Funding the Future

US lawyers don’t want to report money laundering

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I have been reading more of the evidence submitted to the Senate Committee on Homeland Security and Governmental Affairs hearing on Business Formation and Financial Crime.

That of the American Bar Association is shocking. They say (and I have edited their submission by eliminating but not changing text):

*The ABA supports all reasonable and necessary domestic and international efforts to combat money laundering, tax evasion, and terrorist financing activity. *

*The ABA, however, opposes the proposed regulatory approach set forth in S. 569 and any other legislation that would unnecessarily regulate state incorporation practices and impose government-mandated suspicious activity reporting (“SAR”) on the legal profession. The ABA’s opposition is grounded in three fundamental aspects of the proposed legislation. *

*First, S. 569 [the bill] would essentially federalize state incorporation practices, meaning that states would be required to obtain, keep current, and make available to law enforcement authorities “beneficial ownership” information on corporations and limited liability companies. In our view, the imposition of a federal regulatory regime focused on beneficial ownership information is not workable, would be extremely costly, would impose onerous burdens on state authorities and legitimate businesses, would run counter to formation practices of major countries (including Canada, Mexico, Japan, and China), and will not achieve the laudable goal of assisting federal law enforcement authorities with pursuing and prosecuting criminal activity. *

For instance, obligating state agencies to collect beneficial ownership information would involve significant and expensive hardware and software changes, including the creation of a parallel record keeping system consisting of public and non-public information. These impediments, coupled with an unwieldy definition of beneficial ownership and the bill’s focus on only a limited number of entities, would sow

confusion into the formation process that would not enhance law enforcement's goals.

Second, S. 569 would create a new class of "financial institutions," known as formation agents, that would be subject to enhanced anti-money laundering ("AML") requirements. Because lawyers assist clients in forming corporations and limited liability companies, the designation of formation agents as financial institutions subject to additional AML requirements threatens to sweep in U.S. lawyers and treat them as the functional equivalents of banks.

Third, S. 569 could potentially impose SAR requirements on the legal profession, meaning that lawyers would have to report to governmental authorities a suspicion that their clients are engaging in money laundering or terrorist financing activity.

Let's summarise this:

a) We want law enforcement but not if it costs anything or might work

b) We want an exclusive crave out for ourselves that provides competitive advantage

c) We wish that competitive advantage to be based on turning a blind eye to criminality.

Yes: I know about client confidentiality. But crime is always a crime and whilst lawyers must be able to defend their clients it is an unfortunate fact that lawyers have also been found,time and again, to be assisting tax abuse in the US. Those lawyers should not be able to use the right of criminal defence lawyers to avoid their obligations when they incorporate legal entities. That seems to me an abuse of the right of the lawyer.

I find these arguments quite shocking. This is a profession that appears to want to allow anonymity so it might profit from it, even if that use might be criminal. That is utterly ethically unacceptable. No wonder lawyers are held in such low regard.