



Susan Bysiewicz
SECRETARY OF THE STATE
CONNECTICUT

October 22, 2009

The Honorable Joseph I. Lieberman, Chairman
Committee on Homeland Security & Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Re: S. 569 Incorporation Transparency and Law Enforcement Assistance Act

Dear Chairman Lieberman,

In advance of the November 5, 2009 hearing I write to convey my strong opposition to Senate Bill 569, the Incorporation Transparency and Law Enforcement Assistance Act, as proposed by Senator Levin. As Chief Business Registrar for the State of Connecticut, I believe strongly that this bill as drafted would have negative consequences on Connecticut's business community and a detrimental impact on the State of Connecticut's budget and economic prosperity on a long term basis.

In this difficult economic climate where Connecticut's final budget implementers have yet to be fully negotiated, I trust you recognize the importance of not burdening our state with additional federal mandates. Under this legislation, however, there appear to be no new sources of Homeland Security funding to address necessary fundamental changes to my agency's Commercial Recording Division, were the bill to become enacted. Faced with such an unfunded mandate, state legislators and policy officials would be forced to offset an expensive conversion of our Commercial Recording Division through existing Homeland Security funds. As you know, these designated funds serve a vital mission to protect the New Haven Harbor oil gateway and Food Terminal, Bradley International, Brainard, Sikorsky and Tweed New Haven Airports, to monitor our rail and freight lines, and to protect our highways and other infrastructure from terrorist threat. There is too much infrastructure to guard with existing Homeland Security funds to enter the high stakes zero-sum game that is effectively proposed by the unfunded bill.

As you know, S. 569 will impact lawyers, accountants and other entity formation professionals as "formation agents," who essentially are deputized and charged with providing federal law enforcement with Suspicious Activity Reporting ("SAR") regarding the activities of their clients. In fact, SAR currently is prohibited under the Connecticut Rules of Professional Conduct for lawyers, which stipulate only that a Connecticut lawyer "shall [disclose confidential information about a client] to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal act that the lawyer believes is likely to result in death or substantial bodily harm." Rules of Professional Conduct Rule 1.6. Hiding one's identity as beneficial owner of a business entity does not in itself arise to the level of being "likely to result in death or substantial bodily harm." Similarly under the same section, lawyers may reveal confidential information to prevent the client from committing a crime that is likely to result in injury to the financial interest or property of another, but a lawyer is not compelled to do so, and there are any number of legal, valid reasons to hide one's identity as a beneficial owner that do not give rise to injuries to the financial interests or property of others. *Id.* Client-lawyer confidentiality is sacrosanct in the law in order to preserve the trust between lawyer and client that promotes representation. Such representation arms clients with legal advice that enables them to avoid criminality. A more detailed explanation of this

concern can be found in the June 30, 2009 letter that Thomas Susman of the American Bar Association sent to you setting forth that institution's opposition to S. 569 (copy appended).

To lower the ethical standard and require Connecticut attorneys to report merely suspicious activity to federal law enforcement would place a substantial chill on both the provision of legal services and the resort to legal representation by those who arguably require it most. Without legal representation, many small businesses that would otherwise form legal entities will be forced instead to form off-the-record (i.e. sole proprietorships or general partnerships) or will be unable to form at all. Forcing businesses to form largely off-record will undermine the intent of the bill and in fact will exacerbate the very beneficial ownership opacity that the bill seeks to clarify. That aside, without liability protections afforded by entity status, entrepreneurs are less likely to accept personal risk, which will further chill business formation and investment at a time when we can not afford to stifle economic growth. Small businesses create over 90% of the jobs in the Connecticut marketplace. Any negative effect on small business formation could be disastrous for our already ailing economy.

Furthermore, this legislation represents ill-conceived policy for the administration of the public record. Requiring high volume filing offices to scrutinize each transaction to a law enforcement standard would choke down our administrative operation and further delay or discourage business formation activity, as well as the flow of commerce generally. This, too, could be catastrophic as Connecticut attempts to rebound from the current recession. Ironically, the scrutiny would be for naught because a hidden beneficial owner will not appear anywhere on the paperwork for the filing office to analyze in the first place.

Finally, the proposed legislation would negatively impact Connecticut because it simply will not work. Despite the laudable goals behind S. 569, I harbor grave concerns that creating a new law enforcement and investigatory agency at the state level will be as ineffective and duplicative as it is costly. Money would be spent to add staffing and resources to upgrade state ministerial filing offices into law enforcement agencies. Money would be spent for training and continuing education. Filing officials would need to learn how to recognize and expose illegal front organizations and entity formation shell games, even as "hidden partners" and silent arrangements are specifically designed to prevent such exposure.

In my view, filing offices are simply not an effective resource to root out potential homeland security risks. On the other hand, the U.S. Treasury, FBI and other enforcement agencies have sophisticated means of tracking money transactions back to the true beneficiaries of these entities. I would advocate that additional funding should be granted to the Treasury and other federal partners instead of mandating duplication and waste at the state level.

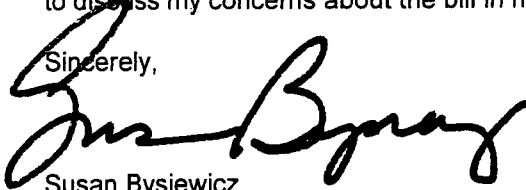
I am not the only public official or interested party to raise these concerns. The members of the National Association Of Secretaries of State (NASS) voted unanimously to oppose the bill and that organization has been vocal in its opposition (see appended letter dated July 24, 2009, as well as NASS's August 28, 2009 letter to Senator Dodd, Chair of the Senate Committee on Banking, Housing and Urban Development). Significantly, the US Chamber Of Commerce is opposed on grounds that the bill would impede or discourage business growth and would represent an inappropriate infringement on state sovereignty. The American Bar Association's opposition is referenced earlier in this letter. Many other organizations and officials oppose S. 569, all for good reason.

Overall, I oppose S. 569 and urge your opposition as well because, while it is a well-intentioned attempt to address a real issue, it will fall woefully short of accomplishing its objectives. Equally as important, this bill will have dire consequences on Connecticut's business community and our state overall. It has recently come to my attention that this legislation is scheduled for a hearing on November 5, 2009 and possible mark-up soon thereafter. I respectfully ask that you refrain from further action on this bill until the

U.S. Treasury Department completes an analysis and offers comprehensive recommendations with respect to the issues contained in S 569.

I would be happy to work with you and your colleagues to find alternative solutions to this legislation, and to discuss my concerns about the bill in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Bysiewicz". The signature is fluid and cursive, with a large, stylized "S" at the beginning.

Susan Bysiewicz
Secretary of the State of Connecticut