

ALERTS

Corporate Transparency Act Update: Nationwide Preliminary Injunction Enjoining Enforcement

December 4, 2024

On Dec. 3, 2024, Judge Amos L. Mazzant of the US District Court for the Eastern District of Texas issued a nationwide preliminary injunction prohibiting the government from enforcing the Corporate Transparency Act (“CTA”) and its implementing regulation (31 C.F.R. §1010.380 (“Reporting Rule”)) and enjoining enforcement of the filing deadlines thereunder. The CTA, which was enacted on Jan. 1, 2021, and the Reporting Rule require certain legal entities (known as “Reporting Companies”) to file a beneficial ownership information report (“BOI Report”) with the US Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”).^[1] This ruling is noteworthy in light of the upcoming reporting deadlines under the CTA and Reporting Rule, which require that Reporting Companies formed or registered to do business in the US: (1) before Jan. 1, 2024, are required to file their initial BOI Report by Jan. 1, 2025; or (2) in 2024 are required to file their initial BOI Report within 90 days of formation or first registration.

Judge Mazzant’s 79-page Memorandum Opinion and Order (the “Order”): (1) found that, for the purposes of a preliminary injunction, the CTA and the Reporting Rule are “likely unconstitutional as outside of Congress’s power”^[2]; and (2) enjoins enforcement of the CTA and the Reporting Rule and stays compliance deadlines. The Court explained that it “has not made an affirmative finding that the CTA and Reporting Rule are contrary to law or that they amount to a violation of the Constitution” leaving final adjudication of that issue to a later stage of the litigation given that the Court’s ruling was issued early in the case. The Order specifically provides

that neither the CTA nor the Reporting Rule “may be enforced, and reporting companies need not comply with the CTA’s January 1, 2025, BOI reporting deadline pending further order of the Court.”

Constitutional challenges to the CTA are also pending before the Eleventh and Ninth Circuits. On March 1, 2024, Judge Liles C. Burke of the US District Court for the Northern District of Alabama found the CTA unconstitutional because “the CTA exceeds the Constitution’s limits on the legislative branch and lacks a sufficient nexus to any enumerated power to be a necessary or proper means of achieving Congress’ policy goals.” [3] Judge Burke permanently enjoined the US Government from enforcing the CTA but only against the plaintiffs in that case: Isaac Winkles; reporting companies for which Isaac Winkles is the beneficial owner or applicant; the National Small Business Association; and members of the National Small Business Association (as of March 1, 2024). The government appealed that ruling to the US Court of Appeals for the Eleventh Circuit and oral argument was held on Sept. 27, 2024. The Eleventh Circuit has not yet issued an opinion. Conversely, on Sept. 20, 2024, Judge Michael H. Simon of the US District Court for the District of Oregon denied a request for a preliminary injunction that challenged the constitutionality of the CTA.[4] The case is on appeal to US Court of Appeals for the Ninth Circuit.

The government may appeal Judge Mazzant’s ruling to the US Court of Appeals for the Fifth Circuit or seek direct review by the Supreme Court (thereby bypassing the Fifth Circuit) and may seek a stay of his Order. If an appellate court issues a stay of Judge Mazzant’s Order, the government would be permitted to enforce the CTA and the Reporting Rule, including the Jan. 1, 2025, deadline to file BOI Reports, pending a final decision by an appellate court on the constitutionality of the CTA. We will continue to monitor any developments related to this case and whether the Justice Department, the Treasury Department or FinCEN issues any guidance clarifying the impact this ruling has on Reporting Companies that have not yet filed their BOI Reports. Clients who have not yet filed BOI Reports may wish to consider refraining from filing any BOI Reports until additional guidance is issued by the government or an appellate court decides whether or not to stay, narrow or limit the nationwide preliminary injunction issued by Judge Mazzant. Clients who defer filing BOI Reports should nonetheless continue to prepare for anticipated BOI Report filings in the event the preliminary injunction is lifted, stayed or altered by an appellate court, in which case Reporting Companies may still be required

to meet the Jan. 1, 2025, deadline for filings with regard to entities formed or registered prior to Jan. 1, 2024.

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For assistance in navigating the the CTA's reporting requirements, please contact one of the authors or your attorney at Schulte Roth & Zabel.

[1] For more information on the beneficial ownership information reporting obligation under the CTA, please see our prior *Alerts*: (1) "FinCEN Issues Final Rule Requiring Reporting of Beneficial Ownership Information," available here; (2) "The Corporate Transparency Act: Key Considerations for Compliance With the Beneficial Ownership Reporting Rule," available here and (3) "The Corporate Transparency Act: The Private Funds Guide to Compliance With the Beneficial Ownership Reporting Rule," available here.

[2] *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-cv-00478 (E.D. Tex. May. 28, 2024).

[3] *Nat'l Small Bus. United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala. Nov. 15, 2022).

[4] *Firestone v. Yellen*, No. 3:24-cv-01034 (D. Or. June. 26, 2024).

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