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Corporate Transparency Act: Texas Court Grants Nationwide Injunction; Government Appeals; and FinCEN Stands Down (For Now)

On Tuesday, December 3, 2024, the U.S. District Court for the Eastern District of Texas granted a nationwide preliminary injunction ordering that enforcement of the reporting requirements under the Corporate Transparency Act (CTA) is enjoined and the compliance deadline is stayed: "[r]eporting companies need not comply with the CTA's January 1, 2025, [Beneficial Ownership Information] BOI reporting deadline pending further order of the Court." [1]

The injunction is a *preliminary* injunction as opposed to a *permanent* injunction (pending further order of the Court). The government quickly filed a notice of appeal on Thursday, December 5, 2024.

We have been waiting to see if the Financial Crimes Enforcement Network (FinCEN), which is tasked to enforce the BOI reporting requirements, would provide guidance or at least a statement on the issue. And now they have with the following alert:

> "In light of a recent federal court order, reporting companies are not currently required to file beneficial ownership information 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."

The FinCEN alert goes on further to provide the following:

> "On Tuesday, December 3, 2024, in the case of *Texas Top Cop Shop, Inc., et al. v. Garland, et al.*, No. 4:24-cv-00478 (E.D. Tex.), a federal district court in the Eastern

District of Texas, Sherman Division, issued an order granting a nationwide preliminary injunction that: (1) enjoins the CTA, including enforcement of that statute and regulations implementing its beneficial ownership information reporting requirements, and, specifically, (2) stays all deadlines to comply with the CTA's reporting requirements. The Department of Justice, on behalf of the Department of the Treasury, filed a Notice of Appeal on December 5, 2024.

Texas Top Cop Shop is only one of several cases in which plaintiffs have challenged the CTA that are pending before courts around the country. Several district courts have denied requests to enjoin the CTA, ruling in favor of the Department of the Treasury. The government continues to believe – consistent with the conclusions of the U.S. District Courts for the Eastern District of Virginia and the District of Oregon – that the CTA is constitutional.

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 beneficial ownership information with FinCEN and will not be subject to liability if they fail to do so while the preliminary injunction remains in effect. Nevertheless, reporting companies may continue to voluntarily submit beneficial ownership information reports."

FinCEN of course believes that the CTA is constitutional and intends to follow through on the appeal. They noted that two other federal courts have ruled that the CTA is constitutional. Of course, they failed to point out that in March 2024 a federal court in the U.S. District Court for the Northern District of Alabama ruled that the CTA was unconstitutional. That court limited the order to constituents in that district and members of the plaintiff association. The case is currently in appeals.

The FinCEN statement does not entirely clear up the matter because it provides no indication of what would happen if the injunction is lifted. Would FinCEN then allow for a reasonable time to comply (e.g, 30 days), or would they demand immediate compliance (which would be extremely unreasonable)?

Reporting companies who have not yet filed their BOI report will need to decide whether to (1) take the conservative approach and report by the January 1, 2025,

deadline (this deadline is applicable to all reporting companies formed before January 1, 2024), or (2) see how this plays out over the coming weeks before the January 1, 2025, deadline. Assuming there is no change between now and the end of the year, the reporting company must then decide to file before the deadline to be safe or rely on the injunction and the FinCEN statement and not comply with the original January 1, 2025 deadline.

With FinCEN issuing the statement, we believe it is reasonable for a reporting company to hold off on the BOI filing, wait to see how the court case evolves, and assume that if the injunction is lifted then reporting companies would be granted a reasonable amount of time to comply, either by court order or FinCEN's own guidance, although it could be a shorter than preferable period of time. Our expectation is that this could also be the result for companies formed on or after January 1, 2024 (reporting companies formed in 2024 had 90 days to comply and reporting companies formed beginning January 1, 2025, and after have 30 days to comply). We recognize that, until FinCEN provides specific guidance about what happens if the injunction is lifted, it is ultimately a judgment call for our reporting company clients whether to file the BOI report now during this interim period – or to wait and see what happens.

It is important to note that there are very harsh penalties for willful failure to comply. A person who willfully violates the BOI reporting requirements may be subject to civil penalties of up to $500 per day (subject to annual adjustment for inflation – currently $591) and criminal penalties of up to two years imprisonment and a fine of up to $10,000. The CTA requires the following information on beneficial owners: name, address, date of birth and a copy of the driver's license. But FinCEN has now stated publicly that in light of the Texas court order reporting companies are not currently required to file BOI information with FinCEN and are not subject to liability if they fail to do so while the order remains in force.

This blog post was drafted by Peter Hartweger, Trace Blankenship, Kelly Mooney, and Leslie Greathouse, attorneys on the firm's Corporate Transparency Act Committee. For more information visit www.spencerfane.com or connect with the Committee at CTACompliance@spencerfane.com.

[1] Texas Top Cop Shop, Inc., et al. v. Garland, et al., No. 4:24-cv-00478 (E.D. Tex.).

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