



NATIONAL CONFERENCE *of* STATE LEGISLATURES

*The Forum for America's Ideas*

November 4, 2009

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

The Honorable Susan M. Collins  
Ranking Member  
Committee on Homeland Security and Government Affairs  
340 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Lieberman and Ranking Member Collins,

I write on behalf of the National Conference of State Legislatures to express our opposition to the Incorporation Transparency and Law Enforcement Assistance Act (S. 569). S.569 would force states to amend their corporate laws by requiring the collection of detailed personal information of all beneficial owners of a non-public corporation or limited liability company and publicly disclose this information. S. 569 would also set a national standard for incorporation thus preempting most current state corporate formation statutes.

The ability to regulate and set standards for incorporation law has always been a responsibility of the states. As you know, many states rely on the revenue generated by incorporation fees, corporate taxes and other fees as a way to fund vital state programs, such as education, health, public safety and highways. States determine what the articles of incorporation need to involve and have the ability to both tighten and lift requirements for corporate formation.

NCSL, through a special task force of state legislators, evaluated many of the federal reports and criticisms that you will be told about in your Committee's hearing on November 5, 2009. After a year of meetings and hearings, the NCSL Task Force found that, while some state statutes may lack some of the transparency demanded by the federal agencies, the wholesale preemption of state corporate formation statutes is unwarranted and unnecessary. Many of the same federal agencies that will testify before the Committee also met with my colleagues during the course of our review. We believe that just as they failed to show us the evidence that would warrant such massive preemption, they will not be able to do so during the Committee hearing.

The Task Force also concluded that this legislation redirects state agencies away from their current, ministerial role to one of collecting and processing ownership information. This will be a costly unfunded mandate requiring states to fund the hardware, software, and staffing to collect, update, preserve, and make accessible such data. There would also be a considerable cost to educate the public on the new requirements. Furthermore, members of the Task Force argued that the

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Department of Treasury presently has the proper tools to track and monitor illegal activity including databases monitoring financial transactions within the Internal Revenue Service.

NCSL will continue to work with the National Association of Secretaries of State, American Bar Association, and the National Conference of Commissioners of Uniform State Laws to enhance the transparency of current state corporate formation laws. NCSL along with NASS and other partners is committed to continuing to work to ensure that our state corporate formation laws are not abused by criminals in illegal activities, such as money laundering.

NCSL applauds the efforts of the Committee to review current federal activities to monitor the issue of money laundering. Although NCSL is opposed to this legislation, we will continue to work with you, the members of the Committee and federal agencies to ensure law enforcement access to the information they need to investigate and prosecute criminal activity. We have attached NCSL's official policy statement on Corporate Formations for the record. Should you have questions about our concerns, please contact Chris Coleman at 202-624-8673 or Neal Osten at 202-624-8660 in NCSL's Washington office.

Sincerely,

A handwritten signature in black ink that reads "Brian Patrick Kennedy". The signature is written in a cursive, flowing style.

Representative Brian Patrick Kennedy, Rhode Island  
Chair of NCSL Communications, Financial Services and Interstate Commerce Committee