CORPORATE AND FINANCE

DECEMBER 11, 2024

Federal Court in Texas Bars Enforcement of the Corporate Transparency Act

By Jay Taylor

The U.S. District Court for the Eastern District of Texas, on Tuesday, December 3, 2024, issued a nationwide injunction barring enforcement of the Corporate Transparency Act ("CTA"). In Texas Top Cop Shop, Inc. v. Merrick Garland, Civil Action No. 4:24-CV-478, the court granted a preliminary injunction upon finding that the plaintiffs demonstrated a substantial likelihood of success on the merits that the CTA and FinCEN's reporting rule, which implements the CTA, will be deemed unconstitutional.

According to District Court Judge Amos L. Mazzant, the CTA represents government overreach by intruding on state rights. The legislation intrudes by requiring "Beneficial Owners" of "Reporting Companies" registered under state law to provide personal information to a federal government entity, the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN). The court rejected the argument that such intrusion is authorized by any interpretation of the government's authority under either the Commerce Clause or the Necessary and Proper Clause.

Judge Mazzant also opined the CTA "creates" a new activity to regulate—the activity of corporate existence—instead of regulating an existing activity within interstate commerce. The court relied on reasoning in the landmark case NFIB v. Sebelius, 567 U.S. 519 (2012), concluding that the CTA does not regulate an instrumentality of interstate commerce but instead compels an activity not required by the state laws under which these business entities are formed.

The constitutionality of the CTA also remains under review by the Eleventh Circuit in the case of National Small Business United (NSBU) v. Yellen, 5:22-CV-01448. In this case, the district court for the Northern District of Alabama found the CTA unconstitutional but confined its injunction against enforcement to the specific plaintiffs involved in that action. By contrast, the injunction issued in the "Texas Top Cop Shop" litigation holds national applicability. This dichotomy raises potential concerns regarding the Texas district court's authority to issue a nationwide injunction.

The national injunction provides a reprieve for filing. However, FinCEN's database remains live and continues to accept Beneficial Ownership Information ("BOI") reports. "Reporting Companies" which have not yet filed their BOI reports may decide whether to delay their filings or push ahead and file the reports. Either way, we advise that "Reporting Companies" check with their legal advisers to remain updated based on the outcome of the Texas and Alabama court cases.

If you have any questions about the effect of the injunction on your filing requirements and the BOI Report, please contact Jay Taylor, Keith Lazere, Jason Kosek, or Nick Bradley.

Authors

Jay Taylor is a shareholder in Anderson Kill's New York office and serves as chair of the firm's Corporate & Finance Group. jtaylor@andersonkill.com