

December 19, 2024

U.S. FEDERAL COURT TEMPORARILY SUSPENDS REPORTING OBLIGATIONS UNDER THE CORPORATE TRANSPARENCY ACT

I. WHAT IS THE CORPORATE TRANSPARENCY ACT?

The Corporate Transparency Act (the "CTA")¹ was enacted by the U.S. Congress on January 1, 2021, as part of the National Defense Authorization Act (the "NDAA"). The CTA introduces significant reforms to anti-money laundering laws, aiming to prevent and combat money laundering, terrorist financing, corruption, tax fraud, and the creation of shell companies.

A key feature of the CTA is the establishment of a Beneficial Ownership Information ("BOI") reporting regime. This regime mandates that both domestic and foreign (formed outside of the U.S.) to file BOI reports with the Financial Crimes Enforcement Network ("FinCEN"), a bureau within the U.S. Department of Treasury.

Under the CTA, a beneficial owner is defined as any individual who either (1) directly or indirectly exercises 'substantial control'² over the reporting company, or (2) directly or indirectly owns or controls 25 percent or more of the ownership interests of the reporting company. BOI reports require information including the beneficial owner's legal name; date of birth and residential street address; and unique identifying number from an acceptable identification document, among other details. BOI reports only need to be filed once, with updates or corrections submitted as necessary.

II. CASE OVERVIEW: TEXAS TOP COP SHOP v. GARLAND ET AL.

On December 3, 2024, in the case of *Texas Top Cop Shop, Inc., et al. v. Garland, et al.*,³ the U.S. District Court of the Eastern District of Texas (the "District Court") issued an order holding the CTA to be "likely unconstitutional" and granted a temporary nationwide preliminary injunction enjoining the government from enforcing the CTA under Section 705 of the Administrative Procedure.

¹ 31 U.S.C. § 5336

² An individual exercises substantial control over a reporting company if the individual meets any of the following criteria: (i) Senior Officer: an individual holds a position such as President, Chief Financial Officer (CFO), General Counsel (GC), Chief Executive Officer (CEO), Chief Operating Officer (COO), or any other officer performing similar functions; (ii) Appointment or Removal Authority: an individual has the authority to appoint or remove any senior officer or a majority of the board of directors; (iii) Important Decision-Maker: an individual directs, determines, or has substantial influence over important decisions made by the company, including decisions regarding the nature, scope, and attributes of the business, major expenditures, investments, and significant contracts; and (iv) Catch-All: any other form of substantial control over the reporting company.

³ *Texas Top Cop Shop, Inc. v. Garland*, C.A. No. 4:24-CV-478, 2024 U.S. Dist. LEXIS 218294 (E.D. Tex. Dec. 3, 2024).

The plaintiffs, led by Texas Top Cop Shop, Inc. (a family-run firearms and tactical gear retailer), the Libertarian Party of Mississippi, and the National Federation of Independent Businesses (the "NFIB"), challenged the constitutionality of the CTA. They argued that the CTA exceeds the U.S. Congress's powers under both the Commerce Clause and Necessary and Proper Clause of the U.S. Constitution. Additionally, the plaintiffs also contended that the CTA (i) infringes upon states' rights under the Ninth and Tenth Amendments, (ii) violates First Amendment rights of association, and (iii) breaches the Fourth Amendment by requiring the disclosure of private information without specific suspicion or judicial oversight.

Although Judge Amos L. Mazzant did not rule on any of the above arguments specifically, he found that the plaintiffs satisfied all the prerequisites for obtaining a preliminary injunction. Since one of the plaintiffs, the NFIB, represents members nationwide, the District Court concluded that a nationwide injunction was necessary to provide meaningful relief and address the extensive constitutional concerns raised.

This ruling came just weeks before the January 1, 2025 deadline for compliance with FinCEN's reporting requirements under the CTA.

III. IMPLICATIONS

On December 5, 2024, the Department of Justice, on behalf of the Department of Treasury, filed a notice of appeal, indicating that the government will seek review of the District Court's decision. Shortly thereafter, on December 5, 2024, FinCEN issued a public notice on its [website](#)⁴ announcing that they will "comply with the order...for as long as it remains in effect."

As a result, reporting companies are currently not required to submit their BOI reports and will not be liable for failing to file during the pendency of the injunction. This injunction not only applies to the January 1, 2025 filing deadline for entities formed before January 1, 2024, but also to other CTA deadlines, such as (i) the 90-day filing requirement for entities formed in 2024, and (ii) the 30-day filing deadline for entities needing to update their BOI reports due to changes in ownership. However, FinCEN will continue to accept BOI reports from reporting companies on a voluntary basis.

IV. CONCLUSION

The nationwide injunction is only the beginning of what is likely to be an extensive legal battle. The U.S. government is already pursuing the reversal of the preliminary injunction, and there is potential for a circuit split among the U.S. Courts of Appeal, which may ultimately trigger review by the U.S. Supreme Court. Additionally, the incoming Trump administration may take steps to limit the CTA administratively, adding another layer of uncertainty for companies doing business in the U.S. territory. In 2021, then-President Donald Trump exercised his veto against the passing of the NDAA (which includes the CTA). However, the U.S. Congress overrode this veto with a two-thirds majority in both the U.S. House of Representatives and the Senate, thereby enacting the NDAA and the CTA into law.

⁴ <https://fincen.gov/boi>

In light of this situation, many reporting companies are now faced with a dilemma; beneficial owners must decide whether to (1) continue with CTA compliance efforts, potentially investing significant time, effort, and legal expenses for compliance with a law that may become moot; or (2) risk potential liability for failing to meet the BOI reporting deadline if the injunction is lifted or amended, or the CTA is ultimately upheld. The outcome of this case would have far-reaching implications for the future of the regulatory landscape for small businesses, both domestic and overseas. Companies impacted by the CTA should monitor this case closely and seek legal advice to effectively navigate these evolving legal developments.

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