

## The Ongoing Legal Tug-of-War Over the Corporate Transparency Act

January 27, 2025

Since our [prior discussion about the Fifth Circuit's allowing a preliminary injunction against the Corporate Transparency Act \(CTA\)](#) to remain in force pending appeal, the legal landscape surrounding the CTA has only grown more complex. Separate proceedings in different federal courts have yielded a patchwork of enforcement rulings that leave businesses uncertain about their compliance obligations. The U.S. Supreme Court very recently stayed a preliminary injunction issued by one federal district court, seemingly allowing the CTA to go into effect. A different federal district court, however, issued its own preliminary injunction and stay order that enjoined the operation and enforcement of the CTA. As discussed in our 2023 [Overview of the Corporate Transparency Act](#), the CTA was enacted by Congress in 2021 to combat money laundering and illicit financial activities. It requires most smaller companies to file beneficial ownership information (BOI) reports with the Financial Crimes Enforcement Network (FinCEN), disclosing, among other things, the identities of natural persons who own or control at least 25% of the reporting company. In today's Client Alert, we provide a brief overview of the current legal tug-of-war and discuss how businesses should respond.

### Supreme Court Ruling on January 23, 2025

On December 3, 2024, Judge Amos Mazzant of the Eastern District of Texas issued a nationwide preliminary injunction enjoining the enforcement of the CTA (*Texas Top Cop Shop, Inc. v. McHenry—formerly, Texas Top Cop Shop v. Garland*). On appeal, the Fifth Circuit's motions panel subsequently stayed that preliminary injunction on December 23, 2024, only for a merits panel of that same court to lift the stay and reinstate the preliminary injunction on December 26, 2024. (For a more in-depth discussion of this injunction, see our [Client Alert from December 30, 2024](#).) The Government promptly sought relief in the U.S. Supreme Court on December 31, 2024. On January 23, 2025, the Supreme Court stayed the *Texas Top Cop Shop* nationwide injunction that had halted enforcement of the CTA. The U.S. Supreme Court's ruling was expected to settle the issue of the CTA's enforceability for the time being. Meanwhile, however, another challenge to the CTA was brewing in a different Texas federal district court.

### The Second Texas Injunction

In the midst of this legal tug-of-war, on January 7, 2025, Judge Jeremy Kernodle of the Eastern District of Texas issued an order in a separate case (*Smith v. U.S. Department of the Treasury*), preliminarily enjoining enforcement of the CTA against the plaintiffs there and staying the effective date of the CTA's Reporting Rule nationwide. Judge Kernodle found that the plaintiffs "ha[d] demonstrated that the CTA and its implementing rule are likely unconstitutional, that they face a substantial risk of irreparable harm absent an injunction, and that the balance of

equities and public interest support preliminary relief.” This second order creates an unusual situation where, despite the Supreme Court’s recent ruling in the *Texas Top Cop Shop* case, businesses are still not required to comply with the CTA reporting requirements while the *Smith* nationwide stay remains in effect. The government has not yet appealed the *Smith* ruling, but there is still time for it to do so.

### **FinCEN’s Updated Guidance on January 24, 2025**

In response to these conflicting rulings in *Texas Top Cop Shop* and *Smith*, FinCEN has clarified that reporting companies are currently *not obligated to file BOI reports*. Moreover, FinCEN has assured that no penalties will be enforced for non-compliance while the injunction or stay remains in effect. However, FinCEN has left the door open for reporting companies to voluntarily submit their BOI reports.

### **Other Potential Challenges to the CTA**

Adding another layer of uncertainty, on January 15, 2025, Republican Senator Tommy Tuberville reintroduced the Repealing Big Brother Overreach Act which would repeal the CTA altogether. The Senator and his supporters argue that the CTA imposes unnecessary burdens on small businesses while infringing on privacy rights. As of the time of this writing, the Trump administration, which took office on January 20, 2025, has not issued any official statements regarding the CTA. However, the administration has been active in rescinding various executive orders from the previous administration, indicating a potential for further policy shifts that could impact the CTA’s future.

### **What’s Next?**

The legal future of the CTA remains unclear. While FinCEN continues to prepare for potential enforcement, businesses should remain cautious and monitor further developments. Key considerations for businesses include:

- Staying up to date on rulings from the Fifth Circuit and other courts.
- Preparing to comply with FinCEN’s reporting requirements in case the *Smith* injunction and stay order are lifted.
- Consulting legal counsel to navigate these uncertain waters.

For now, the CTA remains trapped in a legal tug-of-war, so business owners and legal practitioners alike must remain alert as this issue continues to wind through the courts.

