

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

STEVEN F. HOTZE, M.D., DANIEL ROGERS,)
RUSSELL RAMSLAND, MICHAEL WALLIS,)
and the ASSOCIATION OF AMERICAN)
PHYSICIANS & SURGEONS,)

Plaintiffs,)

v.)

Civil Action No. 2:24-cv-210-Z

UNITED STATES DEPARTMENT OF THE)
TREASURY,)

JANET YELLEN, in her official capacity as the)
Secretary of the United States Department of the)
Treasury, and)

ANDREA GACKI, in her official capacity as)
Director of the Financial Crimes Enforcement)
Network,)

Defendants.)

**PLAINTIFFS' REPLY BRIEF IN SUPPORT OF THEIR EXPEDITED
MOTION FOR A PRELIMINARY INJUNCTION**

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Plaintiffs Steven F. Hotze, M.D. (“Hotze”), Daniel Rogers (“Rogers”), Russell Ramsland (“Ramsland”), Michael Wallis (“Wallis”), and the Association of American Physicians & Surgeons (“AAPS”) respectfully submit this reply brief in support of their Expedited Motion for a Preliminary Injunction (ECF No. 16) against a disclosure obligation by January 1, 2025, and in reply to the response (ECF No. 19) by Defendants United States Department of the Treasury, Janet Yellen, and Andrea Gacki (collectively, the “Defendants” or the “government”).

Reply Argument

The government does not contest Plaintiffs’ standing, thereby simplifying this case. The government misconstrues Plaintiffs’ First Amendment claim as a “facial” challenge, when it is an “as applied” challenge based on multiple Declarations submitted with the pending Motion. (ECF No. 16-2 to -5) The government fails to provide any specific example of a crime that the Corporate Transparency Act (CTA) and its “Beneficial Ownership Information Reporting Requirements,” 87 Fed. Reg. 59498 (Sept. 30, 2022) (codified at 31 C.F.R. pt. 1010) (the “Rule”) would prevent. It is as though the Court were presented with an argument for a sweeping new gun control law, without a single example of a crime that the new law would thwart. Instead, the government makes dozens of boilerplate references to “money laundering” and “financing of terrorism,” as if merely invoking these conclusory terms is enough to overcome the Bill of Rights.

Much that is in Plaintiffs’ brief and Declarations in support of their Motion is never addressed by Defendants’ response, while Defendants devote some of their argument to claims Plaintiffs never assert. (*see, e.g.*, Gov’t Resp. 15 n.6) Notably, Defendants fail to rebut or address that a preliminary injunction is needed here to preserve the status quo during this litigation.

I. Plaintiffs Have Shown Irreparable Harm.

Defendants’ primary argument against Plaintiffs’ Motion is on the issue of irreparable

harm, while ignoring the ample evidence presented by Plaintiffs in their Declarations. (Gov't Resp. 6-7) Indeed, throughout the government's entire response they have only handful of cursory references to extensive factual evidence provided in Plaintiffs' Declarations. (ECF No. 16-2 to -5)

The government's lead argument is that "Plaintiffs' years-long delay in filing this action undermines any claim of imminent harm that could justify emergency relief." (Gov't Resp. 6) But there was never "imminent harm" until now, due to the effective date of Jan. 1, 2025, for Plaintiffs, and it would be improper to seek injunctive relief years before a scheduled effective date. The "imminent harm" does not arise upon the enactment of legislation or the issuance of a regulation, but rather the imminent harm arises if and when they take effect.

Effective dates of new federal mandates are often repeatedly delayed. For example, the REAL ID Act was enacted by Congress in 2005 in response to 9/11, to require high-security identification by air travelers. It was set to take effect in 2008. President Obama's Secretary of Homeland Security Janet Napolitano felt this mandate was unnecessary, and its effective date was repeatedly postponed such that it is not currently scheduled to go into effect until May 7, 2025. *See* "Editorial: Real ID was supposed to make air travel safer 15 years ago. America is still waiting," *Chicago Tribune* (January 4, 2023).¹ The requisite showing of imminent harm on this 2005 law cannot be made until next year at the earliest. Likewise, the harm to Plaintiffs with respect to the CTA has not become imminent until recently.

The government's argument against Plaintiffs' pending motion for a preliminary injunction is that Plaintiffs waited until their harm was imminent before seeking this preliminary injunction based on imminent harm.² There is no obligation to sue early over harm that may occur in the

¹ <https://www.chicagotribune.com/2023/01/04/editorial-real-id-was-supposed-to-make-air-travel-safer-15-years-ago-america-is-still-waiting/> (viewed Nov. 20, 2024).

² The government also criticizes the delay of a month between Plaintiffs' filing their Complaint

distant future, and indeed such requests for relief can be denied as premature.

The government's cited authorities are inapposite and easily distinguishable. In *Anyadike v. Vernon Coll.*, a district court merely held against an attempt to obtain an *ex parte* TRO after an unwarranted delay. *Anyadike*, No. 7:15-cv-00157-O, 2015 U.S. Dist. LEXIS 185326, *8-*9 (N.D. Tex. Nov. 20, 2015) (denying an *ex parte* TRO, but ordering the parties to confer on a schedule for considering plaintiff's request for a preliminary injunction). In *Leaf Trading Cards, LLC v. Upper Deck Co.*, the issue was a delay in seeking injunctive relief for alleged harm that had been ongoing for a year, in contrast with how the harm to Plaintiffs here has not yet occurred. *Leaf Trading Cards*, No. 3:17-CV-3200-N, 2019 U.S. Dist. LEXIS 227044, at *2 (N.D. Tex. Sep. 18, 2019). The government adds that "FinCEN has been accepting beneficial ownership reports since January 1, 2024," but that does not relate to Plaintiffs (or to the vast majority of those affected by the challenged Rule). The reporting deadline for Plaintiffs and millions of other Americans is on January 1, 2025. (ECF No. 16-1, Pls. Br. 1, 5, 8, 21, 23)

The government omits addressing how privacy-invading its Rule really is, by requiring outspoken Americans like Plaintiff Hotze to disclose their home addresses despite (as in the case of Plaintiff Hotze) having received multiple death threats. (ECF No. 16-2, Hotze Decl. ¶ 24) The government does not defend how the Rule requires disclosure of home addresses, which is allowed but not required by the CTA. 31 C.F.R. § 1010.380(b)(1)(ii)(C); 31 U.S.C. § 5336(b)(2)(A)(iii).

Overall, Defendants devote merely 7 lines to downplaying Plaintiffs' extensive factual evidence of imminent harm, without citing to Plaintiffs' Declarations. (Gov't Resp. 7) Defendants

and filing their Motion for a Preliminary Injunction with its brief and evidentiary support. But the latter required substantial work, and Plaintiffs' primary counsel here had an intervening commitment as the sole plaintiff's counsel on a major filing in federal court in Galveston by October 22 in *Association of American Physicians and Surgeons Education Foundation v. ABIM, et al.*, No. 3:22-cv-240 (on remand after prevailing at the Fifth Circuit, 103 F.4th 383).

do not deny that the CTA and its Rule apply to Plaintiff Hotze’s local Campaign for Houston PAC, which he used successfully “to defeat a ballot initiative there that would have allowed biological men to enter women’s public restrooms.” (ECF No. 16-2, Hotze Decl. ¶ 15) The public disclosure of and ensuing retaliation based on a mere donation by an NFL team owner was so severe that he felt he had to rescind his donation. (*Id.* ¶ 14) Requiring disclosures by political committees – in this case a purely local one – harms First Amendment rights by chilling them.

Ironically, Defendants argue that Plaintiffs “fail to identify any entity with which they will refuse to associate,” but Plaintiffs are suing here to avoid making such disclosures to the federal government. (Gov’t Resp. 7) Requiring that now would undermine the purpose of this lawsuit.

II. Plaintiffs Show Their Likelihood of Success on the Merits.

Plaintiffs are likely to prevail on each of four constitutional grounds: (A) Enumerated Powers, (B) First Amendment, (C) Fourth Amendment, and (D) Fifth Amendment, and they rebut Defendants’ arguments on each below. (Gov’t Resp. 7-22)

A. The CTA Is Beyond the Enumerated Powers of Congress.

Defendants rely almost entirely on the Commerce Clause (Gov’t Resp. 7-13) and then, by leveraging the Necessary and Proper Clause, on tax and national security powers (*id.* 13-14), as a basis for the CTA.

As to the Commerce Clause, the CTA itself notably does not cite it for authority, in contrast with most commerce-based federal legislation, yet Defendants failed to address this glaring omission. (Pls. Br. 2) Instead, the government repeats jargon overused by Capitol Hill staffers to try to bolster expansions in federal power, such as combatting “money laundering” and “financing of terrorism.” (Gov’t Resp. 4, 9, 10, etc.) But laws pre-existing the CTA fully track that activity, and the CTA’s federal monitoring of participants in millions of lawful small state entities,

including political entities, does nothing to advance the tracking of illicit monetary transactions.

Defendants insist that this Court defer to the boilerplate use of this jargon by Congress despite its obvious copy-and-paste character. Congress used the same amorphous terms to justify its politically motivated subpoenas for financial records of President Trump and his family members, which the U.S. Supreme Court unanimously rejected: “The House asserts that the financial information sought here—encompassing a decade’s worth of transactions by the President and his family—will help guide legislative reform in areas ranging from **money laundering and terrorism** to foreign involvement in U. S. elections.” *Trump v. Mazars USA, LLP*, 591 U.S. 848, 853 (2020) (emphasis added). The Democrat-controlled House even passed a resolution to lay the groundwork for subpoenaing the private financial records of President Trump and his family: “The House also invokes the oversight plan of the Financial Services Committee, which stated that the Committee intends to review banking regulation and ‘examine the implementation, effectiveness, and enforcement’ of laws designed **to prevent money laundering and the financing of terrorism**. H. R. Rep. No. 116-40, p. 84 (2019).” *Id.* at 855 (emphasis added).

Nope, every justice of the U.S. Supreme Court held. Likewise, this same conclusory terminology does not justify the CTA’s sweeping invasion of local privacy, including Plaintiff Hotze’s PAC that defeated the Houston initiative to allow men in women’s restrooms.

“National security” as a pretextual, improper justification for expanding federal power is not new, and is not credible. The raid on President Trump’s residence at Mar-a-Lago was supposedly for the purpose of national security, which U.S. District Judge Aileen Cannon saw through and rejected, ultimately dismissing the prosecution. A majority of voters in the recent presidential election implicitly rejected the stated rationale of national security for raiding Trump’s residence and prosecuting him over documents found there. Likewise, “national security” is not a

valid justification for the CTA and its Rule to demand the home address of Plaintiff Rogers as the Chairman of the Potter County GOP here in Amarillo, or the home addresses of the other Plaintiffs.

A further independent basis for rejecting the overused, conclusory justification for the CTA is to recognize that it is as superficial as what an AI program would generate. This Court rejects AI-produced briefs, and courts should likewise reject congressional findings that could be AI-generated. The CTA's purported justification to combat "serious" tax fraud looks like an AI gaffe, and no deference is due to findings so superficial that an AI program could write them. The CTA has nothing to do with any taxation power, and targets many entities exempt from taxes.

Defendants' reliance on a purported goal to "bring the United States into compliance with international anti-money laundering norms" is mere sophistry. Most foreign governments do not have the extensive monitoring that CTA imposes, as Plaintiffs explained (Pls. Br. 14) and which Defendants concede by seeking to spur a (non-existent) "international consensus." (Gov't Br. 13)

B. The CTA Violates the First Amendment.

The CTA and its Rule force Plaintiffs to submit to federal authority for local activities, exposing them to federal investigation; the chilling effect on freedom of association can hardly be doubted and is supported by the evidence. (ECF No. 16-2 to -5, Hotze Decl. ¶¶ 22-32; Exh. B, Snavelly Decl. ¶¶ 16-25, 28; Exh. C, Ramsland Decl. ¶¶ 6-15; Exh. D, Rogers Decl. ¶¶ 8-16)

Defendants devote 4 pages to this issue (Gov't Resp. 14-18), but fail to confront the chilling effect that a mandate to disclose highly personal information including home address, birthdate, and driver's license number, plus submission to federal investigation, has. Mere disclosure of a donation by an NFL team owner to Plaintiff Hotze's PAC – which the government does not deny is subject to the CTA – turned the wealthy owner's life upside down because it related to the transgender issue. Defendants argue that the CTA does not require donation information, but that

misses the point; the CTA requires that an NFL owner's identity and home address must be disclosed to FinCEN for local entities in which he has a significant role. Plaintiff Hotze himself has been subjected to death threats for exercising his First Amendment rights. (ECF No. 16-2, Hotze Decl. ¶ 24). There is nothing irrational about the evidence from him and other Plaintiffs about how "very worried" (*id.* ¶ 25) and deterred as they are by the CTA requirements.

Defendants, in a footnote (15 n.7), try to downplay the concerns by Plaintiff Ramsland about losing his gun rights based on application of the CTA, but Defendants do not deny that Plaintiffs are correct: a harmless violation of the CTA causes a loss of the person's right to bear arms, due to the interplay of a federal gun control statute with the draconian two-year incarceration under the CTA. (Pls. Br. 1-2) This is a significant concern for millions of Americans who value their Second Amendment rights. Defendants argue that this approach would cast doubt on the constitutionality of other reporting requirements carrying criminal penalties, but Defendants cite nothing similar to the gotcha-style CTA requirement for local activities, with a long federal prison sentence that triggers loss of gun rights. The CTA is uniquely punitive for everyday activities.

Defendants argue that merely "modest burdens" on associative activities are fine (Gov't Resp. 15), but mandatory disclosure of one's home address and other private information, identifying one's political associates, losing one's Second Amendment rights, and being forced to submit to an unwanted jurisdiction for federal investigation and prosecution, are not merely "moderate" burdens on Plaintiffs, some of whom are high-profile targets of political adversaries and lawfare. It is not merely the burden of reporting – which is significant itself due to the vagueness and ambiguities discussed below – but the substantial burdens of having to make unwanted private disclosures while risking consequences that chill First Amendment rights.

Many members of AAPS rationally, indeed wisely, avoid federal jurisdiction over their

medical practices by being HIPAA non-covered entities. (ECF No. 16-3, Snavelly Decl. ¶¶ 16-17) (Pls. Br. 15-16) The CTA significantly burdens them and the other Plaintiffs for merely engaging in local associative entities, and that burden on First Amendment rights is unconstitutional.

C. The CTA Violates the Fourth Amendment.

As to the Fourth Amendment, Defendants rely heavily on *Shultz*, where the Supreme Court “upheld a statute requiring banks to report transactions over a specified dollar amount to the government.” (Gov’t Resp. 18, citing *Cal. Bankers Ass’n v. Shultz*, 416 U.S. 21 (1974)). But that is nothing like the CTA at issue here. In *Shultz*, a bankers’ association challenged a reporting obligation on them, of information having a “**high degree** of usefulness in criminal, tax, or regulatory investigations or proceedings.” *Shultz*, 416 U.S. at 26 (emphasis added). The CTA imposes more intrusive reporting obligations on ordinary law-abiding Americans about local associative, sometimes political, entities without a “high degree of usefulness” to the government.

Plaintiffs cited several precedents prohibiting this under the Fourth Amendment, which Defendants cite but fail to distinguish. (Pls. Br. 18-19; Gov’t Resp. 19-20) Defendants concede “the Supreme Court’s longstanding view that ‘reasonableness’ is the touchstone of Fourth Amendment analysis” (Gov’t Resp. 19), but the CTA and its Rule are not reasonable. For example, Defendants provide no justification for why the Rule requires disclosure of home addresses, which the CTA does not require. This subjects people to sometimes-deadly “swatting”. (Pls. Br. 22)

The Supreme Court holding in *Brown v. Texas*, which Defendants fail to sufficiently distinguish, is controlling here: “Even assuming that [valid] purpose is served to some degree by stopping and demanding identification from an individual without any specific basis for believing he is involved in criminal activity, the guarantees of the Fourth Amendment do not allow it.” 443 U.S. 47, 52 (1979) (quoted by Pls. Br. 19). The CTA is analogous to arbitrary demands for ID.

D. The CTA Violates the Fifth Amendment.

The government relies on a decades-ago affirmance of convictions for grisly drug-related murders to argue the CTA is not unconstitutionally vague. *See United States v. Flores*, 63 F.3d 1342 (5th Cir. 1995) (cited by Gov’t Resp. 21) The government further argues that it is entitled to more ambiguity in this context because the CTA is supposedly “an economic regulation” (*id.* at 20), when in fact the CTA applies to many political and nonprofit entities too, including Plaintiff Hotze’s Campaign for Houston PAC. Finally, the government argues that because Plaintiffs admit that the CTA applies to *some* of their entities (while also expressing uncertainty about whether it applies to other entities), then somehow “[t]hat concession is fatal.” (*Id.* at 21)

None of government’s arguments withstands scrutiny. The Court can take judicial notice of the confusion and disagreement among experts as to which entities the CTA and its Rule apply. (ECF No. 16-1, Pls. Br. 20) Plaintiff Hotze has been associated with entities having 70 entries in a search on the Texas Secretary of State website, and he (who is highly educated) cannot decipher to which ones CTA applies. (ECF No. 16-2, Hotze Decl. ¶ 17) How is an everyday American supposed to figure this out, as the standard concerning vagueness requires?

There is an entity associated with each Plaintiff to which CTA does apply – which gives them standing – but that does not cure the Fifth Amendment defect of vagueness as to whether the CTA applies to Plaintiffs’ other entities. Defendants did not clarify whether the CTA applies to the Potter County GOP entity in Amarillo, of which Plaintiff Rogers has been Chairman since 2018. No one seems to know, and this requires voiding for vagueness the CTA, a criminal statute.

III. The Balance of Equities Tips in Plaintiffs’ Favor and the Requested Injunction Is in the Public Interest.

Defendants correctly state that the final two factors for a preliminary injunction merge when the government is the defendant, as here. (Gov’t Resp. 22)

The CTA was enacted on New Year's Day in 2021, to become effective for most Americans four years later, on New Year's Day in 2025. So by its own terms there is no governmental urgency. An additional delay of a few months would be consistent with the slow timing approved by Congress. Moreover, another federal court (in Alabama) has enjoined this law for the plaintiffs there. (Pls. Br. 2) The government provides nothing here to indicate any harm to it from granting an injunction here, while Plaintiffs face personal harm as described in their Declarations if their motion for a preliminary injunction were denied. (ECF No. 16-2 to -5)

IV. The Scope of Plaintiffs' Proposed Injunction Is Proper.

Saving the best for last, Defendants argue against the scope of the proposed injunction (Gov't Resp. 23-24). But a broad injunction against the CTA would not be an objectionable type of nationwide injunction, because Defendants could still accept submissions on a voluntary basis. If Defendants are violating constitutional rights by requiring the submission of the private information under threat of criminal sanction, then Defendants should be enjoined against this infringement. Also, freedom of association at stake here requires that the injunction not be limited to only Plaintiffs themselves, as their associative rights are lost if others are chilled in their rights.³

Conclusion

For the reasons provided by Plaintiffs and *Amici*, Defendants should be preliminarily enjoined from applying the CTA and its Rule against Plaintiffs, anyone who associates with them in entities created under state law or, more generally, from enforcing the CTA against anyone.

³ Defendants argue that there is a mistake in the proposed order (ECF No. 16-6, p. 2, first paragraph) in stating that a FinCEN identifier will be assigned to everyone; the government states that only people who request a FinCEN identifier will receive one. (Gov't Resp. 24) Both Plaintiffs and Defendants could be correct about this if FinCEN uses identifiers internally as databases commonly do. This is immaterial to the order and the paragraph can be crossed out.

Dated: November 21, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

On November 21, 2024, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court, which I understand to have caused service on counsel of record for all the parties in this case.

/s/ Andrew L. Schlafly
Andrew L. Schlafly