

Service

Corporate
Transparency Act
(CTA)

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Nationwide Injunction Halts Enforcement of the Corporate Transparency Act

Key takeaway

As of the posting of this article, reporting companies nationwide do not need to comply with the Corporate Transparency Act's (CTA) January 1, 2025, beneficial owner information (BOI) reporting deadline. Yet, given the appeal and the possibility of a full or partial stay issued by the Fifth Circuit, the CTA's reporting obligations may be reinstated at any time. We will continue to monitor and provide updates as the law progresses.

Update

In response to the District Court's preliminary injunction in *Texas Top Cop Shop* discussed below, FinCEN has issued an alert on its BOI homepage that reporting companies are not currently required to file any reports and would not be subject to liability while the District Court's decision stands.

On December 5, 2024, the defendant, the U.S. Attorney General, appealed the District Court's preliminary injunction in *Texas Top Cop Shop* to the Fifth Circuit. On December 11, 2024, the Attorney General filed a motion to stay the preliminary injunction, requesting in particular that the national scope of the preliminary injunction be narrowed to just the named plaintiffs.

On December 13, 2024, the Attorney General filed an emergency motion to stay the preliminary injunction pending appeal to the Fifth Circuit. The Attorney General has requested a ruling on the motion no later than December 27, 2024, to ensure reporting companies are aware of their obligations prior to the January 1, 2025 reporting deadline. The Fifth Circuit has ordered an expedited timeline for the parties' responses, suggesting the Fifth Circuit intends to issue its decision before January 1, 2025.

The decision

In a significant legal development, the United States District Court for the Eastern District of Texas has issued a *nationwide* preliminary injunction against the enforcement of the CTA and its implementing regulations. The court's decision effectively halts the January 1, 2025, filing deadline for all reporting companies as of December 3, 2024.

The plaintiffs, including the National Federation of Independent Business (NFIB) on behalf of a number of its members, brought their legal challenge to the CTA in *Texas Top Cop Shop, Inc., et al. v. Garland et al.*, on behalf of a number of its members, arguing that the CTA exceeded Congress's authority under the U.S. Constitution. The CTA, enacted as part of the Anti-Money Laundering Act of 2020, mandates businesses provide the federal government with detailed BOI to help address financial crimes enabled by anonymous corporate structures.

As part of its preliminary injunction analysis, the court found that the plaintiffs would likely succeed on the merits of its argument that the CTA exceeds Congress's powers under the Commerce Clause and the Necessary and Proper Clause. The court determined that the CTA does not regulate an existing activity but instead compels businesses to engage in a new activity—disclosing ownership information—which is beyond the scope of Congress's regulatory authority. The court stated, “[t]he fact that a company is a company does not knight Congress with some supreme power to regulate them in all aspects—especially through the CTA, which does not facially regulate commerce.” The court also concluded that the harm to plaintiffs, including compliance costs and potential constitutional violations, outweighed any potential harm to the government. The court emphasized that enforcing a law likely to be unconstitutional is not in the public interest.

Although the NFIB sought a remedy for its members only (similar to the plaintiffs in *NSBU v. Yellen*), the court broadened the preliminary injunction to apply nationwide, blocking reporting under the CTA for all companies. As part of its analysis, the court also addressed the ongoing debate over whether a federal district court can issue a nationwide injunction.

What happens next?

The government will likely appeal this injunction to the U.S. Court of Appeals for the Fifth Circuit. It also will likely move for a stay of the injunction pending appeal. The Fifth Circuit then has a number of options while it considers the merits of this preliminary injunction, including (1) granting the motion to stay (meaning that the reporting obligations under the CTA would be immediately revived), (2) denying the motion to stay (meaning the preliminary injunction of the CTA would continue), or (3) altering the scope of the injunction, such as to make it only applicable to the named plaintiffs.

Contact us

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If you have questions regarding compliance with the CTA in light of this decision, please contact Yuefan Wang, Matti Mortimore, Joseph Diedrich, or your Husch Blackwell attorney.