



Federal Court Issues Nationwide Preliminary Injunction Temporarily Suspending Enforcement of Corporate Transparency Act

Client Advisories

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The Corporate Transparency Act ("CTA") requires more than 32 million domestic and foreign companies to file a beneficial ownership information report ("BOI Report") with the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN"). A BOI Report discloses certain information about the companies and their "beneficial owners", which include persons directly or indirectly owning or controlling 25% or more of the ownership interests, senior management, and other persons directly or indirectly substantially controlling a company.

Companies in existence before January 1, 2024 must file a BOI Report by January 1, 2025. Companies formed or registered in 2024 must file a BOI Report within 90 days and companies formed or registered in 2025 and thereafter must file a BOI Report within 30 days. There are significant civil and criminal penalties for failing to file a BOI Report by the applicable deadline. For more information on the CTA, please review our most recent [client advisory](#).

The Nationwide Preliminary Injunction

On December 3, 2024, in *Texas Top Cop Shop, Inc. v. Garland*, a judge in the United States District Court for the Eastern District of Texas issued an [opinion and order](#) entering a nationwide preliminary injunction temporarily preventing FinCEN from enforcing the CTA and its implementing regulations and staying the January 1, 2025 filing deadline. On December 5, 2024, the court issued an [amended opinion and order](#) to make a correction and add additional background facts. For purposes of issuing the preliminary injunction, the federal district court found that it is likely that Congress did not have the power to enact the CTA under the Commerce Clause or the Necessary and Proper Clause of the U.S. Constitution. In other words, this federal district court believes it is

likely that the CTA is unconstitutional. The federal district court will hold further hearings before issuing a final ruling and order. However, on December 5, 2024, the federal government filed an appeal to the U.S. Court of Appeals for the Fifth Circuit.

The Other Lawsuits

On March 1, 2024, in *National Small Business United v. Yellen*, a judge in the United States District Court for the Northern District of Alabama entered a final **opinion** finding that the CTA was unconstitutional and issued an injunction preventing FinCEN from enforcing the CTA. However, the injunction was limited to the plaintiffs in that lawsuit. The federal government filed an appeal to the U.S. Court of Appeals for the Eleventh Circuit, which heard arguments in September 2024, but has not yet made a ruling. For more information about the NSBU case, please review our **client advisory**.

On September 20, 2024, in *Firestone v. Yellen*, a judge in the United States District Court for the District of Oregon issued an **opinion** denying the issuance of a preliminary injunction. It found that the CTA is likely constitutional and that the plaintiffs would not suffer irreparable harm in the absence of a preliminary injunction. The plaintiffs filed an appeal to the U.S. Court of Appeals for the Ninth Circuit, which is pending.

On October 24, 2024, in *Community Associations Institute v. Yellen*, a judge in the United States District Court for the Eastern District of Virginia likewise issued an **opinion** denying the issuance of a preliminary injunction, finding that the CTA is likely constitutional. The plaintiffs filed an appeal to the U.S. Court of Appeals for the Fourth Circuit, which is pending.

Besides the four appeals currently pending in the Fourth, Fifth, Ninth, and Eleventh Circuit Courts, there are additional lawsuits pending in the federal district courts. It is only a matter of time (perhaps a long time) before the constitutionality of the CTA reaches the U.S. Supreme Court.

The Significance of the Appeal in the Fifth Circuit

Obviously, the significance of the Texas Top Cop Shop case is that the court issued a nationwide preliminary injunction on the eve of the January 1, 2025 filing deadline. It creates uncertainty for companies that are required to file BOI reports with FinCEN. What can the Fifth Circuit do? Among other things, it can reverse the lower court by lifting or staying the preliminary injunction, thus restoring the obligation to file BOI reports by the filing deadline (or by a new deadline extended by the court or FinCEN). It can uphold the preliminary injunction, or do nothing, thus continuing the temporary suspension of the obligation to file BOI reports. It can modify the preliminary injunction by narrowing it to the plaintiffs in the case, thus restoring the obligation to file BOI reports by the filing deadline for reporting companies that are not plaintiffs in the case.

FinCEN's Statement

On December 7, 2024, FinCEN issued an Alert with the title "**Impact of Ongoing Litigation – Deadline Stay – Voluntary Submission Only**". The Alert states that the nationwide preliminary injunction "stays all deadlines to comply with the CTA's reporting requirements". Therefore, it answers the question of whether the preliminary injunction applies to filing deadlines *other than* January 1, 2025; that is, the 90-day filing deadline for new



companies formed or registered in 2024, the 30-day filing deadline for companies formed or registered in 2025 and thereafter, and the 30-day filing deadline to update and correct BOI Reports. The answer is that the preliminary injunction applies to all deadlines.

The Alert further states that reporting companies “will not be subject to liability if they fail to [file their BOI Reports] while the preliminary injunction remains in effect.” In other words, FinCEN will not impose civil or civil penalties. However, the moment the preliminary injunction is lifted, stayed, modified, etc., reporting companies will be expected to begin filing their BOI Reports. At that time, it would make common sense for FinCEN (or a court) to extend the filing deadlines to give reporting companies time to file their BOI Reports, but there are no assurances that the deadlines will be extended.

Finally, the Alert states that, notwithstanding the preliminary injunction, FinCEN will continue to accept BOI Reports from reporting companies who decide to voluntarily file them.

The Impact of the New Administration

There is much speculation about the new administration’s impact on the CTA, especially in light of the deregulation goals of President-elect Trump and the new U.S. Department of Government Efficiency (DOGE). The new administration may direct the U.S. Department of Justice not to defend the CTA. It may reduce funding to FinCEN, thus frustrating its ability to enforce the CTA. It may issue executive or agency orders limiting the enforcement of the CTA. It may work with Congress to amend the CTA to ensure that it passes constitutional muster, or it may even seek to repeal the CTA. Further, the Heritage Foundation’s Project 2025 report entitled **Mandate for Leadership—The Conservative Promise** states on page 707 that “Congress should repeal the Corporate Transparency Act, and FinCEN should withdraw its poorly written and overbroad beneficial ownership reporting rule.” Although President-elect Trump has disavowed Project 2025, many people associated or aligned with him are contributors to Project 2025.

What To Do Now

What should a company do now? First, it should continue its analysis of whether it is a reporting company or an exempt company under the CTA. Next, if it is a reporting company, at a minimum it should continue identifying its “beneficial owners” and gathering beneficial ownership information and documents from them in order to be ready to file a BOI report if and when the preliminary injunction is lifted or stayed, especially since there are no assurances that the filing deadlines will be extended. For some reporting companies, it may be prudent to voluntarily file BOI Reports by the required filing deadline, especially for newly formed companies, companies with straightforward ownership and management structures, and companies who intend to use third party vendors to handle the filing of the BOI Report (although some vendors have suspended BOI Report filings in light of the preliminary injunction). This is a business decision to be made by each reporting company. We will continue to monitor the situation and provide updates concerning further developments.

If you have any questions, please contact **Gianfranco Pietrafesa** at gpietrafesa@archerlaw.com or 201-498-8559, or any member of Archer & Greiner’s **Business Counseling Group**.



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