

Senator Charles Grassley. Photo: Gage Skidmore

For years, Senator Carl Levin (D-Michigan) and Senator Charles Grassley (R-Iowa) have sponsored a bi-partisan bill to eliminate anonymous shell corporations only to see their measure go nowhere. This year, their annual Sisyphean effort is getting support from the unlikeliest of places: Delaware.

Pretty odd because Delaware has long been criticized for its welcome embrace of corporate secrecy and, in fact, is one of the targets of the Levin-Grassley bill. The tiny state is perennially at the top of the list of global tax havens and has gained a reputation as place where those with something to hide – embezzlers, arms merchants, money launders, drug dealers and the like – can set up shop, no questions asked. This is thanks to Delaware laws that allow the true owners of a corporate entity to remain a secret.

Now some politicians in Delaware are saying this nearly air-tight corporate secrecy has become an embarrassment and are backing the struggling Levin-Grassley measure. A letter signed by 31 members of the Delaware legislature – half of the total body – has been sent to the state’s Congressional delegation in Washington urging them to support the bi-partisan measure. In years past, stiff opposition from Delaware’s Congressional delegation has helped keep the measure bottled up in committee, where it has died a quiet death.

The home-grown effort to combat corporate secrecy is in its early stages. The letter from the 31 state legislators was written only last month,, just as Congress was about to go on its summer break. Delaware has long prided itself for the large number of legitimate companies that have incorporated there, polishing the state’s reputation as the corporate capital of the nation. The state is also known for having the sharpest courts in the nation for resolving business disputes, further enhancing its reputation. Delaware’s state treasury has welcomed the hefty fees that these corporation registrations bring. As a result, the state – home to Vice President Joe Biden – has far more corporations than people. With more attention being paid to the darker side of Delaware’s laissez-faire attitude to corporate privacy, the tide may be turning, however slowly.

The positive and negative sides of the state’s pro-corporate stance are reflected in the letter signed by the 31 state legislators, which reads, in part:

"Delaware benefits greatly from our status as a corporate capital. Our state earns respect and revenue because U.S. and international corporations frequently choose to make and keep Delaware as their legal domicile.

"While the overwhelming majority of American and Delaware businesses are law-abiding, some individuals take advantage of our laws by creating and using anonymous shell companies to facilitate money laundering, terrorist financing, drug smuggling, arms trafficking, anonymous campaign contributions, tax evasion, and other criminal activity."

A number of individual state legislators have picked up the same theme. In a press release, state representative John Kowalko of Newark, Delaware, said that while the majority of companies incorporated in Delaware are set up by “law abiding and responsible individuals,” many are not and they have given the state a black eye:

“Delaware has been called the ‘U.S. Shell Corporation Capital,’ a ‘corporate tax haven,’ and the ‘new Cayman Islands.’ These labels besmirch Delaware’s image. I do not want that to be Delaware’s reputation or Delaware’s reality. However, when people like convicted criminal DC lobbyist Jack Abramoff, the notorious arms smuggler Viktor Bout (known as the Merchant of Death), or fraudsters such as the ‘Midwest Madoff’ Timothy Durham all take advantage of Delaware’s laws to create anonymous shell companies to launder money for illegal purposes, our state has a real problem that needs to be addressed.”

Senator Carl Levin  
Senator Carl Levin. Delaware’s support for the Levin-Grassley bill has been hailed by advocacy groups that have long supported the measure and called for greater corporate transparency all across the globe. “Delawareans are speaking out,” said Stefanie Ostfeld, Senior Policy Advisor with Global Witness, an advocacy group.

While it is not surprising that groups like Global Witness are heartened by this new-found activism in the Delaware legislature, it does represent a bit of a turnabout in their attitude towards the state. Last June, Global Witness and other groups were sharply critical of a series of measures had breezed through one of the state’s two legislative chambers – the House – that would take some modest steps towards eliminating Delaware’s corporate secrecy. Those measures were derided as “mere window dressing,” something that Ms. Ostfeld repeated again this week.

When it comes to Delaware, Global Witness appears to be all over the map: Bashing Delaware legislators for some baby steps towards transparency, even if they are in the direction that advocacy groups favor; praising Delaware when some of its state legislators back the Levin-Grassley measure, even though its chances of passage remain awfully dim.

Of course, the letter from the 31 Delaware legislators is just that – a request to Delaware’s three-member Congressional delegation, which may or may not follow their wishes. Delaware is so small it has only one member of the House of Representatives, along with two Senators. While few in numbers, the three-member Congressional delegation has been able to block any changes to their state’s fabled corporate secrecy. This is the first time, however, that they’ve heard from powerful voices within their own state.