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No Benefit to a Beneficial Ownership Reporting System That Increases America's Over-Incarceration Problem and Fails to Adequately Protect Privacy

H.R. 2513 would require people who form or already own businesses to submit extensive personal, financial, and business-related information to the government. Legislative efforts to stop international crime by trying to "follow the money" such as H.R. 2513 likely have the best intentions in mind. However, the **Due Process Institute**, the **American Civil Liberties Union**, and **FreedomWorks** have serious concerns with several provisions of the Corporate Transparency Act of 2019 and believe the committee should not move the bill forward until these issues are fully addressed.

In sum, the creation of 5 new federal crimes for first-time "paperwork" violations that are felony criminal offenses calling for prison time is a dramatic step in the wrong direction. No matter how well-intentioned, this bill bears no real relation to combatting terrorism or money laundering and instead eliminates a significant amount of personal and financial privacy. On that score, the bill fails to adequately or specifically address how all of the personal and financial information disclosed to, and collected by, the government will be used solely for legitimate purposes or how privacy interests will be protected.

Terms are too vague

Importantly, numerous key terms and phrases in the bill are poorly defined. For example, the current definition of "beneficial owner" includes anyone who "directly or indirectly" exercises substantial control or receives substantial economic benefit from the entity. What does it mean to indirectly control an entity? The bill does not explain, and this lack of clarity has very serious consequences when a bill creates 5 new federal criminal laws that do nothing but increase this nation's overreliance on criminalization as a cure for every problem. Vague or overly broad statutory text leaves people vulnerable to unfair criminal prosecutions. Furthermore, this bill exempts most large entities with the compliance teams necessary to help them navigate new and burdensome requirements. Determining what is to be reported, when, and by whom, in a complex regulatory scheme is difficult. Large corporations have successfully lobbied to be spared these requirements—leaving the reporting burdens solely to small or independent businessowners. Compounding this problem, these new disclosure requirements would apply not only to newly formed businesses but those who have already been in existence—yet a businessowner (even a first-time offender) who fails to learn of the law or who fails to comply with any aspect of the requirements could face a prison sentence. These kinds of requirements easily set traps for honest people trying to faithfully comply with complex laws, particularly business owners who lack experience or significant funds to retain sophisticated business lawyers who can help them.

Casting a wide net – with little chance of catching what you want

Creating criminal penalties for paperwork errors will not prevent money laundering, terrorism, and or any other crimes. To support this legislation, you would have to accept the premise that those engaging in such crimes—and who are engaging in this practice with the intention to hide behind a legal entity and go unnoticed—would comply with any legal requirement to disclose themselves. Meanwhile, those attempting to comply in good faith would be providing information including their passport or driver's license numbers to government entities that may then share it with other government entities with little meaningful assurance that their privacy will be properly protected. Second, this legislation includes so many exemptions that those seeking to engage in criminal acts would just have to take advantage of one to avoid detection. Rather than curbing abuse, the bill would impose criminal penalties, including jail time, on businesses that fail to meet compliance requirements with no real indication that such requirements would curtail international money laundering cartels. The truth is: there are already hundreds of federal criminal laws on the books, along with a wide swath of powerful investigative tools and authorities, that the government can use to adequately address or prevent money laundering and this bill is an unnecessary step in the wrong direction.

We hope you share our concerns and oppose this legislation unless serious amendments are made.

If you have further questions, feel free to contact Shana O'Toole (202-558-6683 or Shana@iDueProcess.org), Kate Ruane (202-675-2336 or kruane@aclu.org), or Jason Pye (202-942-7634 or jpye@freedomworks.org).