



November 3, 2009

The Honorable Joseph Lieberman
Chairman
Senate Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Lieberman:

As Co-Chairs of the Company Formation Task Force of the National Association of Secretaries of State (NASS), we are writing once again to express our opposition to S. 569, the Incorporation Transparency and Law Enforcement Assistance Act. With the Homeland Security and Governmental Affairs Committee (HSGAC) preparing to hold another hearing on this bill on November 5, it is important that you are aware of the negative impacts of this legislation. Above all, S. 569 would impose an unfunded federal mandate on states, create additional, unnecessary bureaucracy for states and businesses alike, and result in a myriad of unintended consequences that we fear would ultimately harm the business community throughout the U.S.

In its current form, the bill requires states to collect and maintain beneficial ownership information from corporations and limited liability companies formed under their laws, and to provide this information to law enforcement upon receipt of a subpoena. This legislation transforms what is largely the ministerial role of state agencies to one of oversight through the collection and processing of ownership information. Not only will this be a costly venture requiring states to fund the hardware, software, and staff to collect, store, and make accessible such data, there will also be a considerable cost to educating the public. We do not support such an expenditure of state resources, particularly during these difficult economic times.

In addition to the hardship S. 569 would impose on states, we are deeply concerned about the effects of this proposed legislation on the tens of millions of legitimate, law-abiding Americans who conduct their business through corporations. The disclosure requirements and secret access afforded to federal law enforcement may ultimately prove to be an affirmative disincentive to the creation of new businesses.

There are better, state-based solutions that already exist. For the past two and a half years, NASS has been working with a number of other prominent organizations, including the Uniform Law Commissioners, the American Bar Association, the National Conference of State Legislatures and the International Association of Commercial Administrators, to develop options that support the goals of law enforcement without unnecessarily restructuring state governments into federal agencies and negatively impacting the business community. We believe state laws and proposals like the Uniform Law Enforcement Access to Entity Information Act are the more practical and effective means by which to adopt the Financial Action Task Force's (FATF) recommendations for combating international money laundering. In addition to being state-based, these alternative approaches are simple to administer and do not seek to alter the role of the Secretary of State's office as a registration agent without enforcement powers.

As fellow public officials, we applaud the Committee's efforts to ensure that our government is being proactive in combating money laundering and other financial crimes. Although we are strongly opposed to S. 569, we will continue to work with federal agencies and law enforcement to fight illegal activity related to the company formation process.

Sincerely,

Hon. Elaine Marshall
North Carolina Secretary of State
NASS Company Formation Task Force Co-Chair

Hon. Ron Thornburgh
Kansas Secretary of State
NASS Company Formation Task Force Co-Chair

cc: Senate Homeland Security and Governmental Affairs Committee Members