

CLIENT ALERT

Federal Judge in Texas Blocks Enforcement of the Corporate Transparency Act Nationwide

DECEMBER 4, 2024

Unless a legal entity created in or registered to do business in the United States before 2024 can satisfy one of the few and relatively narrow exemptions from reporting its beneficial ownership information (BOI) to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), such legal entity – a reporting company – has until Wednesday, January 1, 2025 to file its BOI report with FinCEN. The BOI report is required under the Corporate Transparency Act (CTA) and the BOI reporting rule that FinCEN issued pursuant to the CTA (BOI Reporting Rule). Failure to timely file, amend or correct a BOI report with FinCEN subjects the reporting company to potential civil, and in some cases criminal, penalties from FinCEN.

AN UNEXPECTED AND SWEEPING RULING

On December 3, 2024, U.S. District Judge Amos Mazzant of the Eastern District of Texas turned the CTA and the FinCEN BOI Reporting Rule on their heads, issuing a preliminary injunction that:

- i. enjoins the CTA, 31 U.S.C. § 5336;
- ii. enjoins enforcement of the BOI Reporting Rule, 31 C.F.R. § 1010.380;
- iii. stays the January 1, 2025 compliance deadline imposed by the BOI Reporting Rule;
- iv. orders that “[n]either [the CTA nor the BOI Reporting Rule] may be enforced”; and
- v. declares that “reporting companies need not comply with the CTA’s January 1, 2025, BOI reporting deadline pending further order of the Court.”^[1]

THE COURT’S REASONING

The Court’s reasoning for enjoining the CTA and FinCEN’s BOI Reporting Rule is that Congress’s powers, which are expressly defined in the U.S. Constitution, do not include a “federal police power to regulate all aspects of public life.” The Court disagreed with FinCEN that Congress had the power to enact the CTA under either the Constitution’s Commerce Clause or its Necessary and Proper Clause.

According to the Court, “[u]pholding the CTA would require the Court to rubber-stamp what appears to be a substantial expansion of commerce power.” Moreover, neither Congress’ authority to regulate commerce, regulate

foreign affairs and further its national security interests, nor levy and collect taxes support FinCEN's contention that the CTA is within Congress's powers.^[2]

The Court determined that the CTA and the BOI Reporting Rule are **likely** unconstitutional for purposes of a preliminary injunction. Judge Mazzant added that he has not yet made "an affirmative finding that the CTA and [BOI] Reporting Rule are contrary to law or that they amount to a violation of the Constitution." On this basis of his finding that the CTA and Reporting Rule are likely unconstitutional, however, District Judge Mazzant determined that FinCEN should be enjoined from enforcing the BOI Reporting Rule, and that the January 1, 2025, compliance deadline under the BOI Reporting Rule should be stayed.

A NATIONWIDE INJUNCTION

The most surprising part of Judge Mazzant's order is his determination that the injunction should apply nationwide. Both the CTA and the BOI Reporting Rule apply nationwide to "approximately 32.6 million existing reporting companies."^[3] Because one of the Plaintiffs' membership extends across the country, Judge Mazzant held that the extent of the constitutional violation Plaintiffs have alleged was best served through a nationwide preliminary injunction.

WHAT'S NEXT?

The key question is whether the U.S. Department of Justice (DOJ) will appeal the preliminary injunction to the U.S. Court of Appeals for the Fifth Circuit, which hears appeals from proceedings before the Eastern District of Texas. Our expectation is yes, it will. If the DOJ appeals Judge Mazzant's preliminary injunction to the Fifth Circuit, will it ask the Fifth Circuit to stay the preliminary injunction pending the appeal? Our expectation is also yes, it will. And if an appeal is filed, will the Fifth Circuit act on it before the BOI Reporting Rule's January 1, 2025 compliance deadline? Will FinCEN and/or the DOJ issue a position statement that they will respect Judge Mazzant's decision pending the outcome of an appeal? Will FinCEN publish an interim final rule or order that delays the compliance date of the BOI Reporting Rule by another year or longer?

OUR TAKE

It is our strong expectation that FinCEN will publish some type of statement or other guidance addressing the Texas ruling – as FinCEN did in the days following the Alabama ruling in March 2024.^[4] Accordingly, we are counseling clients to pause BOI filings and take a "wait-and-see" approach over the next few weeks (before January 1, 2025) and monitor the anticipated publication of a statement, order or interim rule from FinCEN that addresses in some fashion the Texas preliminary injunction. We will update this Alert as appropriate before January 1, 2025.

Please reach out to any of the Winston CTA Task Force attorneys with any questions.

[1] Texas Top Cop Shop, Inc. v. Garland, No. 4:24-cv-00478 (E.D. Tex.), at *79 (Dec. 3, 2024).

[2] Id., at *33-55 (internal citations omitted).

[3] FinCEN Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59,585 (Sept. 30, 2022).

[4] Recall that FinCEN earlier this year published a statement three days following a March 1, 2024 ruling from a federal judge in the Northern District of Alabama concluding that the CTA is unconstitutional. See *Notice Regarding National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.) (Mar. 4, 2024; updated March 11, 2024) ("FinCEN is complying with the court's order and will continue to comply with the court's order for as long as it remains in effect. As a result, the government is not currently enforcing the Corporate Transparency Act against the plaintiffs in that action Those individuals and entities are not required to report beneficial ownership information to FinCEN at this time."). The DOJ appealed that Alabama ruling 10 days after issuance of the Alabama judge's ruling. That appeal is pending before the U.S. Court of Appeals for the Eleventh Circuit with no indication when the Eleventh Circuit will issue a ruling that affirms or reverses the Alabama ruling.

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