

“Support for the LLC Transparency Act (A9415, S8439)”

May 3, 2022

Prepared Remarks of Ryan Gurule

Policy Director

Financial Accountability and Transparency (FACT) Coalition

Good morning, and thank you for having me. My name is Ryan Gurule, and I am here as the Policy Director of the Financial Accountability and Corporate Transparency (or FACT) Coalition–a broad, nonpartisan alliance of members dedicated to standing up structural reforms that address vulnerabilities in the U.S. financial system that facilitate money laundering, sanctions evasion, corruption, tax dodging, and illicit financial flows.

We are here today in support of the efforts that New York is taking to address financial secrecy in its financial, business and real estate markets. With A9415, also known as S8439 or the LLC Transparency Act, New York can establish itself as a leader in reversing the United States position as one of the most secretive financial jurisdictions in the world. This undesirable status erodes the tax base of the U.S. and our allies, undermines our national security and financial markets, and weakens democracy here and abroad. The financial secrecy offered by the U.S. and our allies have also previously enriched and empowered potentially adversarial regimes, including those of Russian President Putin, giving his inner circle a backdoor to evade the bite of earlier sanctions and emboldening their corrupt and criminal behavior.[[1]](#footnote-1)

What New York does to advance financial transparency matters. New York’s economy represents more than 8% of the U.S. economy, and would comprise the 11th largest economy in the world on its own.[[2]](#footnote-2) New York has also in recent years taken notice of the ways that competition for financial secrecy among U.S. states has often been targeted at eroding New York’s state Treasury coffers, undermining public services provided in the Empire state.[[3]](#footnote-3)

The “LLC Transparency Act” would leverage and, in many ways improve upon reforms occurring at the federal level, to require disclosure of beneficial owners of limited liability companies formed, operating or transacting in New York. We urge the committee to consider advancing this important legislation. Today, my testimony will briefly cover: (i) first, the need for timely implementation of key beneficial ownership transparency reforms in the United States; (ii) second, how the LLC Transparency Act would better protect New York markets, as well as U.S. markets more generally, and (iii) third, next steps New York might consider taking in buttressing our open, democratic markets through transparency.

**The Need for Beneficial Ownership Transparency**

Offering both financial security and secrecy, the United States has become a prime destination for the criminal and corrupt looking to launder their ill-gotten gains. According to the Tax Justice Network, the United States is the second most secretive jurisdiction in the world.[[4]](#footnote-4) As a result, untold wealth pours into U.S. financial markets and real estate, whether that be in small towns in the Hudson Valley or towering Manhattan apartments.[[5]](#footnote-5)

As made clear by the Senator, Assemblywoman, and Transparency International, anonymous U.S. shell companies have played a key role in perpetuating harms that undermine U.S. national security, destabilize the U.S. economy, and threaten global democracy. There is ample evidence of how anonymous U.S. shell companies have been used by fraudsters, human traffickers, terrorists, arms dealers, U.S. adversaries, and kleptocrats to protect the profits of their plunder.[[6]](#footnote-6) Public funds around the world are ruthlessly stolen, stifling economic development and impoverishing communities.[[7]](#footnote-7) Environmental resources are exploited without care for climate repercussions.[[8]](#footnote-8) Legitimate businesses suffer as they are forced to compete with fraudsters who benefit from legal impunity.[[9]](#footnote-9) As the scale of the crisis has metastasized, so has the threat to national security. The invasion of Ukraine demonstrates what happens when kleptocrats like those in Russia can evade sanctions and contribute toward the destabilization of international security and global markets.[[10]](#footnote-10)

The FACT Coalition helped lead the way on passing the 2021 Corporate Transparency Act (CTA)[[11]](#footnote-11) with the support of law enforcement, national security experts, financial institutions, anti-human trafficking organizations, large and small business associations, and faith groups.[[12]](#footnote-12) The CTA will, once implemented, effectively ban the use of most anonymous shell entities in the United States by requiring certain U.S. entities to name their true, “beneficial” owner to a secure federal directory housed at the Financial Crimes Enforcement Network–or FinCEN. Certain exemptions in the law should be closely watched by FinCEN for ongoing money-laundering risks.

The resulting directory will not be available to the public, but will be accessible to state and local law enforcement officials pursuant to the statute. FinCEN is currently in the process of drafting key rulemakings to implement the Act.[[13]](#footnote-13) The FACT Coalition has urged FinCEN to provide uncomplicated, complete access to the central directory for authorized state and local law enforcement officials.

Separately, FinCEN has solicited public input on bringing greater transparency to U.S. real estate markets, advancing beyond the information-gathering focused and temporary geographic targeting orders–or GTOs–that have been in place since 2016 in cities like Manhattan.[[14]](#footnote-14) Such measures would bring transparency to the enormous U.S. real estate market–a market that should have been subject to full anti-money laundering and countering the financing of terrorism (AML/CFT) rules since Congress required as much in 2001. As it drafts the new rule, FinCEN should reform and expand its real estate framework by, among other changes, pursuing a permanent and nationwide reporting regime that would require real estate professionals to identify the individuals behind their entity clients. Reporting requirements should also apply to both commercial and residential real estate transactions, without monetary thresholds, and apply to both buyers and sellers of a real estate property.

 Whether and to what extent state authorities will have access to information reported under any final real estate reporting rules remains to be seen.

**The LLC Transparency Act is a Step Forward for New York**

New York has a key opportunity to take the lead among states in the fight against global corruption. We believe state-level efforts, like the LLC Transparency Act, are critical for shoring up the financial safeguards at the federal level and preventing the abuse of the U.S. financial system.

The LLC Transparency Act would require domestic and foreign LLCs to disclose their beneficial owners in connection with formation or registering to transact business, upon changes of beneficial ownership, and in connection with certain tax filings. The bill would also set up a database to allow the public to understand the true, natural owner behind currently anonymous LLCs. This transparency measure would give both law enforcement and the public a clearer view of the often complex structures behind LLCs, including those serving as landlords in the state. Such a step would ensure that New York does not remain a place for kleptocrats to stash their wealth and would protect New York real estate markets and tenants.

 The LLC Transparency Act does more than just replicate elements of the Corporate Transparency Act. As of now, the CTA directory will not be available to the public and certain exemptions and other limitations in the CTA may continue to provide opacity in areas where New York needs greater transparency. As FinCEN continues to draft the final regulatory language for the CTA, the LLC Transparency Act provides a better-tailored solution for New York than the CTA standing alone, maximizing the tools available to New York law enforcement, government officials, and others to facilitate inter-agency cooperation within New York State, protect public safety, and prevent abuse of New York’s financial system and real estate markets for property owners and tenants. A public database also increases the ability to verify the accuracy of information delivered to this database, as well as other government agencies, on a continual basis. More accurate information is critically important, not just for administrative purposes, but for local businesses and tenants in lowering their own transaction costs in engaging with commercial suppliers, landlords, and others.

**Next Steps**

The LLC Transparency Act is an important step forward for New York. Building on this initiative, New York should continue to monitor successes and potential unintended consequences associated with the LLC Transparency Act, and the bill provides the framework for doing so:

1. The LLC Transparency Act focuses on LLCs as an important starting point for bringing transparency to New York markets. In other international jurisdictions, bringing transparency to a more limited number of legal entities has often encouraged formation and investment via legal entities not included in similar regimes. The bill requires reports regarding compliance with the LLC Transparency Act, and review of whether other available legal entities or arrangements garner increased investments, meriting extension of the regime to additional otherwise anonymous vehicles.
2. FACT would encourage New York to give serious consideration to applying similar transparency reforms to all legal entities, arrangements or associations organized, operating, or transacting in New York or pursuant to New York law. Doing so would continue to leverage federal reforms under the CTA, minimizing compliance costs for all New York businesses, while also bolstering the CTA and New York’s transparency efforts with respect to identified risky vehicles and arrangements that can currently invest in New York with anonymity, such as common law trusts.

**Conclusion**

The LLC Transparency Act creates a solution that works for New York–leveraging federal reforms to minimize compliance costs, while simultaneously increasing transparency and decreasing transaction costs for New York’s small businesses and renters. These reforms also set an important precedent for other state governments–solidifying New York’s position as a leader in transparent, well-functioning markets. Tackling the challenge of kleptocracy and corruption requires a whole-of-government approach that goes beyond the federal government. Now is the time for Albany to lead the way by taking up the LLC Transparency Act and demonstrating how other state governments can do their part to keep illegal wealth out of U.S. real estate and financial markets.

1. See e.g., Anders Asland & Julia Friedlander, Defending the United States Against Russian Dark Money (Nov. 17, 2020), <https://www.atlanticcouncil.org/wp-content/uploads/2020/11/Russia-Dark-Money-Printable-PDF.pdf>. [↑](#footnote-ref-1)
2. See <https://www.bea.gov/sites/default/files/2022-03/qgdpstate0322.pdf> [↑](#footnote-ref-2)
3. Daniel Hemel, “South Dakota’s tax avoidance schemes represent federalism at its worst,” Washington Post (2021), <https://www.washingtonpost.com/outlook/2021/10/07/tax-shelters-states-pandora/> [↑](#footnote-ref-3)
4. “Financial Secrecy Index,” Tax Justice Network (2020), <https://fsi.taxjustice.net/en/> [↑](#footnote-ref-4)
5. Casey Michael and Paul Massaro, “The U.S. Midwest Is Foreign Oligarchs’ New Playground,” Foreign Policy (2021), <https://foreignpolicy.com/2021/06/03/the-u-s-midwest-is-foreign-oligarchs-new-playground/>; and “Towers of Secrecy: Piercing the Shell Companies,” New York Times (2018), <https://www.nytimes.com/news-event/shell-company-towers-of-secrecy-real-estate> [↑](#footnote-ref-5)
6. See the following resources on the how anonymous shell companies harm national security, enable human trafficking, and damage honest businesses:

“FACT Sheet: Anonymous Companies and National Security,” the FACT Coalition (2020), <https://thefactcoalition.org/anonymous-companies-and-national-security/>,

“FACT Sheet: Anonymous Companies and Human Trafficking,” the FACT Coalition (2020), <https://thefactcoalition.org/fact-sheet-anonymous-companies-and-human-trafficking/>,

“FACT Sheet: Shell Businesses Are Harmed by Anonymous Shell Companies,” the FACT Coalition (2019), <https://thefactcoalition.org/fact-sheet-small-businesses-are-harmed-by-anonymous-companies/>. [↑](#footnote-ref-6)
7. For examples, see “Kleptocrats Inflict Real Harm” within “No Justice Without Transparency: Congress Must Pass the Justice for Victims of Kleptocracy Act,” Transparency-International U.S. Office (2021), <https://us.transparency.org/resource/jvok-factsheet/>. [↑](#footnote-ref-7)
8. Christopher Boose, “Financial Secrecy Feeds Kleptocracy and Environmental Destruction. Now is the Time for the U.S. and the World to Act on Beneficial Ownership Reform,” the FACT Coalition (2021), <https://thefactcoalition.org/financial-secrecy-feeds-kleptocracy-environmental-destruction-now-is-the-time-for-the-u-s-and-the-world-to-act-on-beneficial-ownership-reform/>. [↑](#footnote-ref-8)
9. “FACT Sheet: Business Case for Ending Anonymous Companies,” the FACT Coalition (2020), <https://thefactcoalition.org/fact-sheet-business-case-for-ending-anonymous-companies-february-2020/>. [↑](#footnote-ref-9)
10. Sanctioned Oligarch Oleg Deripaska used a Delaware LLC to obfuscate ownership of a $14 million dollar, New York City townhouse. See: Chris Glorioso, “Russian Oligarchs Hide Their Assets in NYC Real Estate and Intricate Shell Companies,” NBC4 New York (2022), <https://www.nbcnewyork.com/news/local/russian-oligarchs-hide-their-assets-in-nyc-real-estate-and-intricate-shell-companies/3582803/> [↑](#footnote-ref-10)
11. 21 U.S.C. 5336. [↑](#footnote-ref-11)
12. “Endorsements for Beneficial Ownership Transparency,” October 2020, <https://thefactcoalition.org/endorsements-beneficial-ownership-transparency/>. [↑](#footnote-ref-12)
13. Nicole Sadek, “US budget proposal seeks to modernize FinCEN and sanctions policy,” International Consortium of Investigative Journalists (2022), <https://www.icij.org/investigations/fincen-files/us-budget-proposal-seeks-to-modernize-fincen-and-sanctions-policy/>; “Enhancing National Security by Reimagining FinCEN,” Global Financial Integrity (2021), <https://gfintegrity.org/report/enhancing-national-security-by-reimagining-fincen/> [↑](#footnote-ref-13)
14. See 86 Fed. Reg. 69589 (Dec. 8, 2021). [↑](#footnote-ref-14)