

# Fifth Circuit Panel Stays Nationwide Injunction of Corporate Transparency Act, and FinCEN Extends Deadline to January 13

Skadden

December 23, 2024

If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the next page or call your regular Skadden contact.

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West  
New York, NY 10001  
212.735.3000

1440 New York Ave., NW  
Washington, DC 20005  
202.371.7000

525 University Ave.  
Palo Alto, CA 94301  
650.470.4500

On December 23, 2024, after expedited briefing, a three-judge panel of the Fifth Circuit in *Texas Top Shop v. Garland*, No. 24-40792, stayed the nationwide preliminary injunction a district court had entered earlier this month halting the Corporate Transparency Act (CTA) and its implementing regulations. The Fifth Circuit panel also expedited the appeal to the next available oral argument panel. See our December 13, 2024, alert [“After Nationwide Injunction of Corporate Transparency Act, FinCEN Suspends Reporting Requirements as Four Circuits Grapple With Act’s Constitutionality.”](#)

The immediate consequence of the stay is to revive the January 1, 2025, reporting deadline for initial reports for many entities within the scope of the CTA (reporting companies). The district court’s preliminary injunction had purported to stay the rule nationwide against all reporting companies, not just the entities that challenged the CTA. As discussed in more detail in our December 13 article, the CTA and its implementing regulations require reporting companies to disclose information, including about their beneficial owners, to the U.S. Treasury Department’s Financial Crimes Enforcement Network (FinCEN).

The members of the Fifth Circuit panel that issued the stay order are Judge Carl E. Stewart (appointed by President Clinton), Judge Catharina Haynes (appointed by President George W. Bush), and Judge Stephen A. Higginson (appointed by President Obama). In their view, the government satisfied all four factors for a stay under the *Nken v. Holder*, 556 U.S. 418 (2009).

The panel first concluded that the government had made a strong case that it is likely to succeed at the merits stage in showing that the CTA is constitutional under Congress’s Commerce Clause power based on corporations’ commercial activity. The panel rejected the businesses’ analogy to *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012) (*NFIB*). In *NFIB*, the panel reasoned, “Congress was attempting to regulate individuals ‘whose commercial inactivity rather than activity is their defining feature’” (quoting *NFIB*, 567 U.S. at 556-57). The “defining feature” of entities covered by the CTA, in contrast, “is their ability and propensity to engage in commercial activity.” Moreover, the panel concluded that the CTA “is likely constitutional on its face” because it “at least operates constitutionally when it requires that corporations engaged in business operations affecting interstate commerce disclose their beneficial owner and applicant information.”

On the second *Nken* factor, the panel concluded that “a last-minute injunction of a statute proposed and passed by the people’s representatives” inflicts irreparable harm. On the third and fourth factors, the panel concluded that the balance of the equities weighed in favor of a stay. For one thing, a stay would cause businesses minimal harm in the form of time and money to fulfill their reporting obligations, and they waited years to sue. For another, a last-minute nationwide injunction would undermine the public interest in protecting our national security, combatting financial crimes, and pushing other countries to reform their money-laundering and counter-terrorism regimes.

In response to the Fifth Circuit’s decision, FinCEN announced the same day that it would extend relevant reporting deadlines. FinCEN stated that the deadline for reporting companies created before January 1, 2024 — which otherwise would have

# Fifth Circuit Panel Stays Nationwide Injunction of Corporate Transparency Act, and FinCEN Extends Deadline to January 13

---

had to file their initial reports by January 1, 2025 — would be extended to January 13, 2025. And reporting companies created on or after December 3, 2024, and on or before December 23, 2024, have an additional 21 days from their original filing deadline to file their initial reports.

With the preliminary injunction stayed and the reporting deadline fast approaching, the challengers could seek review

of the stay order from the *en banc* Fifth Circuit or the United States Supreme Court. The challengers may look next to the possibility of *en banc* review given that the three Fifth Circuit panel members often vote in the 9–8 minority in *en banc* cases among active Fifth Circuit judges.

---

## Contacts

### **Shay Dvoretzky**

Partner / Washington, D.C.  
202.371.7370  
shay.dvoretzky@skadden.com

### **Parker Rider-Longmaid**

Partner / Washington, D.C.  
202.371.7061  
parker.rider-longmaid@skadden.com

### **Amy E. Heller**

Partner / New York  
212.735.3686  
amy.heller@skadden.com

### **Adam J. Cohen**

Partner / Washington, D.C.  
202.371.7510  
adam.cohen@skadden.com

### **Alessio D. Evangelista**

Partner / Washington, D.C.  
202.371.7170  
alessio.evangelista@skadden.com

### **Eytan J. Fisch**

Partner / Washington, D.C.  
202.371.7314  
eytan.fisch@skadden.com

### **Anastasia T. Rockas**

Partner / New York  
212.735.2987  
anastasia.rockas@skadden.com

### **Jeremy Patashnik**

Associate / New York  
212.735.2383  
jeremy.patashnik@skadden.com

### **Nicole Welindt**

Associate / Palo Alto  
650.470.4539  
nicole.welindt@skadden.com