

CLIENT ALERT

Federal Judge in Texas Blocks Enforcement of the Corporate Transparency Act Nationwide and FinCEN States That It Will Not Require Compliance with the CTA – For Now

DECEMBER 8, 2024

This client alert was originally published on December 5, 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 – had 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?

As expected, the Defendants, on December 5, 2024, appealed 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. We further expect Defendants to ask the Fifth Circuit to stay the preliminary injunction pending the appeal.

The key question, then, is whether the Fifth Circuit will act on this appeal before the BOI Reporting Rule’s January 1, 2025 compliance deadline. In the interim, on Saturday, December 7, 2024, FinCEN published an “Alert” on its [BOI landing page](#), that states, in relevant part:

In light of a recent federal court order, reporting companies are ***not currently required to file [BOI] with FinCEN*** and are ***not subject to liability if they fail to do so while the order remains in force***. However, reporting companies may continue to voluntarily submit beneficial ownership information reports. *** While this litigation is ongoing, FinCEN 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***. Therefore, 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 key language from FinCEN’s Alert is that FinCEN’s current no-filing-requirement-no-liability posture lasts as long as the preliminary injunction remains in effect – and it remains in effect until (i) Judge Mazzant rescinds his preliminary injunction or (ii) the Fifth Circuit stays his injunction or reverses his ruling that granted the injunction.

OUR TAKE

The FinCEN Alert excerpted above is generally consistent with what FinCEN did in the days following a March 2024 ruling from the U.S. District Court for the Northern District of Alabama, although the Alabama ruling applied to a relatively small number of reporting companies.^[4] Accordingly, we are counseling clients to pause BOI filings and take a “wait-and-see” approach over the next several weeks (and possibly the next several months, depending on how long it takes for the courts to resolve this litigation) and monitor whether Judge Mazzant rescinds his preliminary injunction or the Fifth Circuit stays his injunction or reverses his ruling. In any event, the CTA saga is far from over. Stay tuned for further developments, and 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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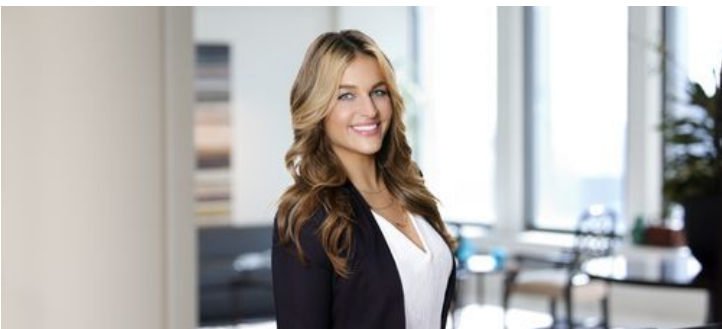
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