UNITED STATES SENATE

WASHINGTON

January 2, 1937

My dear Mr. President:

A Federal law requiring licenses or charters for all corporations engaged in interstate commerce offers a constitutional and speedy method of securing the labor objectives to which the Administration is committed as well as protection to investors and consumers from the abuses of corporate devices.

The argument that by reason of the recent minimum wage decision of the Supreme Court a constitutional amendment is necessary, particularly to prevent child labor and establish minimum wages and maximum hours, is based upon failure to distinguish between the rights of the artificial corporate person and those of the natural person.

A charter is a contract between some government and certain natural persons who desire to do business in the corporate form. The Constitution grants to Congress the power to regulate interstate commerce. My contention is that all corporations engaged in interstate commerce should receive their charters from the government which has jurisdiction over the field in which they operate. Since the charter is a contract, the government may constitutionally exact of the incorporators, in exchange for the privilege of doing business as a corporation, the consideration that that business shall be conducted with due regard for the rights of labor and the rights of investors and of consumers.

Every law heretofore passed dealing with this subject has applied to both corporation and natural persons, thus affording corporations the opportunity to gain the benefit of the Bill of Rights which was intended solely for the protection of natural persons. It is, therefore, clear that a law such as I propose which draws the distinction between the two will make it impossible for corporations to hide behind the shield erected by the Constitution to protect flesh and blood citizens.

Moreover, the chief source of criticism of NRA and similar New Deal laws has been the inconvenience caused the small business man by the operation of laws intended actually only for the large corporations. It is not necessary for the federal government to regulate the labor contracts made between an individual business man and his individual employees, between whom the ordinary relation of master and servant, known to the common law as a “domestic” relationship, exists. A constitutional amendment would give the federal government this power.

We need the power only in those cases where by reason of corporate development there is no longer any opportunity for personal negotiation between the actual employee and the actual employer.

Aside from the fact that it might take years to ratify such an amendment because of opposition arising from the fear that it would completely destroy the power of the states to control purely local matters, every objective that we now seek may be obtained by way of legislation dealing with interstate corporations.

It must be recognized that ninety percent of the commerce we seek to regulate is carried on by corporations. To the argument that corporations engaged in production or in distribution would be beyond the power of Congress under the recent decisions of the Supreme Court, it may be answered that the older decisions give the contrary answer. Moreover, I can quote James C. McReynolds who, with George W. Wickersham, in writing the government brief in the Tobacco Trust cases, clearly announced the constitutional basis of my bill when they said that the will of Congress with respect to interstate commerce "may be materially interfered with by what is no part of instrumentality of interstate or foreign commerce, or by the actions of persons not engaged therein". Wickersham and McReynolds then proceeded:

> "Accordingly, so far as reasonably necessary to prevent this interference, Congress may enact valid laws which operate directly on such things.
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> "In order to satisfy the requirements of a reasonable necessity, there must be a certain nearness of relationship between what the statute directly strikes and interstate or foreign commerce which is probably not susceptible of rigorous definition. Mere indirect, incidental or remote effect on commerce is not sufficient; but, whatever, as a natural and probable consequence, will occasion material hindrance to the efficacious operation of the lawful will of Congress in reference thereto is near enough.
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> "Congress has the right to declare the public policy and <u>economic theory</u> of the country. It is the duty of the courts to accept and seek to promote the due operation of a policy or theory so declared; and they should give full weight thereto when called on to determine the effect on Commerce which may result from any prohibited thing."

In addition to the foregoing, I can quote from the decisions to sustain my contention that to protect interstate commerce from injury and to foster and encourage it so that we may increase consuming power and reduce unemployment in national commerce, Congress has the right to regulate production and distribution by corporation.

Moreover, my bill by making it an unfair method of competition for any corporation engaged in interstate commerce to violate the labor standards set by the bill and by applying to labor conditions the rule laid down with respect to intoxicating liquors in the Wilson Act and the Reed amendment, and with respect to convict made goods in the Hawes-Cooper Act and the Ashurst-Summers Act offers the Supreme Court the avenue which now it is probably seeking to escape its present untenable position.

Before the President commits himself to any policy with respect to this measure or the objectives it seeks to attain, I shall greatly appreciate the opportunity of discussing it with him or any of his advisors.

Respectfully yours,

(Signed) JOSEPH C. O'MAHONEY

Honorable Franklin D. Roosevelt
President of the United States,
The White House