

Official Statement to the House Small Business Committee

By Carol Roth; Small Business Expert and Small Business Owner

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I'm Carol Roth, a small business expert and a small business owner myself.

On behalf of small businesses across the United States, I am asking that you, our bi-partisan advocates for small business, immediately overturn the Corporate Transparency Act's Beneficial Ownership Information rule passed by Congress which unfairly targets American small businesses.

The Constitution of the United States protects the natural rights of all Americans, including against federal government overreach. While preventing financial crimes is a worthwhile endeavor, your methods cannot do so in a way that infringes upon Americans' natural rights or assumes that they are guilty without due process.

Asking small businesses and their owners to report sensitive, personal information and identification to an organization involved in monitoring financial crimes unfortunately does just that.

It is not only an invasion of privacy, but it also creates additional burdens and challenges for small business owners. And, once again, by exempting big businesses from this reporting rule, it specifically and unfairly targets and penalizes small business owners with a different standard and set of rules.

Small businesses overall are not shell companies—they are the backbone of the economy.

If FinCEN has concerns about money laundering, cartel activity or otherwise, they should be using the courts to receive information on those specific cases and entities.

I imagine you would agree that it is highly unlikely that those who would engage in such cartel or money laundering activities would be forthcoming with the information FinCEN is seeking.

Given that, the rule is ineffective (that is, cartels and money launderers won't be swayed to participate), while also unconstitutionally penalizing law-abiding Americans and infringing on their rights.

If there's a concern about foreign entities, then the rule should focus on them exclusively.

Moreover, the penalties, which include significant financial and criminal penalties, including jail time, are egregious.

Plus, the rule exposes small business owners to fraud and privacy violations. In fact, the very first alert on the FinCEN BOI landing page, right in the center of the website, is an alert about fraudulent information solicitation attempts from third parties.

Creating this type of database, in addition to the privacy violations from hackers and unsavory parties, also creates concerns for abuse internally. FinCEN itself has come under fire for its alleged unjustified data usage.

In a time when small business owners have been brutalized by unfair, slanted COVID mandates and their after-effects, such as labor shortages and supply chain interruptions, historic inflation and other challenges, the last thing they need is more administrative burden, both in the original reporting and remembering that any time a piece of data changes they need to provide an update or face jail time.

I personally have had dozens of small business owners tell me that they are considering dissolving their LLCs- to become sole proprietors without an entity- specifically in response to this rule. This will expose these entrepreneurs to more liabilities and other issues because they are trying to escape being targeted.

This cannot be how we treat entrepreneurs. Being a small business owner is fraught with challenges. The government should be doing everything possible to uplift small businesses and remove barriers that interfere with their success.

Instead, with the powers granted to FinCEN and this rule, Congress has added another barrier and is treating small businesses like criminal masterminds.

The ends absolutely do not justify the means here. But the most important piece is the rule's unconstitutionality.

A federal district court in Alabama has already found the CTA BOI rule directed at small business reporting to be unconstitutional.

Unfortunately, based on the ruling's scope, FinCEN is choosing to ignore this for everyone but the plaintiffs in that case- a peculiar outcome.

If it is unconstitutional, it is unconstitutional- period- and should be immediately shut down.

FinCEN has many tools at their disposal and a court system to help their efforts on financial crimes. They should use those tools and not harm a good portion of America's more than 33 million small businesses and their owners in the process.

Good intentions don't always produce good outcomes, and this is a perfect example.

Congress put this in motion and needs to be the one to fix it.

Again, I respectfully ask you to work with your counterparts in the Senate to have Congress immediately overturn the powers given to FinCEN and the CTA BOI rule.

Thank you for your time and consideration.