



More Meanness from Government

by Richard W. Rahn

PEOPLE HAVE THE RIGHT NOT TO BE SURVEILLED BY GOVERNMENT UNLESS THEY HAVE COMMITTED A CRIME

“Name the person and I will find the crime” is a statement attributed to Lavrentiy Beria, Stalin’s head of the Soviet secret police. There are more than 4,000 federal felonies on the books of the U.S. government, not counting all of the felonies created by regulatory agencies and state and local governments. Few Americans or citizens of other countries now go for appreciable periods of time without committing a felony, most often without intent or knowledge.

As we see in the case of “special prosecutors,” if they decide to target a person, they will keep at it until they find some alleged crime, whether or not it had anything to do with the original charge. This fundamental danger to liberty and civil society of an excessive number of felonies is increasingly understood.

So, what would you think of a member of Congress who proposes to put a new regulation on the smallest of businesses that does not meet a cost-benefit test, denies basic privacy protections and, because of its vagueness and ambiguity, is likely to cause very high numbers of otherwise law-abiding Americans to be felons?

David Burton, a scholar at the Heritage Foundation, who is also both a lawyer and economist, has published a new and important report, “Beneficial Ownership Reporting Regime Targets Small Businesses and Religious Congregations.”

Mr. Burton explains how the “legislation would create a large compliance burden of businesses with 20 or fewer employees (the only non-exempt category) and would create as many as one million inadvertent felons. Religious organizations, charities, and other exempt entities and their employees would be subject to fines and imprisonment unless they file the proper certification of exemption with the Financial Crimes Enforcement Network.”

Some bureaucrats and elected officials argue that the government needs to know who the “beneficial owners” are of even the tiniest of businesses in order to combat “money-laundering,” tax evasion or terrorism. Few people are even knowledgeable about the definition of “beneficial owner.” According to Black’s Law Dictionary, a “Beneficial owner is a legal term where specific property right in equity belongs to a person even though legal title of the property belongs to another person.”

Does the federal government really need to know who legally owns your lawn man’s mower? And should he be thrown in jail because he was unaware of or failed to submit the proper form to the Feds about who really owns his mower? Should the church ladies who run the local non-profit food bank be put in jail for their failure to submit the form to the Feds that would give them the exemption from the beneficial ownership requirement? In the real world, it is most unlikely that those described above would actually be prosecuted, but why should they even be put in danger of such prosecution?

The “crime of money laundering” was only made illegal in 1986. It is “vague law” — in that it is a crime of intent as defined by the prosecutor, rather than an objective reality, like murder. Two different people can engage in an identical set of financial transactions, and if one had the intent to commit money laundering, according to the prosecutor, he or she could be charged and the other person ignored.

The existing anti-money laundering (AML) legislation, rules, and enforcement are extremely expensive and do not meet even basic cost-benefit tests. Mr. Burton notes that “The AML regime costs an estimated \$4.8 billion to \$8 billion annually. Yet this AML system results in fewer than

700 convictions annually, a substantial proportion of which are simply additional counts against persons charged with other predicate crimes. It costs at least \$7 million per conviction and potentially many times that.” The proposed beneficial ownership rules will only add to the costly, counterproductive and oppressive AML regime.

People have reasonable rights to financial privacy. They are described in the Bill of Rights of the U.S. Constitution (specifically the Fourth, Fifth, and Ninth Amendments). People have the right to be unmolested and not surveilled by government unless there is reasonable evidence that they have committed or conspired to commit a crime.

Given how few people are actually convicted of money-laundering, the overwhelming evidence is that 99 percent of the people being forced to submit to these costly and time-consuming proposed regulations will not be guilty of money-laundering, terrorism or whatever, and thus should not be harassed by government.

Governments now share financial and tax information with each other, which puts businesses, dissidents and human rights groups in countries with authoritarian governments at great risk. Many in Venezuela at the moment are in great personal and financial danger from the corrupt and oppressive government. It is cruel and unjust to deny them safe havens for both their person and property. A number of international organizations, like the OECD, are demanding that all governments share financial and beneficial ownership information about both their citizens and others.

In the real world, government officials and bureaucrats often leak, steal and use information that they have for a great variety of nefarious reasons. Information sharing by governments is only justified when there is dual criminality for the alleged crime, and that proper specific judicial protections by both governments are met, including warrants. If automatic information sharing demands are not resisted, all are at risk.

Richard W. Rahn is chairman of Improbable Success Productions and on the board of the American Council for Capital Formation

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