likely will be back. They have tried to get into banking four times now, and only regulations and changes in law have prohibited them. There is no reason to believe that there won't be a fifth. In fact, their history tells us they will be back. Time and again Wal-Mart has withdrawn zoning applications for new stores in the face of opposition – only to return and try to quickly get approval when the opposition has rested. It is a calculated strategy and one we are very familiar with. That is why – in spite of the withdrawal, we support S.1356.

Even without Wal-Mart, there are now a record number of commercial companies applying for ILC charters. Blue Cross/Blue Shield, Home Depot, Berkshire Hathaway – these and more have followed Wal-Mart's lead thus far. While some applications have been withdrawn, it is clear that there is unprecedented interest in this charter from commercial companies.

Whether or not these commercial entities will succeed in entering the world of banking is up to you. Congress must deal with the policy questions surrounding ILCs before commercial entities, looking to add financial services as simply another business line – along with home repair or health care, make congressional policymaking an afterthought. That is why we closing this loophole. It does what is necessary to restrict future ILC charters to institutions that are primarily engaged in financial activities and improves the supervision of ILC holding companies.

So, what should be done? The Senate must follow the House's lead and move legislation forward. As you know, the House passed legislation (H.R. 698) with overwhelming support by a vote of 371-16.

The FDIC has extended its moratorium on ILC applications submitted by commercial entities. The moratorium will not last forever however and, in the meantime, fundamental policy decisions must be made. These decisions are beyond the scope of the FDIC's authority and they are too important to be left to a single state. We believe it is dangerous to let the economic interests of one state dictate the structure and oversight of our nationwide system of banking. With the increasing use of internet banking, ATMs, and banking by phone, this would mean that increasingly one state would be setting the banking rules for all the rest of us.

In addition, Governors and state legislatures have recognized the potential policy problems with ILCs and at least eight of them – including Colorado, Iowa, Kentucky,

Maine, Missouri, Nebraska, Oklahoma, and Virginia - have enacted laws to keep ILCs from branching into their states. Our local union is considering following the leads of other unions and forming local coalitions to change Ohio's state law. But it is our belief that the appropriate forum for deliberation and construction of banking policy should be the Congress not individual states. That is why I am here today – to urge the Committee and the Senate to act.

We believe the Senate must act now and we look forward to working with every Member of this Committee and the Senate to see its enactment. I urge you to consider the legislation and address the problems and challenges that I have outlined today. Again, I thank you for your time and would be pleased to attempt to answer any questions that you may have.