

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

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

Plaintiffs,)

v.)

Civil Action No. _____

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.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Steven F. Hotze, M.D., Daniel Rogers, Russell Ramsland, Michael Wallis, and the Association of American Physicians & Surgeons seek declaratory and injunctive relief against the 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 the Director of the Financial Crimes Enforcement Network (FinCEN) (collectively, “Defendants”), based on the following allegations.

NATURE OF THE ACTION

1. “The United States currently does not have a centralized or complete store of information about who owns and operates legal entities within the United States.”¹ Nor should it.

¹ 87 Fed. Reg. 77404, 77405 (Dec. 16, 2022).

The U.S. Constitution does not authorize the federal government to monitor every American who participates in state-approved entities, including many who are not even engaged in any interstate commercial activity. It is plainly unconstitutional for the federal government to require information to create a “complete store” about every owner and participant concerning most associative and corporate small entities in our country.

2. The Corporate Transparency Act, Pub. L. No. 116-283, 134 Stat. 4604, codified at 31 U.S.C. § 5336 (the “CTA”), was tucked into the 2021 National Defense Authorization Act. The CTA comprised only about 21 of the nearly 1,500 total pages in this rushed, end-of-the-year annual appropriation.

3. The CTA requires, under threat of incarceration, that millions of ordinary, law-abiding Americans who establish everyday small entities under state law report private, personal information about themselves to the federal Financial Crimes Enforcement Network (“FinCEN”).

4. The federal government already collects this data concerning financial accounts through the Customer Due Diligence (CDD) Rule, which requires banks and others to obtain and report to the federal government a full panoply of personal information about account holders. CTA, however, imposes a new obligation on ordinary citizens to report personal information about themselves to the federal government merely for exercising their First Amendment rights to associate with others in entities formed in compliance with state law.

5. FinCEN issued its final rule (the “Rule”) implementing the CTA’s beneficial ownership reporting requirements, which took effect on January 1, 2024 for newly-formed entities and, for existing entities, are to take effect on January 1, 2025. “Beneficial Ownership Information Reporting Requirements,” 87 Fed. Reg. 59498 (Sept. 30, 2022) (codified at 31 C.F.R. pt. 1010). FinCEN also issued an additional final rule concerning broad access to this information.

“Beneficial Ownership Information Access and Safeguards,” 88 Fed. Reg. 88732 (Dec. 22, 2023).

6. The CTA thereby converts nearly every American into a potential federal criminal merely for engaging in local activities in the exercise of their constitutional rights. The CTA punishes the least sophisticated of these law-abiding citizens with a gotcha-style, counterintuitive reporting requirement carrying the harsh penalty of two years in federal prison for non-compliance. This is a vast expansion of federal police power in violation of the U.S. Constitution.

7. The CTA applies to roughly 32.6 million small businesses in 2024 and approximately 5 million additional companies annually thereafter. For each of these businesses, many individuals are affected. The “reporting companies” include privately owned enterprises or businesses having 20 or fewer full-time employees or having \$5 million or less in annual gross receipts or sales. *See* 31 U.S.C. § 5336(a)(11)(B)(xxi).

8. The CTA fully applies to companies that are not pursuing any commercial activity, including:

- (i) not-for-profit entities that do not have a federal 501(c) tax-exempt designation,
- (ii) entities formed by Americans solely to acquire or possess a parcel of land, such as a simple residence, and
- (iii) small private clubs, established for merely political, civic, or social purposes, without any intent to seek federal 501(c) tax-exempt status.

9. Many thousands of private medical practices are subject to this onerous law, despite that this field has always been within the exclusive domain of state regulation and has rarely, if ever, been linked to any credible threat to national security. Indeed, FinCEN provides no examples in its Rule promulgated under CTA of any genuine impact on national security of any of these small entities to which CTA and its Rule apply.

10. The CTA constitutes a vast expansion of federal prosecutorial authority over

ordinary American citizens who are not engaging in any activity legitimately within the scope of federal power. Subjecting tens of millions of Americans to a risk of two years in prison, for a mere failure to file a report with the federal government about an activity outside of the scope of federal authority, has a devastating chilling effect in violation of the First Amendment.

11. Stated another way, the federal government lacks authority under the Constitution to become the “Big Brother” over tens of millions of people who exercise their right to freedoms of speech and association under the First Amendment. Nearly everyone who speaks out, particularly when it is in criticism of the federal government, could then plausibly fear the use of a weaponized federal government for politically motivated prosecution based on innocuous deficiencies in reporting to the federal government, about activities in which there is no legitimate federal interest or authority. The CTA and its Rule are a vast expansion in the federal police state, in violation of fundamental constitutional rights of American citizens.

12. At a time when the expression “no one is above the law” is overused to justify selective and arguably politically motivated prosecutions of candidates for public office and their vocal supporters, this vast overreach in new federal prosecutorial power is unconstitutional. The federal government has sharply limited authority under the Constitution, and none of its enumerated powers can be plausibly stretched so far as to support the CTA and its implementing Rule.

13. The U.S. District Court for the Northern District of Alabama enjoined application of the CTA to the plaintiffs in a lawsuit there challenging the constitutionality of the CTA. “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, the Plaintiffs are entitled to judgment as a matter of law.” *Nat’l Small Bus. United v. Yellen*,

No. 5:22-cv-1448-LCB, 2024 U.S. Dist. LEXIS 36205, at *4 (N.D. Ala. Mar. 1, 2024). Despite that clear, strong ruling against the constitutionality of the CTA, Defendants insist on applying the CTA and its Rule to everyone who is not a party in that case, which includes Plaintiffs.

PARTIES

14. Plaintiff Steven F. Hotze, M.D., is a beneficial owner of multiple medical and business entities located in Katy, Texas. He is also the founder and leader of multiple Texas-only political action committees, including Conservative Republicans of Texas PAC, Conservative Republicans of Harris County PAC, and Campaign for Houston PAC. Plaintiff Hotze has founded and will continue to found, with others, new small for-profit entities having less than \$5 million in annual gross revenue under Texas law. Plaintiff Hotze resides in Harris County, Texas.

15. Plaintiff Daniel Rogers is the Potter County GOP Chairman, who resides in Potter County, Texas. Plaintiff Rogers is the president of Llano Estacado Management Company, Inc., a for-profit business located in Amarillo, Texas, whose annual gross revenue is less than \$5 million.

16. Plaintiff Russell Ramsland is a member of Dinero, LLC, which is located in Midland, Texas. Plaintiff Ramsland is associated with multiple for-profit entities registered under state law, each having less than \$5 million in annual gross revenue.

17. Plaintiff Michael Wallis is a member of Loki Management, LLC, a for-profit entity located in Dallas, Texas, which has less than \$5 million in annual gross revenue.

18. Plaintiff Association of American Physicians & Surgeons (“AAPS”) was founded in 1943 and is a nonprofit membership organization of physicians in virtually all specialties. AAPS is incorporated under the laws of Indiana and headquartered in Tucson, Arizona. AAPS membership includes many physicians who are adversely affected by the application of the CTA and its Rule to medical practices registered under state law, including at least one AAPS member physician who is currently practicing medicine in Canyon, Texas, near Amarillo, while also

residing nearby within this venue. Plaintiff AAPS also has members located in Amarillo, Texas.

19. Defendant United States Department of the Treasury is a federal executive agency.

20. Defendant Janet Yellen is the Secretary of the United States Department of the Treasury, who is being sued here in only her official capacity.

21. Defendant Andrea Gacki is the Director of the Financial Crimes Enforcement Network, who is being sued here in only her official capacity.

JURISDICTION, VENUE, AND STANDING

22. This action arises out of Defendants' ongoing violations of the U.S. CONST., Art. I, and Amends. I, IV, V, and X, and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706, and thus raises federal questions over which this Court has jurisdiction pursuant to 28 U.S.C. § 1331.

23. Venue is proper in this United States District Court for the Northern District of Texas, under 28 U.S.C. § 1391(e)(1)(C), because Defendants include officers of the United States, at least one of the Plaintiffs resides within this venue and, in addition, Plaintiff AAPS has at least one member here who has been injured by virtue of Defendants' actions at issue. No real property is involved in this action.

24. Plaintiff AAPS has associational standing here because (a) AAPS's members would otherwise have standing to sue in their own right, (b) the interests that AAPS seeks to protect are germane to AAPS's purpose, which includes the promotion of independent, unburdened private medical practices organized under state law, and (c) neither the claim asserted nor the relief requested requires the participation of individual members in this lawsuit. *See Association of American Physicians & Surgeons v. Texas Medical Board*, 627 F.3d 547, 550 (5th Cir. 2010). Most medical practices, including those of AAPS members relevant here, have less than \$5,000,000 in gross receipts or sales and thus are subject to the CTA and its Rule.

25. Similarly, the other Plaintiffs are involved in existing and planned business entities created or to be created under state law, which have less than \$5,000,000 in gross receipts and sales and thus are subject to the CTA and its Rule.

26. Because this Court has jurisdiction as a threshold matter, the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, provides this Court the power to “declare the rights and other legal relations of any interested party ..., whether or not further relief is or could be sought.” 28 U.S.C. § 2201; *accord* FED. R. CIV. P. 57 advisory committee note (“the fact that another remedy would be equally effective affords no ground for declining declaratory relief”).

CONSTITUTIONAL BACKGROUND

27. Congress has only limited powers, as enumerated in Article I of the U.S. Constitution, which the CTA far exceeds. The Tenth Amendment states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S. CONST. amend. X.

28. Additional amendments in the Bill of Rights further limit the power of the federal government.

29. The CTA violates the First Amendment rights of freedoms of speech and association, by having a chilling effect on those rights in subjecting those who form entities for speech or association purposes to two years in a federal prison if there is a disclosure infraction under the CTA. U.S. CONST. amend. I.

30. The CTA violates the Fourth Amendment right against “unreasonable searches and seizures,” by requiring the disclosure to the federal government, for its criminal prosecution purposes, of private and personal information without probable cause. U.S. CONST. amend. IV.

31. The CTA violates the Fifth Amendment by basing criminal penalties on vague statutory terminology. U.S. CONST. amend. V.

32. The judicial-review provisions of the APA proscribe agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). The APA further bars agency action that is “in excess of statutory jurisdiction, authority, or limitations,” *Id.* at § 706(2)(C), and directs courts to “hold unlawful and set aside agency action, findings, and conclusions found to be ... contrary to constitutional right, power, privilege or immunity.” 5 U.S.C. § 706(2)(B).

ALLEGATIONS RELEVANT TO ALL COUNTS

The CTA

33. The CTA was enacted as part of the omnibus National Defense Authorization Act for Fiscal Year 2021. *See* William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, 134 Stat. 3388 (Jan. 1, 2021). Under the pretext of combating money laundering, terrorism, and other criminal activity supposedly using “shell companies,” the CTA invades the privacy of and subjects to federal criminal penalties millions of legitimate small businesses, political associations, and civic organizations in the United States by demanding that they provide personal ownership and participant information to the federal government at FinCEN to build a massive new database for criminal prosecution purposes.

34. Specifically, the CTA requires “reporting companies” to provide to FinCEN data concerning every “beneficial owner” and “applicant,” broadly defined as follows.

35. A “reporting company” is every “corporation, limited liability company, or other similar entity that is—

(i) created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe; or

(ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe

31 U.S.C. § 5336(a)(11)(A) (then listing exceptions).

36. An “applicant” includes every individual who “files an application to form a corporation, limited liability company, or other similar entity under the laws of a State or Indian Tribe.” *Id.* § 5336(a)(2).

37. The term “beneficial owner” is defined, with limited exceptions, as follows:

(A) means, with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—

(i) exercises substantial control over the entity; or

(ii) owns or controls not less than 25 percent of the ownership interests of the entity;

Id. § 5336(a)(3)(A) (then listing exceptions).

38. For each applicant and beneficial owner, as broadly defined above, the reporting company must provide to FinCEN his full legal name, date of birth, current residential or business street address, and “unique identifying number from an acceptable identification document,” such as an unexpired passport or State-issued identification card or driver’s license, or FinCEN-issued identifier number. 31 U.S.C. § 5336(b)(2)(A).

39. This personal information must either be reported upon formation or registration of the reporting company, or, for existing reporting companies, in a “timely manner” and not later than two years after the effective date of the Rule. *Id.* § 5336(b)(1)(B),(C). Any incidental change in the reported data – such as a routine move in residence or merely obtaining a new driver’s license – triggers a new requirement to report the new information to FinCEN within one year of the change. *Id.* § 5336(b)(1)(D).

40. Those who “willfully” fail to comply with these reporting requirements are subject to a civil penalty of up to \$500 per day, a separate fine up to \$10,000, and two years’ imprisonment,

or both. *Id.* § 5336(h)(1),(3).²

41. FinCEN shall then assign a "FinCEN identifier" to every person about whom it receives this information. *Id.* § 5336(b)(3)(A).

42. The federal government will use these disclosures to build a national database of personal information about all of the "beneficial owners" and "applicants," thereby chilling their lawful activity.

43. FinCEN will maintain the personal data of a reporting company's beneficial owners and applicants for at least five years – and possibly forever – after the reporting company ceases its operations. *Id.* § 5336(c)(1).

44. FinCEN may share this private information, without any finding of probable cause of wrongdoing, with virtually any other federal agency that it so chooses. *Id.* § 5336(c)(2)(B).

45. The CTA exempts two dozen categories of large business entities and companies, including companies having (a) more than 20 full-time employees in the United States, (b) more than \$5 million in gross receipts or sales, and (c) an operating presence at a physical office in the United States. 31 U.S.C. § 5336(a)(11)(B). Banks, insurance companies, investment funds, broker dealers, public accounting firms, public companies, money-transmitting businesses, and other types of businesses not relevant here are exempted. *Id.*

46. The CTA, as clarified by the Rule, also exempts a limited category of tax-exempt entities as follows:

Any entity that is:

(A) An organization that is described in section 501(c) of the Internal Revenue Code of

² The element of willfulness would be for a federal jury to decide, but statistically juries in federal criminal cases rule against defendants in roughly 99% of prosecutions, which means in practice that this element would be resolved by prosecutorial discretion without safeguards against selective prosecution.

1986 (Code) (determined without regard to section 508(a) of the Code) and exempt from tax under section 501(a) of the Code, except that in the case of any such organization that ceases to be described in section 501(c) and exempt from tax under section 501(a), such organization shall be considered to continue to be described in this paragraph (c)(1)(xix)(A) for the 180-day period beginning on the date of the loss of such tax-exempt status;

(B) A political organization, as defined in section 527(e)(1) of the Code, that is exempt from tax under section 527(a) of the Code

31 C.F.R. § 1010.380(c)(2)(xix).

47. Many non-profit organizations properly established under state law are not designated by Section 501(c) of the Code, and many political organizations properly established under state law are not within the definition of Section 527(e)(1) of the Code.

48. Notably, the CTA does not exempt small entities that are established for entirely intrastate commerce or non-business purposes.

49. Except for its harsh criminal penalties against individuals for minor reporting infractions, the CTA is largely redundant to the existing Customer Due Diligence (CDD) Rule in terms of the information obtained: “With respect to the information that the CDD and the CTA collect about entities, the information *is generally the same, with minor variances*.”³

50. The purported goals of the CTA to combat money laundering and similar illegality are best achieved by tracking assets and money flow, which the CDD requirements already mandate that financial institutions do. Under the CDD, financial institutions must already collect beneficial ownership information, which includes passports, driver’s licenses, home addresses, and so on. The information already required by the CDD is fully available to federal authorities, and there are currently obligations of these financial institutions to monitor and update this information.

³ Holland & Knight, <https://tinyurl.com/yjdbnh2v> (emphasis added, viewed Sept. 16, 2024).

51. The primary difference between the CTA and the CDD is that the CTA vastly expands federal prosecutorial power over local matters. Under the CDD, when an individual opens an account he must certify that “to the best of [the individual’s] knowledge, that the information provided ... is complete and correct.” But the CTA requires a stronger certification that “the [report to FinCEN] is true, correct, and complete,” with new harsh criminal penalties against individuals despite how they fully comply with state law.

52. Anonymity has long been an essential part of both political discourse and free enterprise. The remarkable and influential *Common Sense* by Thomas Paine was published anonymously, as were the *Federalist* papers. With the internet today, retaliation against those who speak out in their own name is at an all-time high, and accordingly many popular political accounts on social media are anonymous (e.g., “Libs of TikTok,” an initially anonymous conservative account that has 3.4 million followers on the X platform as of September 2024). As to free enterprise, “It’s common for high-end properties to be bought by trusts or business partnerships on behalf of wealthy individuals, whose names might not be known to the real estate agents representing them.”⁴ Jeff Bezos, typically ranked as the first or second wealthiest man in the world, recently purchased a Florida mansion at a discount of \$6 million less than the asking price, by not disclosing his identity.⁵ The federal government has no legitimate interest in compelling disclosures in any of these political or business situations.

53. While the CTA purports to maintain confidentiality by imposing criminal penalties on unauthorized disclosures, leaks to the media by federal government officials and their

⁴ <https://www.cbsnews.com/news/jeff-bezos-miami-indian-creek-mansion-leo-kryss-douglas-elliman-lawsuit/> (viewed Sept. 14, 2024).

⁵ *Id.*

contractors are commonplace, nearly impossible to trace, and rarely prosecuted. Disclosure of entire tax returns, including that of Donald Trump, were done by leaks to the press. While a contractor implicated for that particular leak was prosecuted, most of the sources of illegal leaks of confidential information to the media are not. The unauthorized leak of the draft opinion from the U.S. Supreme Court, in the case of *Dobbs v. Jackson Women's Health Organization* (overturning *Roe v. Wade*), went unprosecuted. Nor was that an isolated event. In an apparent attempt to harm Donald Trump less than two months before the presidential election, confidential memos from inside the High Court appeared in the media on September 15, 2024. See Jodi Kantor and Adam Liptak, "How Roberts Shaped Trump's Supreme Court Winning Streak," *N.Y. Times* (Sept. 15, 2024).⁶

54. In addition, internet trolls commonly engage in activities such as "doxing" (posting of one's personal information, such as his residential address, to his detriment on the internet) and "swatting" (inciting a raid, sometimes with deadly consequences, on someone's home by making a false report of a hostage crisis or another emergency there),⁷ whereby innocent people exercising their constitutional rights are punished by nefarious retaliation that can include inciting government officials to take action against someone for innocent activity. Candidates for public office and other outspoken citizens are subject to this harassment, and the requirement by the CTA

⁶ <https://www.yahoo.com/news/john-roberts-secret-trump-memo-143303014.html> (viewed Sept. 15, 2024).

⁷ Outspokenly conservative Rep. Marjorie Taylor Greene (R-FL) was swatted for the 8th time at her home on Christmas Day, 2023: "A man in New York called the Georgia suicide hotline just before 11 a.m. Monday, claiming that he had shot his girlfriend at Greene's home and was going to kill himself next." Hannah Schoenbaum, "Rep. Marjorie Taylor Greene targeted by failed Christmas swatting attempt," *Associated Press* (Dec. 26, 2023). <https://apnews.com/article/marjorie-taylor-greene-swatting-georgia-christmas-2081fd3835512cc3180aa1171fc5913d> (viewed Sept. 15, 2024).

of disclosure of personal information exposes law-abiding citizens to unjustified retaliation.

Ripeness

55. The Rule is a “final agency action for which there is no other adequate remedy.” 5 U.S.C. § 704.

56. Plaintiffs are subject to the CTA and its Rule, without entirely qualifying for an exemption from these requirements. In addition, Plaintiffs plan to form new for-profit and/or nonprofit entities in the future, including those that are civic, social, political, or religious in nature, with non-plaintiffs which would not have an exemption from application of the CTA.

57. As held by the U.S. District Court for the Northern District of Alabama, “The ultimate result of this statutory scheme is that tens of millions of Americans must either disclose their personal information to FinCEN through State-registered entities, or risk years of prison time and thousands of dollars in civil and criminal fines.” *Nat’l Small Bus. United v. Yellen*, No. 5:22-cv-1448-LCB, 2024 U.S. Dist. LEXIS 36205, at *9 (N.D. Ala. Mar. 1, 2024).

58. The CTA and its implementing Rule subject Plaintiffs to criminal prosecution, carrying a federal prison sentence of up to two years, for mere disclosure violations concerning lawful activity. Plaintiffs are thereby subjected to selective federal prosecution in retaliation for their exercise of constitutional rights. This has a chilling effect on Plaintiffs’ First Amendment rights.

59. Plaintiffs has no adequate or available administrative remedy; in the alternative, any effort to obtain an administrative remedy would be futile. Plaintiffs have no adequate remedy at law.

CAUSES OF ACTION

COUNT I

(THE CTA IS BEYOND THE ENUMERATED ARTICLE I POWERS, IN VIOLATION OF THE TENTH AMENDMENT)

60. Plaintiffs incorporate herein all statements and allegations contained in this Complaint.

61. The CTA goes far beyond the enumerated powers of Congress as set forth in Article I of the Constitution.

62. Specifically, the CTA is beyond the scope of the Commerce Clause, U.S. CONST. Art. I, sec. 8, cl. 3, because the CTA sweepingly imposes reporting obligations on founders, owners, participants, and affiliated persons of entities that are not engaging in interstate or foreign commerce.

63. The reporting obligations of the CTA and its Rule require disclosure of highly personal information that is not justified by the activity of the individuals.

64. In addition to Plaintiffs' existing entities that are subject to the CTA and the Rule, they plan to found new political, civic, social, or religious entities that would not be clearly exempt from the CTA and its Rule, and thus would be subject to these obligations despite not engaging in any interstate or foreign commerce.

65. The CTA cannot be justified by the authority of the federal government to defend national security. The scant congressional findings on this point are insufficient to justify the sweeping intrusion on a field of traditionally exclusive State jurisdiction: the formation and management of new entities under state law.

66. The examples in the Rule of illegal activity supposedly justifying the CTA are almost entirely unrelated to national security or terrorism, and instead concern matters such as run-

of-the-mill fraud or seizing an asset of a foreigner in a foreign country due to a foreign war, which can be easily addressed under current laws and regulations. *See* 87 Fed. Reg. 59498, 59498-99.

67. The CTA has no justification in the taxing power. The required disclosures are not limited to taxable entities, and the new database envisioned by the government under the CTA is for criminal prosecutions mostly unrelated to tax obligations.

68. The CTA is not sustainable by citing to international law, particularly in the absence of any justification under the U.S. Constitution.

69. The CTA infringes on the “historically exclusive governance of incorporation” by the States. *Nat'l Small Bus. United v. Yellen*, No. 5:22-cv-1448-LCB, 2024 U.S. Dist. LEXIS 36205, at *26 (N.D. Ala. Mar. 1, 2024).

70. The Tenth Amendment to the U.S. Constitution establishes the right of the people to a limited federal government that must be confined to its enumerated powers without encroaching on state and local sovereignty.

71. The formation of entities for small business and other associational activities are within the exclusive authority of the States. In the absence of interstate or foreign commerce or other impact on a recognized federal authority, the federal government has no enumerated power upon which to regulate this activity. With few exceptions, the federal government does not generally charter corporations.

72. The creation of corporate entities is in the near-exclusive domain of State sovereignty, and the regulation of the internal affairs and structure of these entities is properly by the States, not the federal government. “It thus is an accepted part of the business landscape in this country for *States* to create corporations, to prescribe their powers, and to define the rights that are acquired by purchasing their shares.” *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 91 (1987).

Congress lacks constitutional authority over the formation of corporate entities under state law.

73. Despite this, the CTA aims in an unprecedented way to establish “a clear, Federal standard for incorporation practices.” 31 U.S.C. § 5336 note (5)(A).

74. The CTA and its Rule sweep in many entities that never engage in any kind of interstate or foreign commerce, including local associations, nonprofit entities never seeking a federal designation, local political organizations, and entities established simply to hold a local parcel of real property. These entities are beyond the scope of federal authority.

75. “The Constitution grants Congress the power to ‘regulate Commerce.’ The power to regulate commerce presupposes the existence of commercial activity to be regulated.” *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 520 (2012) (emphasis in original).

76. The creation of an entity under state law is not in itself a commercial activity, and many of these entities never engage in any commerce, let alone interstate or foreign commerce.

77. The CTA and its Rule violate Plaintiffs’ rights under the Tenth Amendment by going beyond the enumerated powers of the federal government. U.S. CONST. Art. I, sec. 8 & amend. X.

78. An individual may “assert injury from governmental action taken in excess of the authority that federalism defines.” *Bond v. United States*, 564 U.S. 211, 222 (2011) (*Bond I*). On the second trip to the U.S. Supreme Court in that same seminal case, the Court held further that:

[i]f [the federal statute] reached Bond’s conduct, it would mark a dramatic departure from that constitutional structure and a serious reallocation of criminal law enforcement authority between the Federal Government and the States. Absent a clear statement of that purpose, we will not presume Congress to have authorized such a stark intrusion into traditional state authority.

Bond v. United States, 572 U.S. 844, 866 (2014) (*Bond II*).

79. “We accordingly reject the argument that Congress may regulate noneconomic,

violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce. The Constitution requires a distinction between what is truly national and what is truly local." *United States v. Morrison*, 529 U.S. 598, 617-18 (2000).

80. In addition to their current activities as participants in law-abiding entities created properly under state law, Plaintiffs intend to create new organizations with others that would be for-profit, non-profit and/or political in nature, but not within the exemptions from the application of the CTA.

81. Plaintiffs request that the CTA and its Rule be declared unconstitutional due to their lack of authorization under the U.S. Constitution, and be enjoined with respect to Plaintiffs and all others with whom Plaintiffs have associated in entities, and may associate to form new entities, which are subject to CTA.

COUNT II
(FIRST AMENDMENT FREEDOMS OF SPEECH AND ASSOCIATION)

82. Plaintiffs incorporate herein all statements and allegations contained in this Complaint.

83. Plaintiffs have well-established First Amendment freedoms of speech and association.

84. The American tradition of forming associations dates back at least to the time of Alexis de Tocqueville, who wrote in his classic *Democracy in America* that:

In no country in the world has the principle of association been more successfully used, or more unsparingly applied to a multitude of different objects, than in America. Besides the permanent associations which are established by law under the names of townships, cities, and counties, a vast number of others are formed and maintained by the agency of private individuals. ...

[I]n the United States associations are established to promote public order, commerce, industry, morality, and religion; for there is no end which the human will, seconded by the collective exertions of individuals, despairs of attaining. ...

An association consists simply in the public assent which a number of individuals give to certain doctrines, and in the engagement which they contract to promote the spread of those doctrines by their exertions. The right of association with these views is very analogous to the liberty of unlicensed writing; but societies thus formed possess more authority than the press. ... An association unites the efforts of minds which have a tendency to diverge in one single channel, and urges them vigorously towards one single end which it points out.

Alexis de Tocqueville, *Democracy in America*, Chapter XII (London: 1835).⁸

85. The CTA and its Rule infringe on these rights of speech and association by causing a chilling effect, based on federal imprisonment of up to two years for a mere reporting violation concerning law-abiding associative activities.

86. “The Constitution guarantees freedom of association of this kind as an indispensable means of preserving other individual liberties,” including freedom of speech. *Roberts v. United States Jaycees*, 468 U.S. 609, 618 (1984).

87. The CTA’s compelled disclosures and threat of two years of incarceration deter Plaintiffs and other American citizens from exercising these constitutional rights, and deter them from founding, leading, or participating in entities properly established under state law.

88. There is no compelling interest for the federal government to obtain the information required by the CTA and its Rule, and less onerous alternatives are readily available to attain relevant legitimate goals. The CTA and its Rule are not narrowly tailored for their stated purpose.

89. For example, additional oversight of the large financial institutions exempted by the Rule would address alleged money laundering and any funding of international terrorism.

90. As in the failed approach of gun control, the CTA and its Rule will create an unprecedented federal database filled with personal information about law-abiding citizens, while wrongdoers simply skirt the law.

⁸ <https://gutenberg.org/files/815/815-h/815-h.htm> (viewed Sept. 12, 2024).

91. The law-abiding citizens will then become subject to potential and actual harassment based on prosecutorial discretion, unrelated to any of the purported goals of the CTA.

92. “First Amendment freedoms need breathing space to survive.” *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2384 (2021) (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)). By failing to narrowly tailor its burdens on freedom of speech and association, Defendants violate the First Amendment.

93. Defendants’ foregoing infringement on First Amendment rights has caused, and continues to cause, irreparable harm to Plaintiffs.

94. Therefore, Plaintiffs seek declaratory and injunctive relief against Defendants, the CTA, and its Rule to prevent the foregoing violations of the First Amendment.

**COUNT III
(FOURTH AMENDMENT PRIVACY RIGHTS)**

95. Plaintiffs incorporate herein all statements and allegations contained in this Complaint.

96. The Fourth Amendment to the U.S. Constitution safeguards against “unreasonable searches and seizures.” U.S. CONST. amend. IV.

97. In violation of this protection, the CTA and the Rule require detailed disclosures, without any showing of the “probable cause” required by the Fourth Amendment, of private personal information to the federal government despite a lack of a nexus to interstate commerce or other proper basis for federal authority.

98. A stated purpose of the CTA is for the federal government to acquire information to enforce federal criminal statutes. But under the Fourth Amendment this law enforcement purpose requires a warrant, or satisfaction of one of the limited exceptions to the warrant requirement. The CTA and its Rule improperly bypass this protection with their sweeping, privacy-

invading disclosure requirement that burdens far more law-abiding citizens than anyone engaging in any criminal activity.

99. States do not typically require privacy-invading information such as birth dates and personal identifiers merely to form a corporate or similar type of entity. Accordingly, individuals who create or participate in such an entity have a reasonable expectation of privacy from the warrantless intrusion by the federal government to obtain that information.

100. The CTA and its Rule violate this expectation of privacy by compelling the disclosure of personal information protected by the Fourth Amendment, without any individualized basis to suspect any wrongdoing.

101. The CTA further authorizes the publication of this private information to a wide variety of domestic and foreign agencies and governments without any warrant, and without any finding of probable cause.

102. The threat of two years' incarceration to compel production by Plaintiffs and millions of law-abiding Americans of their personal information to the federal government for law enforcement purposes violates their Fourth Amendment rights.

103. Defendants' foregoing infringement on Fourth Amendment rights has caused, and continues to cause, irreparable harm to Plaintiffs.

104. Plaintiffs seek declaratory and injunctive relief against Defendants, the CTA, and its Rule to prevent the foregoing violations of the Fourth Amendment.

**COUNT IV
(FIFTH AMENDMENT DUE PROCESS RIGHTS)**

105. Plaintiffs incorporate herein all statements and allegations contained in this Complaint.

106. The CTA and its Rule are too vague in setting forth what must be done by millions

of Americans to avoid the penalty of two years of federal incarceration.

107. Among the terms inadequately defined by the CTA and the Rule are “beneficial owner,” “substantial control,” “applicant,” “understanding,” and “relationship.” State law does not typically use these terms, so those who form or participate in small entities are left to engage in guesswork as to what they specifically mean. Likewise, the CTA and the Rule are insufficiently clear as to what all the requirements are for reporting, updating, allowing access, and keeping records.

108. Specifically, the CTA vaguely requires that an individual who “indirectly” by any “understanding” “exercises substantial control” over an entity must be reported as a “beneficial owner.” 31 U.S.C. § 5336(a)(3)(A). Plaintiffs and other potential subjects of this law cannot know what the actual meaning of “beneficial ownership” is, when the Rule defines “beneficial ownership” based on ambiguous terms including “understanding,” “arrangement,” and “relationship,” and even “otherwise.”

109. The Rule fails to clarify this terminology, and obfuscates further. For example, the Rule defines “substantial control” as follows:

Definition of substantial control. An individual exercises substantial control over a reporting company if the individual: ...

Has any other form of substantial control over the reporting company.

31 CFR § 1010.380(d)(1)(i)(D). This definition in the Rule is senselessly circular and hopelessly vague.

110. A law is unconstitutional when “men of common intelligence must necessarily guess at its meaning.” *Coates v. Cincinnati*, 402 U.S. 611, 614 (1971) (quoting *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926)).

111. As a criminal statute imposing a punishment of two years in prison, the CTA leaves

too much discretion to prosecutors in deciding if, when, and how to apply it, particularly in this era of the prosecution of leading political candidates for public office.

112. In addition, Plaintiffs are overly burdened by the substantial expense of attempting to obtain advice about and understanding of how the CTA and the Rule may be applied against them. Many commenters on the Rule objected on this basis, which FinCEN rejected with this inadequate response:

Given the many points raised by commenters on this topic, FinCEN assessed and included a cost for hiring professionals to comply with the requirements in the RIA [regulatory impact analysis].

87 Fed. Reg. 59498, 59555.

113. As one example of the continuing ambiguity in the CTA and its Rule, it remains unclear whether an entity intending to obtain designation by the IRS as a tax-exempt under Section 501(c)(3) must still initially make disclosures to FinCEN under the CTA, and then file an updated report if it obtains recognition as a 501(c)(3) entity. As explained online by one law firm:

Newly Formed 501(c)(3) Organizations: The CTA contains ambiguous language regarding the topic, but many attorneys are advising their clients that newly formed 501(c)(3) organizations are exempt from reporting requirements even if they have not yet been recognized as tax-exempt by the IRS. Until further guidance is published on the topic, the issue remains unclear. If an organization concludes that it is not CTA-exempt until recognized as tax-exempt by the IRS, the organization must file an initial BOI report within 90 days of formation. Upon receiving the IRS determination letter granting tax-exempt status, the organization must then file an updated report with FinCEN within 30 days indicating that it has obtained tax-exempt status and is therefore exempt from further BOI reporting requirements.

Dickinson Wright, “Nonprofit Organizations and the Corporate Transparency Act.”⁹

114. To comply with a new law begs the question of what a new law really means. The vague, ambiguous CTA and its Rule allow a federal prosecutor to define the law nearly however

⁹ <https://www.dickinson-wright.com/news-alerts/client-alert-nonprofits-and-the-cta> (viewed Sept. 15, 2024).

he may like, and prosecute pre-selected defendants accordingly. The Fifth Amendment prohibits such malleable criminal laws and rules.

115. Defendants' vague, ambiguous, and unclarified basis for criminal prosecution under the CTA and its Rule is in violation of due process under the Fifth Amendment of the U.S. Constitution, which requires clear advance notice of which conduct has been criminalized, before enforcement may be initiated.

116. Plaintiffs seek declaratory and injunctive relief accordingly.

**COUNT V
(ADMINISTRATIVE PROCEDURE ACT)**

117. Plaintiffs incorporate herein all statements and allegations contained in this Complaint.

118. In addition to violating constitutional provisions as alleged above and incorporated herein, the Rule is also arbitrary and capricious, and exceeds Defendants' lawful authority under the APA.

119. The Rule is vastly overbroad, applying far beyond any plausible and legitimate justification.

120. The Rule is in violation of many constitutional rights, as described above and incorporated herein.

121. For the foregoing reasons, the challenged Rule is arbitrary, capricious, and not otherwise in accordance with any law construed consistent with the U.S. Constitution.

122. Accordingly, Plaintiffs seek declaratory and injunctive relief against the Rule.

PRAYER FOR RELIEF

123. WHEREFORE, Plaintiffs respectfully asks this Court to grant the following relief:

A. Enter judgment in favor of Plaintiffs and against Defendants on all counts.

- B. Pursuant to 28 U.S.C. §§ 1331, 2201-2202, and FED. R. CIV. P. 57, issue a Declaratory Judgment that the CTA and the Rule and are unconstitutional as beyond the enumerated powers in the U.S. Constitution, and in violation of its First, Fourth, Fifth, and Tenth Amendments.
- C. Issue an injunction providing that:
1. all Defendants, and all federal agencies acting in concert with them, are enjoined from enforcing the CTA and its Rule against Plaintiffs, members of Plaintiff AAPS, and all others with whom they associate in any entity deemed to be a reporting company under the CTA, and with whom they likewise seek to associate, and all those similarly situated; and
 2. all Defendants take immediate action to rescind and remedy all prior enforcement, or attempted enforcement, of the CTA and its Rule.
- D. Pursuant to 28 U.S.C. § 2412 and any other applicable provisions of law or equity, award Plaintiffs' costs and reasonable attorneys' fees.
- E. Such other relief as may be just and proper.

Dated: September 26, 2024

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