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Corporate Transparency Act Enforcement on Hold for Now

Client Alert

12.5.2024

On December 3, 2024, the United States District Court for the Eastern District of Texas (the “Court”) issued a nationwide preliminary injunction prohibiting the U.S. government from enforcing the Corporate Transparency Act (the “CTA”). The Court held that the CTA is likely an unconstitutional exercise of Congress’s legislative power. This preliminary injunction temporarily halts enforcement of the CTA by the Financial Crimes Enforcement Network (“FinCEN”) and the requirement that reporting companies submit their beneficial ownership information reports (“BOIRs”) to FinCEN, at least for now. This order comes just weeks before the January 1, 2025 deadline by which millions of U.S. companies would have been required to submit BOIRs to FinCEN.

Texas Top Cop Shop v Garland, et al.

In the case *Texas Top Cop Shop v Garland, et al.*¹, six plaintiffs sought to enjoin the enforcement of the CTA arguing that: (1) the CTA intrudes upon States’ rights under the Ninth and Tenth Amendments; (2) the CTA compels speech and burdens Plaintiffs’ right of association under the First Amendment; and (3) the CTA violates the Fourth Amendment by compelling disclosure of private information.²

The Court did not rule on the First and Fourth Amendment claims but found that the CTA is likely to violate the Tenth Amendment because the CTA exceeds Congress’s authority under the Commerce Clause and the Necessary and Proper Clause, including Congress’s power to tax under the Necessary and Proper Clause. The Court found that while Congress has authority to regulate existing commercial activity, it cannot *compel* activity and then use that activity to justify its regulation. It held that the mandatory reporting of beneficial ownership information is the creation of an activity and not a regulation of existing commerce.³

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The Court reasoned that a nationwide injunction would be appropriate in this case in part because the 300,000 members of one plaintiff, the National Federation of Independent Business, are located nationwide, and because of the nationwide reach of the likely constitutional violation. It noted that approximately 32.6 million existing companies would be harmed by application of the CTA, legislation that Congress likely did not have power to enact.⁴

What Does This Mean for Reporting Companies?

The Court's preliminary injunction is not an affirmative finding that the CTA is unconstitutional or a final ruling on reporting companies' obligations under the CTA, as the Court determined that it would not be able to render a meaningful decision on the merits of the case by the reporting deadline. However, the Court's order does temporarily halt the CTA's nationwide enforcement and stays the application of the reporting requirement. It is highly likely that the government will appeal to the United States Court of Appeals for the Fifth Circuit to overturn the preliminary injunction, which could potentially reinstate the January 1, 2025 reporting deadline. FinCEN has not yet issued a statement regarding the Court's ruling. The outcomes of this litigation remain uncertain, and challenges to the CTA remain pending in other courts as well. We will continue to monitor developments and provide additional updates.

What Should You Do?

Reporting companies may delay filing BOIRs until further clarity is provided by the Fifth Circuit Court of Appeals, the Supreme Court, or FinCEN. However, they should remain prepared to comply with the January 1, 2025 deadline in case the preliminary injunction is overturned or vacated. We stand ready to assist any clients who prefer to proceed to file BOIRs at this time.

If you have questions regarding your reporting obligations under the CTA, please contact any of the authors of this Client Alert.

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[1] *Texas Top Cop Shop v Garland et al*, No. 4:24-cv-00478 (E.D. Tex. Dec. 3, 2024).

[2] *Id.* at 14.

[3] *Id.* at 40.

[4] *Id.* at 74-77.