

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

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October 1, 2009

The Honorable Joseph Lieberman
Chairman
Committee on Homeland Security and
Government Affairs
United States Senate
Washington, DC 20510

The Honorable Susan Collins
Ranking Member
Committee on Homeland Security and
Government Affairs
United States Senate
Washington, DC 20510

Dear Chairman Lieberman and Ranking Member Collins:

The U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, believes that strong corporate governance and capital formation are an important part of the foundation for a vibrant and growing economy. The Chamber also believes that strong homeland security policies are necessary for the safety and well being of the United States.

The Chamber has serious concerns about S.569, the "Incorporation Transparency and Law Enforcement Act," because the bill would federalize existing state corporate law, add another unnecessary layer of government that would weaken U.S. homeland security, stifle investment, and impose significant restrictions on private businesses. This legislation is another example of government attempting to go too far in regulating the American free enterprise system.

Furthermore, the Chamber is concerned that the bill is being considered out of regular order. Traditionally, anti-money laundering measures have been under the jurisdiction of the Banking Committee, yet the bill to date has been under consideration in the Homeland Security and Government Affairs committee. Because of the bill's broad impacts upon the United States economy, the Chamber urges that the consideration of S.569 goes through regular order.

S.569 would require states to amend their corporate laws compelling detailed personal information of all beneficial owners of a non-public corporation or limited liability company to be publicly disclosed. This information would have to be updated annually. "Right to Know Laws" currently exist in almost all states, which require this private information to be made public. State eligibility for homeland security funding would be contingent upon these state corporate law amendments.

Corporate law, within the United States, has been the domain of the states for more than 150 years. This system has allowed for differing corporate and management structures that have created the foundation of the free enterprise system. S.569 would effectively federalize corporate law and create a one size fits all approach. This federalization could hamper capital formation

and discourage entrepreneurialism during the worst economic crisis in the past 75 years, by placing a chilling effect on legitimate business activity.

Corporate formation and changes go on continuously. Bedrocks of the American economy, such as Microsoft and Wal-Mart, started off as small businesses and grew into large ones creating untold wealth and thousands of jobs. Providing competition with information on who is behind a legitimate business transaction would put the United States at a competitive disadvantage in the international community. Further, requiring the home addresses of owners and then making that information public is completely unreasonable. This sort of requirement would merely inspire legitimate businesses to incorporate outside of the United States.

By publicly disclosing beneficial ownership information at the moment of incorporation, entrepreneurs may be less likely to form businesses within the United States because of the potential dissemination of private information and legitimate business functions.

S.569 could also create other unintended consequences including new and onerous recordkeeping requirements on states. While estimates vary by state, the national Association of Secretaries of State estimates that the cost of implementing S. 569 in California could be as high as \$17.5 million dollars. As the legislation is currently written, the funding for the program would be siphoned from homeland security grant funding to the states. The Chamber believes that funding for this program should not be taken from police, fire fighters, EMT personnel, and other first responders performing the critically important homeland security functions of the states.

Because S.569 only applies to nonpublic corporations and limited liability corporations, many other forms of businesses are exempted from such disclosure regimes. It is unclear how S.569, by targeting only nonpublic and limited liability corporations, would stem money laundering or terrorist financing. Bad actors will not hesitate to exploit loopholes regarding other forms of business entities.

Lastly, the stated goal of the legislation is to respond to the recommendations from the Financial Action Task Force (FATF) in 2006. The Chamber believes that the proposed mandates go beyond the requirements of FATF and encourage Congress to work with the private sector and states to develop an alternative. There are other proposals in the public domain that could better accomplish the goal of money laundering prevention without the harmful effects on all parties involved.

Small and emerging businesses, which are often formed as nonpublic and limited liability corporations, are the engine for economic growth and job creation in the United States. Accordingly, the Chamber urges you to oppose S.569 because it would create a chilling effect upon legitimate business activity and harm economic growth and job creation.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten", written in a cursive style.

R. Bruce Josten

Cc: The Members of the United States Senate