

# ALERT

VOLUME 36, NUMBER 21 • JUNE 25, 2010



## Pro-Jobs Business Campaign Yields Key Primary Victory

*JobsPAC to Continue Effort in Likely Senate District 15 Runoff*

An independent effort by an employer coalition political action committee helped push the pro-jobs candidate close to outright victory this week in the hotly contested campaign for Senate District 15 on the Central California Coast.



Sam Blakeslee

As *Alert* went to press, Assemblyman Sam Blakeslee (R-San Luis Obispo) was ahead with 49.8 percent of the vote to 41.23 percent for former Assemblyman John Laird (D-Santa Cruz).

With about 17,000 ballots yet to be counted, as of 4:30 p.m. on June 23, Blakeslee seemed close to attaining the 50 percent plus 1 vote margin needed to

win. The need for a runoff election on August 17 seemed more likely, however.

A victory for Blakeslee, a former Assembly Republican leader, will help prevent Senate Democrats from attaining a veto-proof two-thirds majority and the ability to raise taxes whenever they want.

“This election demonstrates that employer contributions make a difference. By getting involved in this critical campaign, we are sustaining an important check-and-balance on the Legislature,” said California Chamber of Commerce President and CEO Allan Zarembeg.

“Employers will need to continue committing the resources to remain competitive in the runoff campaign with Senate leaders, who have made this district a high priority in their attempt to get to a veto-proof two-thirds majority,” Zarembeg said.

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## Court Sides with Employers on Search of Text Messages



The U.S. Supreme Court has upheld an employer’s ability to search text messages on a city-owned pager issued to a police officer.

The June 17 decision in the case of *City of Ontario, California, et al. v. Quon et al.* involved the issue of privacy and text messages sent from employer-provided devices.

Although the text messages were sent from employer-provided devices, the transcripts were stored on a third party’s server—that of the wireless company.

### Legitimate Work Purpose

The U.S. Supreme Court concluded that the employer’s inspection of text messages sent to one of its employees was reasonable because “the search was motivated by a legitimate work-related purpose, and because it was not excessive in scope. . . .”

Although the case before the court involved a public sector employer, the court reasoned that such a search also would be viewed as “reasonable and normal in the private-employer context.”

Based on the foregoing, the court concluded that the City of Ontario did

*See U.S.: Page 3*

## Independent Expenditure Candidate Campaigns

JobsPAC has won bipartisan recognition for its efforts to support pro-jobs candidates running in open legislative seats since 1992. It was formed by a group of California employers to take bold, proactive steps in electing pro-jobs candidates to office in the new era of legislative term limits.

Since its inception, JobsPAC has spent more than \$9.6 million on behalf of Democratic and Republican candidates, primarily through its

Independent Expenditure Account. In 2008, JobsPAC raised and spent almost \$3 million as one of the largest

independent expenditure committees in California. JobsPAC had significant victories in electing Senator Rod Wright (D-Inglewood) in the primary and Senator Tony Strickland (R-Thousand Oaks) in the general election.



## Inside

‘Job Killer’ Bill Moves:  
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## Labor Law Corner

# Disability Act Accommodation: Review Each Case on Own Merits



**Dana Leisinger**  
HR Advisor

*We have an employee who has a disability and needs accommodation in his work environment. I did some research and can't find a definition of what is a "reasonable accommodation." What is that definition?*

The simple answer: There is no definition of "reasonable accommodation" under the Americans with Disabilities Act (ADA). This law

was enacted 20 years ago, in 1990, and came about in part as a grassroots movement among the disabled for protection in the employment setting. (This article addresses only the employment issues of the ADA.)

Each case should be evaluated on its own merits, as the law does not want an employer to point to a definition and claim it has done everything it has to do. An employer with 23 employees might have to make far less of an accommodation versus an employer with 1,000 employees. At one time, however, it was established that the vast majority of accommodations cost employers no more than \$50.

When these situations come up, it is imperative that the employer enter into the "interactive" process with the employee; indeed, the ADA mandates this process.

Essentially, the employer and the affected individual must enter into a dialogue with the objective of finding an accommodation that will allow the disabled employee to perform the essential functions of a job in the workplace. Both parties engage in a form of bargaining to come up with the best way to accommodate the employee's disability.

The Equal Employment Opportunity Commission has outlined four steps of the interactive process:

- Analyze the job involved and determine its purpose and essential functions;

- Consult with the affected employee to ascertain the job-related limitations imposed by the disability and how those limitations could be overcome with a reasonable accommodation;

- Identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position; and

- Consider the preference of the individual and select and implement the accommodation that is most appropriate for both the employee and the employer.

Both parties must engage in this process, and it is important that the employer listen and not appear/be callous and/or uncompromising. When both parties engage in good faith, there usually is a solution that will be agreeable to everyone.

It should be noted that California has its own laws protecting the disabled; however, the scope of this article is to focus on the ADA.

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*The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at [www.hrcalifornia.com](http://www.hrcalifornia.com).*

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*Alert (ISSN 0882-0929) is published weekly during legislative session with exceptions by California Chamber of Commerce, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Subscription price is \$50 paid through membership dues. Periodicals Postage Paid at Sacramento, CA.*

*POSTMASTER: Send address changes to Alert, 1215 K Street, Suite 1400, Sacramento, CA 95814-3918. Publisher: Allan Zaremborg. Executive Editor: Ann Amioka. Associate Editor: Blake Ellington. Art Director: Marcy Wacker. Capitol Correspondent: Christine Haddon. Photographer: Megan Wood.*

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## CalChamber-Sponsored Seminars/Trade Shows

More information at  
[www.calchamber.com/events](http://www.calchamber.com/events).

### Business Resources

EngEx 2010 Conference & Exhibition.

EngEx Engineering United.

July 29–31, San Diego. (951) 225-4566.

Entrepreneurial Institute. National Black

MBA Association. September 24,

Los Angeles. (312) 580-8569.

2010 Aerotech Expo Job Fair. Aerotech

News and Review. September 25,

Lancaster. (877) 247-9288.

Second Annual California Sustainable Tourism Summit. California Travel and Tourism Commission. October 14–15, Lake Tahoe. (916) 319-5426.

### Human Resources

Annual Conference & Exhibition. Society for Human Resource Management.

June 28–29, San Diego.

(800) 283-7476.

Social Media and the Workplace—Can the Two Coexist? CalBizCentral.

July 1. Live webinar. (800) 331-8877.

*See CalChamber-Sponsored: Next Page*

**Next Alert:  
July 9**



# U.S. Supreme Court Sides with Employers on Ability to Search Text Messages

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not violate the Fourth Amendment right against unreasonable searches when it inspected text messages sent to its employee, city police officer Jeffery Quon.

## Background

Quon, a sergeant and member of the City of Ontario Police Department (OPD) SWAT team, had a department pager.

The city maintained a computer use policy that limited use of computers and related equipment to city business only and informed employees that it could monitor and view employee use of employer-provided devices. The policy did not expressly mention pagers or text messages.

The city contracted with Arch Wireless for the pagers. The contract included a monthly character limit. Quon exceeded the character limit a number of times, each time reimbursing the city.

At a staff meeting, an OPD officer told officers that messages sent on pagers were considered e-mail and could be audited. The officer said he did not intend to audit an employee's text messages to see if the overage was due to work-

related transmissions, and suggested employees who incurred overage fees could reimburse the city rather than having the messages audited.

After a while, however, the supervising lieutenant got tired of being what he called "a bill collector," and the police chief decided the department should review the messages of the highest users. The department asked Arch Wireless to provide transcripts of the text messages.

A major account specialist with Arch Wireless printed out the transcripts associated with OPD pager numbers, put the transcripts in a manila envelope and brought them to OPD. The major account specialist did not read the messages, but after reviewing about four lines of one of the transcripts, she realized the messages were sexually explicit.

Internal Affairs audited the records to determine if Quon was violating department rules by dealing with personal matters while on duty. The audit of messages Quon sent during work hours found that on an average workday, Quon sent or received 28 messages, of which only three were related to police business.

Quon sued the OPD for violating his Fourth Amendment protection against unlawful searches, and Arch Wireless for violating his privacy by releasing the transcripts to OPD. A jury concluded that the police chief's intent was a legitimate one of auditing the messages to determine the efficacy of the character limits to ensure the officers were not paying hidden work-related costs.

The 9th U.S. Circuit Court of Appeals, however, concluded the search was not reasonable, saying there were approaches less intrusive than an audit that the police chief could have used. The circuit court also said Arch Wireless had violated Quon's privacy.

The U.S. Supreme Court rejected the circuit court ruling on the reasonableness of the search, but said it was not necessary to resolve the privacy question.



More information, including the U.S. Supreme Court decision, is linked from the *HR Watchdog Blog* at [www.hrcalifornia.com](http://www.hrcalifornia.com).

**Staff Contact: Erika Frank**

## CalChamber-Sponsored Seminars/Trade Shows

*From Previous Page*

### International Trade

Global Readiness—Leadership

Conference. Los Angeles Area Chamber of Commerce. June 30, Los Angeles. (213) 580-7569.

Indo Aquaculture 2010. Indonesia

Directorate General of Livestock Services, Department of Agriculture. July 8–10, Jakarta, Indonesia. [kontakt@merebo.de](mailto:kontakt@merebo.de).

Indo Livestock 2010. Indonesia

Directorate General of Livestock Services, Department of Agriculture. July 8–10, Jakarta, Indonesia. [kontakt@merebo.de](mailto:kontakt@merebo.de).

Africa's Big Seven. Exhibition

Management Services. July 18–20, Johannesburg, South Africa. [admin@exhibitionsafrica.com](mailto:admin@exhibitionsafrica.com).

Indowater 2010. PT. Napindo Media

Ashatama. July 28–30, Surabaya, Indonesia. [contact@merebo.de](mailto:contact@merebo.de).

Indowaste 2010. PT. Napindo Media

Ashatama. July 28–30, Surabaya, Indonesia. [contact@merebo.de](mailto:contact@merebo.de).

Indomeelex 2010. PT. Napindo Media

Ashatama. July 28–30, Surabaya, Indonesia. [contact@merebo.de](mailto:contact@merebo.de).

India Trade Conference. Quantaco.

July 29, Irwindale. (949) 480-9466.

Destination India 2010. Port of Los

Angeles, Southern California Edison and Quanta Consulting. July 29, Irwindale. (949) 480-9466.

N-Expo/Kansai '10. Japan External Trade Organization/Nippo Co. Ltd.

September 1–3, Osaka, Japan.

(415) 392-1333.

Business Mission to Dubai. Chester County (Pennsylvania) Chamber of Business and Industry. September 21–28, Dubai. (610) 725-9100.

Labor law answers online:  
**HRCalifornia.com**



## Pro-Jobs Business Campaign Yields Key Senate Primary Victory

### *JobsPAC to Continue Leading Effort in Likely Runoff for Senate District 15 Special Election*

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#### **JobsPAC Effort**

JobsPAC, an employer coalition political action committee led by the CalChamber, mounted an independent campaign in the district to educate the public about Laird's anti-jobs record on the budget, spending and taxes.

The district has the longest coastline in the state and Democrats tried to use the oil spill in the Gulf of Mexico to turn voters against Blakeslee, who once worked for the Exxon energy company.

The JobsPAC effort was the largest independent expenditure in the district, where registered Democrats outnumber registered Republicans by a 6 percent margin, but nearly 20 percent of voters are "decline to state."

Semi-official returns from the

Secretary of State show Blakeslee winning in the counties of San Luis Obispo (57.8 percent), Santa Barbara (61.4 percent) and Santa Clara (46.19 percent). Laird was ahead in the counties of Santa Cruz (56.16 percent) and Monterey (54.7 percent).

Blakeslee's strong showing reflects a shift in voter sentiment from 2008, when the district supported President Barack Obama by a margin of more than 20 percentage points. Overall voter turnout in the district was 28 percent.

If a runoff election is held, Libertarian Mark Hinkle and Independent Jim Fitzgerald also will appear on the ballot.

#### **CalChamber Vote Record**

In the five years since being elected to the Assembly in 2004, Blakeslee has voted in accord with CalChamber

positions nearly 100 percent of the time.

During six years in the Assembly, before being termed out of office in 2008, Laird voted in accord with CalChamber positions less than 40 percent of the time, frequently having only one or two votes in the positive column.

Democrats currently hold 25 of the 40 seats in the Senate, two short of the 27 that would constitute a two-thirds majority. A Democrat victory in Senate District 15 will narrow the margin to 26 Democrats, 14 Republicans.

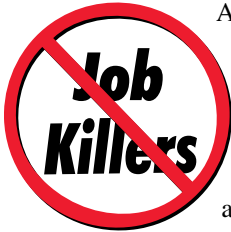
The seat had been held by Abel Maldonado (R-Santa Maria), who Governor Arnold Schwarzenegger appointed as Lieutenant Governor when John Garamendi was elected to Congress.  
**Staff Contact: Rob Lapsley**

## CalChamber Meets with Japanese Business Leaders



A June 23 luncheon gathering in Sacramento provides an opportunity for California Chamber of Commerce representatives to exchange comments on international trade and the world economy with members of the Japan Business Association (JBA) and the Japanese Chamber of Commerce of Northern California (JCCNC). Both associations include Japanese businesses that invest in California and employ Californians. JBA is marking its 50th anniversary in California while JCCNC is observing its 60th year. From left are: Shiro Tomeoki, Western States regional officer, Mitsui USA; Yoshinori Yamashita, president and CEO, Ricoh Electronics; Koichi Kinoshita, general manager of Los Angeles, Mitsubishi International Corp.; Hiroshi Tomita, president, Konica Minolta Systems; Yuji Takahashi, JBA executive director; Robert Tse, deputy director, Governor's Office of Economic Development; Masanori Yasunaga, president and CEO, Calbee America, Inc.; Yuichi Okura, JBA president and general manager, Bank of Tokyo - Mitsubishi; Susanne Stirling, CalChamber vice president, international affairs; Allan Zaremberg, CalChamber president and CEO; Hideki Oshima, vice president and regional manager, Japan Airlines; Hiroshi Haruki, JCCNC president and president and CEO, Fujitsu Management; Scott Keene, attorney; Luis Farias, deputy director, Governor's Office of Economic Development; George Valverde, director, California Department of Motor Vehicles; Steven Teraoka, attorney; Larry Dicke, CalChamber executive vice president and chief financial officer; June-Ko Nakagawa, JCCNC executive director. More information is available at [www.calchamber.com/japan](http://www.calchamber.com/japan).

# ‘Job Killer’ Bill Delays Recovery of Residential Construction Industry



A California Chamber of Commerce-opposed bill that seeks to make substantive statutory changes to foreclosure law and residential loan modification efforts

passed an Assembly policy committee this week.

**SB 1275 (Leno; D-San Francisco)**, a “job killer” bill, hinders recovery of the residential construction industry by reducing the availability of credit due to delays in resolving delinquent loans by requiring lenders to determine a borrower’s eligibility for a loan modification prior to the filing of a notice of default.

This measure continues a trend of delaying or stretching out the foreclosure process by requiring a lender/servicer, among other things, to determine a borrower’s eligibility for a loan modification or other foreclosure avoidance efforts before filing a notice of default.

## Delays Recovery

The CalChamber’s primary concern with the bill is its potential to have a negative impact on the availability of credit in California and thus further delaying recovery of the state’s crippled construction industry and its many supporting industries.

California’s economic recovery is already lagging behind the rest of the nation. While there has been a slight nationwide uptick in construction jobs, the state continues its downward trend, losing 1,400 construction jobs in April, adding to the nearly 400,000 lost since 2006. This sluggish recovery in California will only be exacerbated by

measures that unnecessarily expand the foreclosure process and further delay recovery of the housing market.

Furthermore, the Legislature has appropriately responded over the last several years to help mitigate California’s mortgage crisis. Members of the financial services industry have successfully worked collaboratively with policymakers, consumer groups and members of the administration to enact meaningful reforms designed to assist struggling borrowers.

These efforts include, but are not limited to, SB 1137 (Perata; D-Oakland), AB 1160 (Fong; D-Cupertino), and AB 260 (Lieu; D-Torrance). Each of these measures involved good faith negotiations among interested parties, conducted over a period of months to ensure the outcome would be thoughtful public policy.

More specifically, in 2008, industry members spent months collaboratively negotiating on SB 1137. The changes proposed in SB 1275 dramatically change the pre-foreclosure and foreclosure notice and outreach requirements enacted by SB 1137.

## Procedural Traps

SB 1275 exemplifies an overly complicated formula that will be layered on top of recently enacted borrower outreach efforts to further frustrate and prolong existing foreclosure and loss mitigation efforts. The CalChamber believes the measure will add to the complexity of navigating these processes for loan servicers, thereby creating a series of procedural traps that will lead to ever-increasing litigation.

How this measure interacts mechanically and chronologically with recent state and federal regulatory and statutory changes is unclear. The lack of clarity will result in compliance hurdles

and a detrimental distraction from lenders’ efforts to assist their customers.

## Federal Program Conflicts

Given recent changes to President Barack Obama’s and the U.S. Treasury Department’s Home Affordable Modification Program, the CalChamber believes that SB 1275 is unnecessary and may conflict with federal programs.

At a minimum, SB 1275 continues a trend of delaying or stretching out the foreclosure process. This will delay economic recovery, further frustrate local governments struggling with properties in disrepair while continuing the trend of reduced property tax revenue for local governments, and will artificially sustain depressed property values.

## Key Vote

SB 1275 passed the Assembly Banking and Finance Committee by a vote of 7–4 on June 21:

**Ayes:** Eng (D-Monterey Park), Evans (D-Santa Rosa), Fong (D-Cupertino), Fuentes (D-Sylmar), Nava (D-Santa Barbara), Ruskin (D-Redwood City), Torres (D-Pomona).

**Noes:** Gaines (R-Roseville), Harkey (R-Dana Point), Niello (R-Fair Oaks), Tran (R-Garden Grove).

**Absent/abstaining/not voting:** Mendoza (D-Norwalk).

## Action Needed

SB 1275 will be considered next by the Assembly Judiciary Committee on June 29. The CalChamber is urging members of the business community to contact committee members and urge them to **oppose SB 1275**.

A sample letter is available at [www.calchambervotes.com](http://www.calchambervotes.com).  
**Staff Contact: Robert Callahan**

They won’t know unless you tell them. Write your legislator.

[calchambervotes.com](http://calchambervotes.com)

## Legislative Outlook

An update on the status of key legislation affecting businesses. Visit [www.calchambervotes.com](http://www.calchambervotes.com) for more information, sample letters and updates on other legislation. Staff contacts listed below can be reached at (916) 444-6670. Address correspondence to legislators at the State Capitol, Sacramento, CA 95814. Be sure to include your company name and location on all correspondence.

### CalChamber Backs Community College Transfer Recognition



SUPPORT

A California Chamber of Commerce-supported bill that requires California community colleges to award an associate of arts degree to students transferring to four-year universities passed an Assembly committee with bipartisan support this week.

**SB 1440 (Padilla; D-Pacoima)** provides community college students with support to complete their overall higher education pursuits by allowing individual community colleges to create transfer degree agreements with individual four-year universities.

The bill precludes community colleges from requiring additional courses for this degree and guarantees those who earn the degree admission to a California State University (CSU) with junior status.

Sixty percent of community college students never transfer to four-year universities, in part due to confusion about conflicting requirements. Studies also show that many transfer students have taken far more courses than they need to.

“Creating a single pathway with clear requirements will ensure that more California community college students successfully transfer to and graduate from

four-year universities, helping the state meet the increasing demands of its workforce,” said Mira Guertin, CalChamber policy advocate.

The California Legislative Analyst’s Office reports community college students transferring to a CSU graduated with an average of 162 units when the minimum requirement is 120 units.

A new study by the California Community Colleges Chancellor’s Office finds roughly 50,000 community college students transfer annually to the CSU system. They do so with an average of 80 semester units when only 60 semester units are required. Similarly, when these students arrive at the CSU, they take excess units to make up for courses that did not transfer from their community college.

Streamlining the process will save the state approximately \$160 million a year, according to the office of the community college chancellor. The chancellor’s office estimates the savings will permit the community college system to serve 40,000 more students a year and the CSU system 14,000 more students a year.

**Staff Contact: Mira Guertin**

### Assembly Passes Resolution Hindering U.S.-Colombia Free Trade Agreement



OPPOSE

A California Chamber of Commerce-opposed state resolution that memorializes Congress to oppose the U.S.-Colombia Free Trade Agreement (FTA) passed the Assembly this week.

**AJR 27 (Torrico; D-Fremont)**, an Assembly Joint Resolution, would cast the FTA and Colombia in an unproductive light if it were to pass the Legislature.

The U.S.-Colombia FTA, signed in 2006, is a critical element of the U.S. strategy to liberalize trade through multilateral, regional and bilateral initiatives. The agreement will also increase momentum toward lowering trade barriers and set a positive example for other small economies in the Western Hemisphere.

Colombia is an important trading partner with California and the United

States and also a partner in stopping drug trafficking. In 2009, the United States exported more than \$9.5 billion worth of goods to Colombia, with total trade topping \$20.7 billion. Colombia is California’s 35th largest trading partner, exporting more than \$320 million in goods in 2009.

The FTA is pending approval by the U.S. Congress.

AJR 27 passed the Assembly on June 21 by a vote of 47–27, with support coming largely from Democrats and Republicans opposing.

AJR 27 now goes to the Senate for consideration.

More information on the U.S.-Colombia FTA is available at

[www.calchamber.com/colombia](http://www.calchamber.com/colombia).

**Staff Contact: Susanne Stirling**

## Discount for CalChamber Members at Energy/Business Conference

California Chamber of Commerce members can receive a 10 percent registration discount for EngEx 2010, a conference and exhibition focused on energy, water, infrastructure and environmental technologies.

EngEx2010 is being held at the San Diego Convention Center on July 29-31.

EngEx 2010, sponsored by Shell Energy North America, creates opportunities by uniting 39 fields of engineering for collaboration, integration and to exhibit innovation.

The goal of EngEx is to bring engineers, business leaders, entrepreneurs, government agencies, students, professors and researchers



together to collaborate about practical solutions that address today's energy, water, infrastructure and environmental concerns and to help revive the economy.

Keynote speaker Mark Quartermain, president of Shell Energy North America, will discuss "counting carbon."

In addition, EngEx will offer more than 30 workshops at which government representatives will explain how private sector attendees can gain access to more

than \$500 billion given annually in government contracts, grants, exports and financing. The Bureau of Land Management will host four workshops on how to get access to government lands for renewable and non-renewable energy projects.

Eight electric vehicles will be on display in the exhibit hall, providing an opportunity for attendees to learn the effects of electric cars on the grid.

Advanced registration for the conference and exhibition space are available at [www.engexpo.com](http://www.engexpo.com). Use code number 80002666 to claim the 10 percent registration discount for CalChamber members.

## Nominations Open for Inner City Companies Seeking Capital

Nominations have opened for a program that educates investment-ready inner city companies about equity and other sources of growth capital, and matches them with potential investors.

The open call for nominations for the Inner City Capital Connections (ICCC) program was announced by the Initiative for a Competitive Inner City (ICIC) and Bank of America. The deadline for nominations is September 30.

The sixth annual ICCC will be held in Los Angeles in late fall, and will feature a full day of speed-pitching to potential investors, along with workshops and individual assessments on investment potential.

Eligible companies must be headquartered in or have 51 percent or more of a physical operations presence in an economically distressed urban area; and be a for-profit corporation, partnership or proprietorship with revenues of more than \$2 million in 2009.

More than 250 companies were nominated for last year's ICCC program; 75 accepted. Industries included technology, business services and manufacturing. This year, ICCC hopes to select 100 companies for participation.

The ICCC is a free program providing web-based training workshops, a day-long educational program on equity and

growth financing, and a one-day event connecting business participants with investors including private equity firms, venture capitalists, mezzanine investors and angel investors.

Since the launch of the ICCC program in 2005, nearly 200 inner city companies and 150 equity providers have been selected to participate. Participating companies have raised more than \$335 million in capital and experienced a compound growth rate of 23 percent.

More information about nominating a company for the program is available at [www.icic.org/iccc2010nom](http://www.icic.org/iccc2010nom).

**Which candidate is best for California?**  
*Get the facts and decide for yourself.*

Available exclusively at

**CalChamber2010.com**

 **CalChamber. 2010**  
Jobs • Economy • Working Families



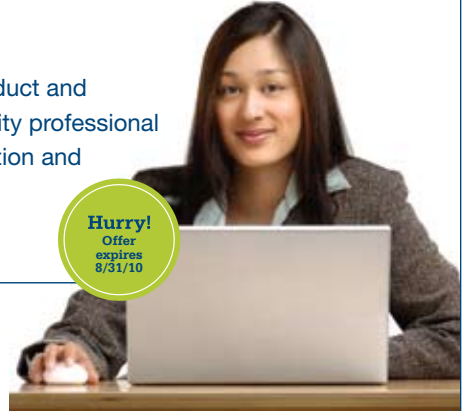
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