



August 28, 2009

The Honorable Christopher J. Dodd
Chairman
Banking, Housing and Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Dodd:

As President and President-elect of the National Association of Secretaries of State (NASS), we are writing to express the association's opposition to S.569, the *Incorporation Transparency and Law Enforcement Assistance Act*. The reasons for our opposition were set forth in detail in testimony provided by North Carolina Secretary of State Elaine Marshall, Co-Chair of the NASS Company Formation Task Force, during the Senate Homeland Security and Governmental Affairs Committee (HSGAC) hearing on this bill on June 18, 2009. In short, for the past two and a half years, our organization has been working with a number of other prominent organizations including the Uniform Law Commissioners (ULC), the American Bar Association (ABA), the National Conference of State Legislatures (NCSL) and the International Association of Commercial Administrators (IACA) to develop solutions that would support the goals of law enforcement without unnecessarily restructuring state governments into federal agencies and negatively impacting the business community.

We have written Sen. Lieberman, Chair of the HSGAC to ask that his committee defer any action on this legislation in light of state-based efforts to explore alternative solutions.

We also ask, that as Chairman of the Banking, Housing and Urban Affairs Committee, you review this legislation and consider hearings. We believe much of what is referenced in S.569 falls under the jurisdiction of your committee. We are deeply concerned about the impact that this legislation – as written – will have upon legitimate, law-abiding Americans seeking to conduct their business. The disclosure requirements and secret access afforded to federal law enforcement may prove to be an affirmative disincentive to the creation of new businesses during these already challenging economic times. We are also wary of any federal law that would burden states and legitimate businesses, yet provide lawbreakers with the ability to evade it.

At our annual meeting in July 2008, NASS members unanimously adopted a resolution in opposition to the Act. NASS members also voted to work with our colleagues at ABA, ULC, NCSL and IACA to continue developing reasonable and cost-effective, state-based responses to the issues raised in the Act. Over the past year, NASS and its partners have continued to work diligently with federal agencies to develop a more sensible approach to combating money laundering in the area of corporate law. To be of meaningful assistance, any approach should be:

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- A state-based approach that is not extremely complex, extensive or redundant;
- Simple to administer in all aspects;
- One that respects our role as a registration agent with the mission of keeping valid, accurate public records and does *not* transform a public record keeping role into an enforcement role.

We believe that effective state laws and proposals like the Uniform Law Enforcement Access to Entity Information Act can fully meet the Financial Action Task Force (FATF) Recommendation 33, which urges member nations to take measures to prevent the unlawful use of legal persons by money launderers. NASS also believes that such approaches will dramatically reduce any undue administrative burdens and costs on legitimate businesses and state agencies at a time when the U.S. economy and state governments are under severe economic stress. Our opposition to the proposal at hand, while decisive, is predicated on our unique understanding of the ramifications of what the proposal will mean to American businesses.

If Congress determines that action must be taken, we urge an approach that cleaves closely to the principles of not only transparency and effectiveness, but also takes into consideration those practical considerations to which we have repeatedly adhered. Above all, the core principles of Constitutional state sovereignty should be maintained as Congress seeks ways to enhance the integrity and transparency of filing information.

As fellow public officials, we applaud the efforts to ensure that the United States is proactive in addressing the issue of money laundering. Although NASS is strongly opposed to this legislation, its members will continue to work with federal agencies to fight illegal activity and to develop state laws that ensure law enforcement access to the information they need to investigate and prosecute criminal activity. We remain confident that a comprehensive solution can be developed to address our mutual goals.

Sincerely,



Hon. Trey Grayson
Kentucky Secretary of State
President, National Association of Secretaries of State



Hon. Matt Dunlap
Maine Secretary of State
President-Elect, National Association
of Secretaries of State

cc: Members of Senate Banking Housing and Urban Affairs Committee
Hon. Susan Bysiewicz (CT)