Deciphering the Drama: Legal Challenges to the Corporate Transparency Act

Drew Teague

The Corporate Transparency Act (CTA) took effect on January 1, 2024, and has impacted millions of businesses across the country. Enacted in 2021 as part of a more significant effort by Congress to enhance corporate transparency and anti-money laundering protections, the CTA seeks to deter illicit financial activities, such as tax fraud, money laundering and terrorism funding, by compiling a database of information regarding the individuals associated with entities operating or engaging in business within the U.S. market. However, the CTA has had legal troubles since its implementation. This article will provide a high-level overview of the ongoing legal fights of the CTA and its current status as of the writing of this article.

The CTA Declared Unconstitutional

Before the CTA took effect, the National Small Business Association (NSBA) and one of its members, Isaac Winkles, filed a lawsuit in November of 2022, challenging the constitutionality of the CTA—the litigation as filed in the Northern District of Alabama. On March 1, 2024, Judge Liles C. Burke granted NSBA and Winkles summary judgment. The Court concluded that the CTA was unconstitutional because it exceeded Congress' enumerated powers. However, the Court's ruling only permanently enjoined the U.S. government from enforcing the CTA against the NSBA and Winkles. A nationwide injunction was not issued as part of Judge Burke's judgment.

In light of the judgment, the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) indicated that everyone beyond the plaintiffs should assume the CTA and FinCEN continue to apply to them. This meant that any entities formed after July 1, 2024, should have their beneficial ownership reported within 90 days of the entity's formation (subject to the 23 exemptions of the CTA) and all entities formed on or prior to December 31, 2023, should have their beneficial ownership reported by January 1, 2025.

Texas Top Cop Shop Lawsuit

Texas Top Cop Shop, Inc. et al. filed litigation against the U.S. government on May 28, 2024, in the Eastern District of Texas. The plaintiffs in this litigation alleged the CTA was unconstitutional because it exceeds Congress's authority over the states and violates the Tenth Amendment. The plaintiffs claim that the government has historically left matters relating to business entities to the states, and the CTA disrupts that balance by imposing federal standards. The plaintiffs alleged the CTA violated the First Amendment by improperly compelling speech and burdening association. By requiring disclosure of beneficial ownership information (BOI), the CTA infringes on the right of anonymous association, which is protected under the First Amendment.

On December 3, 2024, the Court issued a preliminary injunction in favor of the plaintiffs. This injunction enjoined the government from enforcing the CTA and the reporting rule nationwide. The Court's injunction also issued a stay on the January 1, 2025, reporting deadline. The order indicated that the CTA and the reporting rule are "likely unconstitutional," and thus, the preliminary injunction was warranted.

On December 23, 2024, the 5th Circuit Court of Appeals granted the government's motion to stay the injunction. The Court of Appeals' order temporarily stayed the injunction and obligated entities to report their beneficial ownership with FinCEN. After the appellate court stayed the injunction, FinCEN updated the reporting deadline to January 13, 2025.

However, the stay was short-lived. The merits panel, on December 26, 2024, vacated the December 23, 2024 stay. FinCEN indicated that filing at the time was voluntary. The government appealed to the U.S. Supreme Court (SCOTUS) on January 1, 2025. In its petition, the government sought an emergency stay of the injunction. The government argued that the injunction disrupts efforts to combat financial crimes and protect national security, among other things. Justice Samuel Alito gave the plaintiffs until January 10, 2025, to respond to the government's motion.

On January 23, 2025, SCOTUS issued an order granting the government's motion for an emergency stay of the district court's injunction. The stay will remain in place while the case is appealed on the merits. However, other litigation has resulted in separate injunctions, to which SCOTUS's Texas Top Cop Shop ruling does not apply.

On February 6, 2025, the government filed its brief with the 5th Circuit. This appeal continues on the merits and will likely be appealed to SCOTUS regardless of the 5th Circuit's ruling.

A Second Injunction Halts CTA Reporting Requirements Despite SCOTUS Top Cop Ruling

Samantha Smith and Robert Means filed a separate lawsuit in the Eastern District of Texas on September 12, 2024. Their lawsuit claimed the CTA requirements infringed upon the plaintiff's rights to privacy due to the disclosure of sensitive personal information and exceeded the government's authority under the constitution. On January 7, 2025, the Court issued a separate nationwide injunction on the enforcement of the CTA reporting regulations and enjoined enforcement of the CTA against the plaintiffs only. In its ruling, the Court indicated uncertainty with the Top Cop injunction, as there were differences in the arguments presented in the two cases, and the parties were unique, so it analyzed the plaintiffs' motion for an injunction. The Court indicated that the CTA was "unprecedented in its breadth and expands federal power beyond constitutional limits."

The government appealed the injunction on February 5, 2025, seeking the 5th Circuit to stay enforcement of the injunction pending appeal. The same day, the government filed a motion, pending appeal, to stay the temporary injunction granted by the trial court. On February 18, 2025, the appellate court stayed its temporary injunction, meaning the government can enforce the CTA throughout the appeals.

In light of the court's stay, FinCEN issued guidance on February 19 extending the reporting deadline until March 21, 2025, for all companies. However, it noted that it may further modify the existing deadlines. In the guidance, FinCEN also indicated that it intends to revise the reporting requirements to reduce the burden on small businesses, which are lower-risk.

Shortly after making this statement, FinCEN said it would not enforce the March 21, 2025, reporting deadline and instead would issue further guidance on March 21, 2025.

Additional Legislation

The U.S. House of Representatives passed the Protect Small Businesses from Excess Paperwork Act of 2025 (H.R. 736) on February 10, 2025. This law would extend the reporting deadline for entities formed before 2024 to no later than January 1, 2026. Sen. Tim Scott (R-SC) introduced the bill in the Senate on February 12, 2025. The bill had 10 cosponsors and was referred to the Banking, Housing, and Urban Affairs Committee.

Future of the CTA Uncertain

With the appeals process ongoing in both the Top Cop and Smith cases, the future of the CTA remains uncertain. SCOTUS is likely to take up these cases and potentially others and ultimately determine the fate of the CTA. However, as is typical with ongoing appeals, it will take time, even on an expedited basis, for the Courts of Appeal to have briefings, oral arguments and issue a ruling and for the process to repeat at SCOTUS.

While the Top Cop and Smith lawsuits are being appealed, other litigation will likely be initiated around the country, potentially further disrupting the reporting requirements/deadlines of the CTA. In addition to the potential injunctions from courts, legislation in the 119th Congress could further alter reporting deadlines should the SCOTUS uphold the CTA as constitutional. All those required to report BOI for entities should stay updated on changes to the reporting deadlines on FinCEN's website.

Lastly, on March 2, 2025, the Treasury Department indicated that it would suspend enforcement of the CTA against U.S. citizens and domestic reporting companies. In the statement, it indicated the Treasury Department would not enforce any penalties or fines associated with BOI reporting under existing deadlines but would also no longer enforce penalties or fines against U.S. citizens or domestic reporting companies or the beneficial owners after the forthcoming rule changes.

The Treasury Department has also indicated that it intends to implement further rules to narrow the scope of the rule to foreign reporting companies only.

Drew is a real estate attorney licensed in Kentucky with a national practice, representing lenders in commercial real estate financing. He is currently an Associate at Frost Brown Todd LLP and Vice-Chair of the LBA's Corporate Law Section. ■