
SPECIAL ISSUE: Court halts BOI reporting; AICPA urges preparedness

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Date Thu 12/5/2024 12:31 PM

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December 5, 2024

Court halts BOI reporting; AICPA urges preparedness

A federal district court, finding that the Corporate Transparency Act (CTA) is likely unconstitutional, issued an order Tuesday prohibiting the enforcement of the CTA and the beneficial ownership information (BOI) reporting rule in the CTA's accompanying regulations.

The injunction, which according to the court should apply nationally, was issued in [**Texas Top Cop Shop, Inc. vs. Garland**](#), No. 4:24-CV-478 (E.D. Texas 12/3/24).

Under the injunction, the CTA and the BOI reporting rule cannot be enforced, and reporting companies need not comply with the CTA's Jan. 1, 2025, BOI reporting deadline pending a further order of the court.

The Financial Crimes Enforcement Network (FinCEN), which enforces the CTA, is reviewing the order, a spokesperson said Wednesday, pointing out that other courts have denied similar requests. The Justice Department did not immediately respond to a question about plans to appeal.

An AICPA statement acknowledged the potential effects of the injunction and urged CPAs assisting clients with BOI reporting to be prepared.

"Under the injunction, FinCEN is barred from enforcing BOI filing requirements while the case is pending," the statement said. "Best practices dictate that at a minimum those assisting clients

with BOI report filings gather the required information from the clients and are prepared to file the BOI report if the injunction is lifted. While it is unlikely that the injunction will be lifted prior to the final outcome of the proceedings, we advise being prepared in the event that there is a reversal."

Constitutional issues

The court, calling the CTA "quasi-Orwellian," found that the legislation "is likely unconstitutional as outside of Congress's power." It further found that "because the reporting rule implements the CTA, it likely is unconstitutional for the same reasons."

The government argued that Congress has the power to enact the CTA under the Commerce Clause and under the Necessary and Proper Clause.

Regarding the Commerce Clause, the court stated, "The CTA is a law enforcement tool — not an instrument calibrated to protect commerce; an exercise of police power, rather than a regulation of an activity which might impair commerce among the several states. This the Commerce Clause will not tolerate."

The government also claimed that Congress had the authority to pass the CTA because of its broad power under the Necessary and Proper Clause to enact legislation for the regulation of foreign affairs and pertaining to national security.

The court disagreed, saying, "The CTA, by its very language, does not regulate any issue of foreign affairs. It regulates a domestic issue: anonymous existence of companies registered to do business in a U.S. state and their potential conduct."

The plaintiffs also argued that the CTA is unconstitutional under the First and Fourth amendments, but the court did not address those arguments.

Scope of order

The largest plaintiff in the case is the National Federation of Independent Business (NFIB), which has about 300,000 members. The government argued that if the court enjoined the CTA and reporting rule to cover those members, the effect would be a nationwide injunction. The court agreed with the government's point and noted the controversy around nationwide injunctions. However, the court concluded that, given the extent of the constitutional violation shown by the plaintiffs, the injunction should apply nationwide.

Background

Under the CTA, P.L. 116-283, which Congress passed in 2021 as an anti-money-laundering initiative, reporting companies must disclose the identity and information about beneficial owners of the entities. For new entities incorporated after Jan. 1, 2024, reporting companies must also disclose the identity of "applicants" — defined as any individual who files an application to form a corporation, limited liability company, or other similar entity.

Willful violations are punishable by a fine of \$591 a day, up to \$10,000, and two years in prison with similarly serious penalties for unauthorized disclosure.

Reaction to order

The court's order is "a massive first step," Beth Milito, executive director of the NFIB Legal Center, said in an interview. "This was, from our perspective, a David and Goliath fight, and I'm happy that he had such a decisive win in the first round."

If the government appeals, the case would next go to the Fifth Circuit, Milito said. The preliminary injunction likely would remain in effect through the appeal process or until the court issues another order, she said.

A statement from Melanie Lauridsen, the AICPA's vice president—Tax Policy & Advocacy, said, in part:

"The AICPA understands the confusion and anxiety that business owners have struggled with regarding the BOI reporting requirement. We believe that the injunction ... is applicable nationwide to all small businesses. While we are still awaiting formal guidance from FinCEN, if this injunction is applicable as we believe, many small businesses would receive the much-needed BOI reporting relief. The AICPA will continue an open dialogue with FinCEN in the hopes that our questions and concerns will be addressed, and we will continue to advocate on behalf of small businesses for clarity and relief."

Todd McCracken, the president and CEO of the National Small Business Association (NSBA), the main plaintiff in an Alabama case where the judge declared the CTA unconstitutional, applauded the decision in a post on the NSBA site. It is "a huge relief to the millions of small business owners across the country who were facing a wildly complex regulatory regime," along with fines and prison time, he said.

The AICPA has created a [BOI reporting resource center](#).

— by Martha Waggoner, *Journal of Accountancy*

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