



November 4, 2009

The Honorable Senator Joseph I. Lieberman, Chairman
The Honorable Senator Susan M. Collins, Ranking Member
Senate Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC, 20510

Re: Update to letter dated June 18, 2009 submitted in support of the S. 569, The Incorporation Transparency and Law Enforcement Act

Dear Mr. Chairman and Ranking Member:

In advance of the Hearing before the Homeland Security and Governmental Affairs Committee on November 5, 2009 concerning Senate Bill 569, the Incorporation Transparency and Law Enforcement Assistance Act (S. 569), we are writing to express our support for the adoption of S. 569 as drafted. Incorporation transparency is an invaluable tool to (i) combat national and international crime and terrorism, (ii) hinder the financing thereof, and (iii) frustrate the ability of perpetrators to hide and benefit from the proceeds of their crimes.

You may recall that several of the undersigned organizations submitted a letter to you in support of S. 569, dated June 18, 2009 (attached hereto for reference). The signatories hereto confirm or re-affirm the sentiments expressed in that letter. **In the time that has elapsed since the June 18th letter was delivered to you, however, we have become aware of some of the concerns that have been voiced by industry and at the state level with respect to this Bill. We would like to supplement the June 18th letter by identifying and responding to some of those concerns as follows:**

1. Concern: S. 569 is trying to federalize state incorporation laws.

Response: S. 569 does not require any state to enact any law with respect to corporations; it merely requires the states to add one more question to their existing incorporation forms and to make the information provided available to law enforcement upon presentation of a subpoena or summons. Federalization would be a fair charge if the bill required federal control of the corporate formation process or the incorporation determination, but no such requirements are part of the bill. Instead, the bill requires one additional piece of information to be collected regarding the beneficial owners of the corporations being formed to prevent the misuse of U.S. corporations by criminals and other wrongdoers within or outside of the United States.

2. Concern: S. 569 will be contrary to "Right to Know" laws on the books in many states.

Response: Some states have chosen to put into place laws allowing public access to incorporation information, reflecting a decision by each such state legislature to support a policy of general public access. Those laws are also subject to state interpretation, and may permit certain personal information to be kept nonpublic, if a state chooses that course of action. S. 569 does not preempt state law. To the contrary, S. 569 expressly permits states to keep corporate beneficial ownership information non-public and limit access to such information to appropriate law enforcement authorities.

3. Concern: S. 569 will make public information that is important to safeguard corporate strategy.

Response: Again, S. 569 takes no position on the issue of public access and expressly permits states to keep corporate beneficial ownership information non-public and limit access to such information to appropriate law enforcement authorities. To the extent that some states choose to make such information public, corporations should have no cause for concern if any strategies revealed do not break federal or state laws. We should not permit corporate secrecy to be used as a shield to hide corporate misconduct.

4. Concern: Implementation of S. 569 at the state level will be a costly burden on states.

Response: Beneficial ownership information can be collected via existing electronic incorporation methods and stored in existing electronic databases. Alternatively, such information can be obtained by adding the relevant question and space for a response on existing paper incorporation forms. Still another approach would be for a state to add one additional piece of paper to the exiting form requesting beneficial ownership information which would not be included in the publicly available information. It is important to note that while incorporation information may be a matter of public record in many states, states do charge a variety of fees for collecting such information and for supplying such information to the public upon request, and these fees are always subject to change. Only a portion of this information is reproduced by the states free of charge. States use these fees to either underwrite or offset the cost of their incorporation activities and in some cases as a source of additional revenue. For example, according to the 2007 Annual Report from the Division of Corporations, the Division's operating expenses for 2007 totaled \$12 million, while the Division's revenue exceeded \$700 million. Furthermore, the Bill provides for any initial start-up costs and the cost of any ongoing management to be sourced from the states' allocated Homeland Security monies.

We appreciate your considered attention to the Incorporation Transparency and Law Enforcement Assistance Act. We encourage you to focus on providing law enforcement with the tools needed to effectively fight crime and the criminals that rely, as a matter of course, on the lack of incorporation transparency to shield both the nature and extent of their crimes as well as their personal involvement in those crimes.

Sincerely,

Charlie Cray, Director, Center for Corporate Policy
Robert S. McIntyre, Director, Citizens for Tax Justice
Constance Brookes, Executive Director, Friends Fiduciary Corporation
Raymond Baker, Director, Global Financial Integrity
Corinna Gilfillan, Global Witness
Bea Edwards, International Program Director, Government Accountability Project
Marie Dennis, Director, MaryKnoll Office for Global Concerns
Jo Marie Griesgraber, Executive Director, New Rules for Global Finance
Gawain Kripke, Director, Policy and Research, Oxfam America
Todd Tucker, Research Director, Public Citizen's Global Trade Watch
Sarah Lewis, Executive Director, Tax Justice Network USA
Nicole Tichon, Federal Tax and Budget Reform Advocate, U.S. Public Interest Research Groups (U.S. PIRG)
Jon Adler, National President, Federal Law Enforcement Officers Association

CC: The Honorable Timothy F. Geithner, Secretary, Department of the Treasury
The Honorable Peter R. Orszag, Director, Office of Management & Budget
The Honorable Max Baucus, Chairman, Senate Committee on Finance
The Honorable Charles B. Rangel, Chairman, House of Representatives Committee on Ways and Means Committee



June 18, 2009

The Honorable Senator Joseph I. Lieberman, Chairman
The Honorable Senator Susan M. Collins, Ranking Member
Senate Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington DC, 20510

Dear Mr. Chairman and Ranking Member:

We the undersigned write to express our support for Senate Bill 569, the Incorporation Transparency and Law Enforcement Assistance Act.

It is clear that implementing the provisions of this legislation will help law enforcement stop the misuse of U.S. corporations for tax fraud, money laundering, terrorist financing and other illicit financial transactions. Equally crucial will be to bring the United States in line with international standards of transparency.

Practitioners in offshore jurisdictions accuse the United States of demonstrating hypocrisy by calling for compliance with international standards to combat money laundering, terrorist financing, and tax evasion while failing to meet those standards itself. Cayman, Bahamas, BVI and other tax havens cite Delaware, Nevada, Wyoming, and other states for failing to comply with international standards requiring the collection of beneficial ownership information for the companies formed under their laws.

The Financial Action Task Force on Money Laundering (FATF) issued a report in 2006 criticizing the United States for its failure to comply with a FATF standard requiring countries to obtain beneficial ownership information for the corporations formed under their laws. The United States, to this day, remains non-compliant.

The FATF is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing. It is the leading international anti-money laundering body in the world. FATF Members and Associate Members include a number of nations commonly regarded as secrecy jurisdictions or tax havens.

In order for the United States to obtain international cooperation from other jurisdictions for combating tax evasion, money laundering and terrorist financing, it is essential for it to be seen as compliant with international standards of transparency. Enacting the Incorporation Transparency and Law Enforcement Assistance Act would ensure that the United States meets its commitment to comply with FATF anti-money laundering standards, and would restore a critical measure of credibility in its international stature.

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