

## CTA- Another Court Chimes In

Take-Away: Yet another federal court has held the Corporate Transparency Act (CTA) to probably be unconstitutional.

Background: There has been a flurry of activity in the federal courts in the past few weeks leading to a nationwide injunction against the enforcement of the Corporate Transparency Act (CTA.) *Career Colls. & Schools of Texas v Department of Education*, 98 F.4th 220 (Fifth Circuit Court of Appeals, December 2024.) Yet another federal District Court, also from Texas, chimed in last week to also enter a nationwide injunction against the CTA.

Reasons for Injunction: In *Smith v. U.S. Department of Treasury*, U.S. District Court ED Texas, Case No. 6:24-cv-00336 (2025) the Court listed several reasons for its preliminary finding that the CTA is unconstitutional. The listed reasons provided by this Court follow.

1. The CTA likely exceeds Congress's enumerated powers, and thus there is a likelihood of the plaintiffs' success in challenging its constitutionality. *"The CTA expands federal power beyond constitutional limits, mandating disclosure of personal information while intruding on an area of traditional state concern... which would recreate a completely centralized government."*
2. The CTA does not regulate the channels or instrumentalities of interstate commerce. The Court noted that the CTA regulates private companies formed under state law, not channels or instrumentalities of commerce.
3. The CTA does not regulate activities that substantially affect interstate commerce. The Court noted that filing papers with the Secretary of State to form a corporate or LLC entity is not *"the production or use of a commodity that is traded in an interstate market."*
4. The CTA lacks a jurisdictional element that would limit its applications to instances affecting interstate commerce.

5. The findings of Congress were insufficient to demonstrate that the CTA fills an essential gap in a broader regulatory scheme of economic activity. The Court observed: *"helpful findings would demonstrate that the regulation is 'an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated.'"*
6. The link between the activity and commerce is too attenuated. The forming or owning an entity under state law *"does not alone have a self-evident substantial effect on interstate commerce."*
7. The CTA is not a necessary and proper exercise of Congress's power to regulate foreign commerce because it does not regulate foreign trade or commerce itself, nor does it regulate channels or instrumentalities of foreign commerce.
8. The CTA is not a proper and necessary exercise of Congress's power to regulate foreign affairs and national security. *"The forming and owning a company under state law are 'purely internal affairs'"* and these *"entities remain creatures of state law."*
9. The CTA is not a necessary and proper exercise of Congress's taxing power. The Court noted that the CTA is not a tax. *"It would be a substantial expansion of federal authority to permit Congress to bring its taxing power to bear just by collecting 'useful' data and allowing tax-enforcement officials access to that data."*

Conclusion: According to this Court, compelling individuals to comply with an unconstitutional law constitutes irreparable harm. Incurring unrecoverable costs of compliance with the CTA constitutes irreparable harm. In addition, the disclosure of private information is a type of harm that cannot be undone through monetary remedies. Where we stand with the CTA and complying with its reporting requirements is anyone's guess, but this most recent court decision does outline many of the CTA's constitutional deficiencies.