



FinCEN Suspends Reporting Requirements as Circuits Grapple With Corporate Transparency Act's Constitutionality

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The Corporate Transparency Act (CTA) and its implementing regulations (Regulations) require entities within its scope (reporting companies) to disclose information, including about their beneficial owners, to the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN). The Regulations set a reporting deadline of January 1, 2025, for initial reports to be filed by reporting companies formed before 2024 and require reporting companies formed beginning in 2024 to file within specified time periods following their formation (within 90 days for entities formed during 2024 and within 30 days for entities formed after 2024).

But plaintiffs throughout the country have challenged the CTA's constitutionality, arguing, among other things, that the law exceeds Congress's power under the Commerce Clause. In the most significant development, the district court in [*Texas Top Cop Shop, Inc. v. Garland, No. 4:24-cv-478*](#) (E.D. Tex. Dec. 3, 2024), found the CTA and Regulations likely unconstitutional and issued a nationwide preliminary injunction halting enforcement of the CTA and Regulations and their reporting requirements. According to FinCEN, the result is that "reporting companies are not currently required to file beneficial ownership information with FinCEN and are not subject to liability if they fail to do so while the [injunction] remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership reports."

The government appealed the *Texas Top Cop Shop* nationwide injunction, and the Fifth Circuit has expedited the appeal, with briefs due in February 2025 and oral argument to be heard in March 2025. Although a Fifth Circuit motions panel [initially stayed the preliminary injunction](#), finding the CTA and Regulations likely constitutional, several days later, the Fifth Circuit panel assigned to hear the case on the merits [vacated the stay](#) "in order to preserve the constitutional status quo while the merits panel considers the parties' weighty substantive arguments." The nationwide injunction thus remains in effect.

Although the *Texas Top Cop Shop* developments are the most significant, appeals are pending in three other circuits—the Fourth, Ninth, and Eleventh—from district court rulings that have split on the constitutionality of the law. In deciding that plaintiffs were likely to succeed on the merits of their constitutional challenge, the district court in *Texas Top Cop Shop* agreed with an earlier decision from a district court in the Northern District of Alabama, which held that the CTA is not a valid exercise of Congress’s power under the Commerce Clause or of Congress’s taxing and foreign-relations powers under the Necessary and Proper Clause. By contrast, district courts in the District of Oregon and the Eastern District of Virginia have held that plaintiffs were not likely to succeed on the merits of their arguments that the CTA exceeded Congress’s powers.

If the government in *Texas Top Cop Shop* seeks to reinstate the stay—either from the en banc Fifth Circuit or the Supreme Court—and succeeds (despite the expedited merits appeal that could obviate the need for a stay), then FinCEN likely would set new reporting deadlines that companies would need to meet. And if the Supreme Court ultimately takes up the question whether Congress had the constitutional authority to enact the CTA, then the Court could issue one of the most consequential decisions on Congress’s enumerated powers since *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012) (*NFIB*).

The Corporate Transparency Act

Congress enacted the CTA as part of the Anti-Money Laundering Act of 2020. Congress noted that, under state law, companies are generally not required to disclose information about their “beneficial owners” — that is, the individuals who ultimately control the entities. National Defense Authorization Act of 2021, Pub. L. No. 116-283 §66402(2). Thus, Congress found, “malign actors” are able to “conceal their ownership of corporations” and use those effectively anonymous corporations for “money laundering,” “the financing of terrorism,” and “serious tax fraud.” *Id.* §66402(3).

To address that concern, the CTA requires any “reporting company” to submit to FinCEN a report containing information about the company and its “beneficial owners.” 31 U.S.C. §5336(b). A “beneficial owner” under the CTA is “an individual who, directly or indirectly ... exercises substantial control over the entity” or “owns or controls not less than 25 percent of the ownership interests of the entity,” with various exceptions. *Id.* §5336(a)(3). And the CTA defines a “reporting company” as “a corporation, limited liability company, or other similar entity” that is either “created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe” or “formed under the law of a foreign country and registered to do business in the United States.” *Id.* §5336(a)(11)(A).

But the CTA and the Regulations exempt from these disclosure requirements twenty-three categories of entities, including banks, companies registered with the Securities Exchange Commission under the Securities Exchange Act of 1934, and certain companies that have more

than 20 full-time employees in the United States. *Id.* §5336(a)(11)(B). The CTA also authorizes the Secretary of the Treasury, in consultation with other officials, to exempt additional “class[es] of entities” if “requiring beneficial ownership information” from those entities “would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes.” *Id.* §5336(a)(11)(B)(xxiv).

Willful violations of the CTA’s disclosure requirements carry civil and criminal penalties. For example, any person who willfully provides false or fraudulent beneficial ownership information or fails “to report complete or updated beneficial ownership information to FinCEN” may receive a \$500 per day civil penalty and up to \$10,000 in fines and two years in federal prison. *Id.* §5336(h)(1), (3)(A). And any person who knowingly discloses or uses beneficial ownership information without authorization may receive a \$500 per day civil penalty, along with a \$250,000 fine and five years in federal prison. *Id.* §5336(h)(2), (3)(B).

A Nationwide Injunction and Other Challenges to the CTA

Plaintiffs have challenged the CTA’s constitutionality, to mixed results, in federal district courts around the country. Most recently, a judge in the Eastern District of Texas enjoined the CTA and the Regulations nationwide, concluding that Congress lacked the constitutional authority to adopt the CTA. The four district courts to have considered the constitutionality of the CTA have divided on important constitutional questions.

The courts have split on whether the CTA likely is a valid exercise of Congress’s power under the Commerce Clause, with federal judges in Oregon and Virginia holding that it is and judges in Texas and Alabama holding it is not. The courts have also split on whether the CTA likely is authorized by the Necessary and Proper Clause, combined with Congress’s foreign-affairs or taxing powers, with a judge in Oregon holding that it is, and judges in Texas and Alabama holding that it is not.

A judge in the Eastern District of Texas issued a nationwide injunction

On December 3, 2024, a federal judge granted plaintiffs’ motion for a preliminary injunction in *Texas Top Cop Shop*. The district court held that plaintiffs were likely to succeed on their constitutional challenge to the CTA and thus enjoined the government from enforcing the CTA or the Regulations and stayed the Regulations’ reporting deadlines. As a result, reporting companies need not file reports required by the CTA or the Regulations for as long as the injunction remains in effect.

In issuing the injunction, the court concluded that plaintiffs had shown a substantial likelihood of success on the merits of their claims that Congress exceeded its authority in passing the CTA.

First, the court agreed with plaintiffs that Congress likely lacked the power under the Commerce Clause to enact the CTA. The court explained that the CTA does not regulate the channels or instrumentalities of interstate commerce because nothing in the statute's text limits its reach to only companies engaged in interstate commerce. Slip Op. 36-40. The court acknowledged Supreme Court precedent holding that Congress may regulate activity under the Commerce Clause if "a 'rational basis' exists for concluding that the regulated activity, taken in the aggregate, substantially impacts interstate commerce." *Id.* at 47 (quoting *Gonzales v. Raich*, 545 U.S. 1, 22 (2005)). But the court nonetheless concluded that the CTA fails that test, because the law "does not regulate a pre-existing activity, but instead compels a new one." *Id.* at 40-46.

The court also explained why Congress could not enact the CTA under the Constitution's Necessary and Proper Clause. As an initial matter, the court held that Congress may use the Necessary and Proper Clause only in tandem with one of its enumerated powers. And none of the enumerated powers the government relied on gave Congress authority to enact the CTA. The court held that the CTA falls outside Congress's power to regulate foreign affairs because the law regulates a domestic issue, not a foreign one: "anonymous existence of companies registered to do business in a U.S. state." *Id.* at 56-60. The court further held that the CTA falls outside Congress's taxing power because the connection between the CTA and the collection of taxes is "tenuous at best." *Id.* at 71.

Having concluded that plaintiffs were likely to succeed on the merits, the court also held that plaintiffs had satisfied the other preliminary injunction factors. The court explained that the costs of complying with a regulation later held to be invalid constitute irreparable harm. And the balance of the equities supported plaintiffs because, in the court's view, a preliminary injunction was necessary to preserve the constitutional status quo.

A judge in the Northern District of Alabama had previously held that the CTA is unconstitutional

Nine months before the court in the Eastern District of Texas issued its injunction, the district court in *National Small Business United v. Yellen*, [No. 5:22-cv-01448](#) (N.D. Ala. Mar. 1, 2024), had held that the CTA is unconstitutional and granted summary judgment to the plaintiffs in their challenge to that law. That is the only case in which a district court has decided the ultimate merits of the CTA's constitutionality (as opposed to ruling in a preliminary-injunction posture), though that decision does not have nationwide effect and provides relief only to the plaintiffs.

The district court's analysis in *National Small Business* resembles the court's reasoning in *Texas Top Cop Shop*. First, the court held that Congress does not have power under the Commerce Clause to enact the CTA. Second, the court held that Congress's foreign-affairs powers could not justify its enactment of the CTA because the CTA regulates "the purely domestic arena of incorporation." Slip Op. 23. Third, the court held that the CTA is not a necessary and proper exercise of Congress's taxing power, because there was not a sufficiently close relationship between that power and the CTA's disclosure provisions.

Judges in the District of Oregon and the Eastern District of Virginia have denied preliminary injunctions, concluding the CTA is likely constitutional

Courts in the District of Oregon and the Eastern District of Virginia have reached different conclusions about the likelihood that the CTA is constitutional.

In *Firestone v. Yellen*, [No. 3:24-cv-1034](#) (D. Or. Sept. 20, 2024), the court denied a preliminary injunction, holding that plaintiffs failed to show a likelihood of success on the merits of their constitutional challenge.

The court first held that the CTA is likely a valid exercise of Congress's power under the Commerce Clause. The court noted that it need determine "only whether a 'rational basis' exists" for concluding that "the regulated activities, taken in the aggregate, substantially affect interstate commerce." Slip Op. 12-13 (quoting *Raich*, 545 U.S. at 22). The CTA likely satisfied that test, in the court's view, because Congress "sought to deter money laundering, the financing of terrorism, and other illicit economic transactions." *Id.* at 14.

The court also held that the CTA is likely constitutional under the Necessary and Proper Clause, given that "Congress has broad authority to effectuate the government's powers over national security and foreign affairs and to lay and collect taxes." *Id.* at 12. As to Congress's taxing power, the court reasoned that Congress determined that corporate ownership reporting requirements are useful in combatting tax fraud and tax evasion. And as to Congress's foreign-affairs powers, the court explained that Congress rationally concluded that the disclosure requirement is necessary to protect national security and promote U.S. interests abroad.

The district court in *Community Associations Institute v. Yellen*, [No. 24-cv-01597](#) (E.D. Va. Oct. 24, 2024), similarly denied plaintiffs' motion for a preliminary injunction, concluding that plaintiffs were not likely to show that the CTA was an invalid exercise of Congress's commerce power. The court did not address whether the CTA was likely valid under Congress's foreign-affairs or taxing powers.

Next Steps and Implications

The government has appealed the nationwide injunction issued in *Texas Top Cop Shop* to the Fifth Circuit. And with the other district court decisions currently on appeal in the Ninth, Fourth, and Eleventh Circuits, any disagreement among the courts of appeals in resolving these issues would tee up possible Supreme Court review.

The government asked both the district court and the Fifth Circuit for a stay of the injunction pending the *Texas Top Cop Shop* appeal, given the Regulations' previous reporting deadline of January 1, 2025. The district court denied the government's motion, but on December 23, 2024, after expedited briefing, a three-judge panel of the Fifth Circuit stayed the nationwide preliminary injunction. The panel members were 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 the panel's view, the government satisfied all four factors for a stay under *Nken v. Holder*, 556 U.S. 418 (2009). The immediate consequence of the stay was to revive the January 1, 2025, reporting deadline for initial reports for many entities.

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 plaintiffs' analogy to *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 counterterrorism regimes.

In response to the Fifth Circuit's decision, FinCEN announced the same day that it would extend relevant reporting deadlines. Among other extensions, FinCEN stated that the deadline for reporting companies created before January 1, 2024 — which otherwise would have had to file their initial reports by January 1, 2025 — would be extended to January 13, 2025.

Plaintiffs filed a petition seeking rehearing en banc of the stay order. Plaintiffs also moved to expedite review, seeking a ruling on their petition by January 6, 2025, a week before the new FinCEN reporting deadline, so that they would have time to seek Supreme Court review if necessary. The Fifth Circuit asked the government to respond to the rehearing petition by December 31, 2024, teeing up completed briefing and an opportunity to rule before the reporting deadlines.

Before the government responded, however, the Fifth Circuit merits panel assigned to the case vacated the stay. In an order entered on December 26, 2024, and signed only by the clerk, the panel wrote that, “in order to preserve the constitutional status quo while the merits panel considers the parties’ weighty substantive arguments, that part of the motions-panel order granting the Government’s motion to stay the district court’s preliminary injunction enjoining enforcement of the CTA and the Reporting Rule is VACATED.” (The portion of the stay panel’s order left untouched is the order to expedite the appeal.) Subsequently, the plaintiffs moved to withdraw their petition for rehearing and their motion to expedite, the Fifth Circuit granted the requests, and the Fifth Circuit advised the government that the court’s request for a response to the rehearing petition was moot. As of this writing, then, the district court’s preliminary injunction is back in effect and reporting companies are not subject to the CTA and Regulations’ reporting deadlines. That could change, however, if the Fifth Circuit en banc or the Supreme Court stays the preliminary injunction. And the Fifth Circuit has expedited the appeal, with briefs due in February 2025 and oral argument scheduled for March 2025.

Meanwhile, appeals from the other three cases are farther along. Plaintiffs have filed their opening briefs in the Ninth and Fourth Circuits, in appeals from the district courts’ denials of their motions for preliminary injunctions. See *Firestone v. Yellen*, No. 24-6979 (9th Cir.); *Community Association Institute v. Yellen*, No. 24-2118 (4th Cir.). And in *National Small Business United v. Yellen*, No. 24-10736 (11th Cir.), a three-judge panel of the Eleventh Circuit (Judges Jordan, Newsom, and Brasher) heard oral argument in September 2024 in the government’s appeal from the district court’s summary judgment ruling holding the CTA unconstitutional.

The Supreme Court would likely grant certiorari and review any court of appeals decision that holds on the merits that the CTA is unconstitutional. It is also possible that the Supreme Court could weigh in on this question earlier, through its emergency docket, if the government seeks a stay of the preliminary injunction. If the Supreme Court ultimately reaches the merits of whether the CTA is a valid exercise of Congress’s commerce power, that could be one of the most significant Commerce Clause decisions since *National Federation of Independent Business*, 567 U.S. 519, where the Court held that the Affordable Care Act was a valid exercise of Congress’s taxing and spending powers, but not its commerce power.

It is also possible that Congress could act. A bill introduced in the House of Representatives on December 17, 2024, H.R. 10445, proposes to change the reporting deadline for entities formed or registered before January 1, 2024, to January 1, 2026. The bill has been referred for committee review.

Conclusion

The district courts that have addressed the issue have disagreed about whether Congress had the constitutional authority to enact the CTA. If any circuit court finds the CTA unconstitutional, the issue is likely to go to the Supreme Court, where a decision striking down the CTA would have profound implications for the scope of Congress's constitutional powers. In the meantime, now that the Fifth Circuit merits panel in *Texas Top Cop Shop* has vacated the motions panel's order staying the district court's nationwide preliminary injunction of the CTA and the Regulations, that injunction prevents the government from enforcing the CTA and the Regulations. Thus, entities otherwise subject to the CTA and Regulations do not have to make filings under the CTA and Regulations while that injunction remains in effect. Given the possibility of future orders from the Fifth Circuit or the Supreme Court that could change the status quo once again, however, reporting companies should closely follow legal developments, and check [FinCEN's website](#) regularly, to determine their compliance requirements.

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