

Client Alert

Government Matters and Regulation

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Federal District Court in Texas Grants “Nationwide” Preliminary Injunction Against CTA Enforcement; FinCEN Suspends Compliance with the CTA while Injunction Remains in Effect; DOJ Files Notice of Appeal

On December 3, 2024, the United States District Court for the Eastern District of Texas entered a nationwide preliminary injunction against the enforcement of the Corporate Transparency Act (“CTA”) and its implementing regulations. The Plaintiffs, Texas Top Cop Shop, four additional entities including the National Federation of Independent Business and the Libertarian Party of Mississippi, and one individual, argued that the CTA and its regulations are invalid because they impose unconstitutional burdens and infringe on constitutional rights.

Considering the district court’s injunction ruling, the CTA and its implementing regulations cannot currently be enforced. The U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) recently announced that it “will comply with the order issued by the U.S. District Court for the Eastern District of Texas for as long as it remains in effect.”¹ It further indicated that “[r]eporting companies are not currently required to report beneficial ownership information (“BOI”) with FinCEN and will not be subject to liability if they fail to do so” while the preliminary injunction remains in effect.² The U.S. Department of Justice filed a notice of appeal on December 5, 2024, taking the first step of appealing the district court’s decision to the U.S. Court of Appeals for the Fifth Circuit.

Notwithstanding the above, reporting companies may continue to voluntarily submit BOI reports; additionally, they should be prepared to

comply with the CTA's deadlines if the government seeks and obtains a stay of the district court's order in the appeal. We expect that if the government obtains a stay of the district court's decision, it would provide a "grace period" for compliance, allowing reporting companies sufficient time to comply with the CTA.

The district court's decision follows another federal district court decision from March 2024 in Alabama that held that the CTA is unconstitutional (see our previous client alert [here](#)), which is on appeal before the Eleventh Circuit. The injunction issued by that court was limited to the plaintiffs in the case. The CTA has been challenged in other courts,³ but the Eastern District of Texas is the first court to issue a "nationwide" preliminary injunction against the CTA.

By way of background, the CTA took effect January 1, 2024, and imposed several reporting requirements, including establishing January 1, 2025, as the deadline for non-exempt companies created or registered to conduct business in the United States before January 1, 2024, to report beneficial ownership information to FinCEN. The above decision applies to reporting companies subject to this deadline, as well as any reporting companies created or registered after January 1, 2024, that are subject to a 90-day filing deadline.

CONSTITUTIONAL CHALLENGES

Plaintiffs argued that the CTA imposes significant regulatory costs and burdens, notably on small businesses, by requiring substantial legal and administrative expenses to comply with the reporting requirements. Plaintiffs further argued that because the CTA compels disclosure of ownership and other personal information, the statute infringes on business owners' privacy and association rights in violation of the First Amendment. The CTA also allegedly violates privacy protections by requiring disclosure of sensitive and private information, without adequate safeguards, infringing on Fourth Amendment protections against unreasonable search and seizures. In addition, Plaintiffs argued the CTA violates states' historical rights to regulate corporate formation and operations in violation of the Tenth Amendment, which reserves powers not delegated to the federal government to the states.

THE EASTERN DISTRICT OF TEXAS FINDINGS

In its decision granting a preliminary injunction, the Court found that FinCEN's estimates of the compliance costs associated with CTA compliance and the overall regulatory burden are "precisely the types of concrete injuries that [the U.S. Court of Appeals for the Fifth Circuit] has consistently deemed adequate to provide standing in regulatory challenges." Turning to the merits, the Court determined that the CTA represents a drastic departure from the historical state regulation of corporations, as the regulation of corporate entities traditionally falls under state jurisdiction. The Court thus concluded that there is a *substantial likelihood* the CTA *may* be deemed unconstitutional.

In defending the statute, the government argued that Congress believed the CTA was necessary "to bring the United States into compliance with international anti-money laundering and countering financing of terrorism standards." On that point, the Court observed that "compliance with international standards may be good policy, but it is not enough to make the CTA 'necessary' and 'proper.'" The Court concluded that the harm posed by the CTA to Plaintiffs outweighs the government's interest in implementing the CTA. As the Court explained, the CTA and its reporting requirement "threaten[s] substantial, imminent, non-speculative, and irreparable harm" absent emergency relief, including nonrecoverable compliance costs (particularly burdensome for small businesses, which accounts for most reporting entities), thereby "substantially threaten[ing] Plaintiffs' constitutional rights." According to the Court, granting a preliminary injunction aligns with the public interest in protecting constitutional rights.

SCOPE OF IMPACT AND NEXT STEPS

The most notable part of the Court's decision is the scope of the remedy provided. The Court determined that "the injunction should apply nationwide" to "approximately 32.6 million existing reporting companies." The Court granted that broad relief, even though Plaintiffs did not request a nationwide injunction. Drawing on the government's own

arguments, however, the Court reasoned that it “could not provide Plaintiffs with meaningful relief without, in effect, enjoining the CTA and Reporting Rule nationwide.”

Notwithstanding the Court’s determination, it is unclear whether a federal district court may appropriately issue a nationwide injunction. The appropriateness of nationwide injunctions has become an increasingly controversial issue. Some members of the U.S. Supreme Court have expressed their view that nationwide or “universal injunctions,” providing relief beyond the parties to a case, are “legally and historically dubious.”⁴

We expect that the U.S. Department of Justice will request a stay pending the appeal of the district court’s preliminary injunction ruling to the Fifth Circuit. As noted above, FinCEN has indicated that “reporting companies are not currently required to file their BOI with FinCEN and will not be subject to liability if they fail to do so while the preliminary injunction remains in effect.” The timing is unclear as to when the government will seek such a stay, but the CTA’s January 1, 2025, deadline may go back into effect if the stay is granted. As indicated above, if a stay is granted, we anticipate that FinCEN would provide a “grace period” before requiring compliance with the CTA.

CONCLUSION

Reporting companies that are subject to the current reporting deadlines should be prepared to comply with the CTA in the event the district court’s order is stayed pending the appeal. King & Spalding is closely monitoring this and related litigation and any developments that may impact the enforceability of the CTA.

ABOUT KING & SPALDING

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This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered “Attorney Advertising.”

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¹ “Beneficial Ownership Information”, FinCEN.gov (Dec. 9, 2024), <https://www.fincen.gov/boi>.

² *Id.*

³ Such as in the Northern District of Ohio in December 2023 (*Robert J. Gargasz Co. LPA, et al. v. Janet Yellen, et al.*, United States District Court, Northern District of Ohio, Case No. 1:23-cv-02468-CEF; court entered an order staying the proceedings pending the outcome of the 11th Circuit in the Alabama appeal); in the Western District of Michigan in March 2024 (*Small Business Association of Michigan, et al. v. Yellen, et al.*, United States District Court, Western District of Michigan, Case No. 1:24-cv-00314-RJJ-SJB, decision pending); in the United States District Court of Maine in March 2024 (*William Boyle v. Janet Yellen, et al.*, United States District Court of Maine, Case No. 2:24-cv-00081-LEW, decision pending); in United District Court of Massachusetts in May 2024 (*Black Economic Council of Massachusetts, Inc., et al. v. Janet Yellen, et al.*, United States District Court, District of Massachusetts, Case No. 1:24-cv-11411-PBS, decision pending).

⁴ See e.g., *Trump v. Hawaii*, 585 U.S. at 667, 713, n.1, 717, 721, 138 S.Ct. 2392, 2429 (2018) (Thomas, J., concurring)