

US companies feeling whiplash over the Corporate Transparency Act

By Blair Castellanos

The Corporate Transparency Act (CTA) requires companies to file a Beneficial Ownership Information Report (BOIR) with the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN). The reports contain information on the individuals with ownership interest in or substantial control over millions of entities and are reported to a non-public government database in order to help combat money laundering, terrorism, tax evasion, and other financial crimes. Although the CTA seems well-intentioned, since the CTA came into effect on Jan. 1, 2024, the courts have been faced with multiple lawsuits claiming that the CTA is unconstitutional and constitutes gross government overreach. The various conflicting rulings, preliminary injunctions, and proposed legislation to amend or repeal the CTA have caused companies to experience whiplash and wonder what their best course of action is moving forward. This article is intended to clarify the current status of the CTA.

The Supreme Court ruling on the preliminary injunction of the CTA

Texas Top Cop Shop, Inc., et al. v. Garland, et al. (TTCS) was filed on May 28, 2024 in the U.S. District Court for the Eastern District of Texas. On Dec. 3, 2024, the court in TTCS issued a preliminary injunction against the enforcement of the CTA. *Texas Top Cop Shop, Inc., et al. v. Garland, et al.*, No. 4:24-

cv-478 (E.D. Texas, Dec. 3, 2024). The government requested a stay of the injunction, which the court denied. The government then appealed the preliminary injunction to the 5th U.S. Circuit Court of Appeals. A motions panel of the 5th Circuit issued an order on December 23, 2024, granting the government's emergency motion for a stay of the preliminary injunction, allowing the enforcement of the CTA. *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792, 2024 WL 5203138 (5th Cir. Dec. 23, 2024). In response, FinCEN issued a new rule extending deadlines to file BOIRs. The order granting the stay

expedited the appeal, placing it before the next available panel for oral argument. The merits panel heard the appeal and issued a new order on Dec. 26, 2024, vacating the stay and temporarily reinstating the nationwide preliminary injunction. *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792, 2024 WL 5224138 (5th Cir. Dec. 26, 2024).

On Dec. 31, 2024, the U.S. Attorney General, on behalf of FinCEN, filed an application for a stay of the preliminary injunction with the Supreme Court of the United States. Justice Alito, who handles emergency matters from the 5th Circuit, requested a response to

the application by Jan. 10, 2025. The government filed its reply on Jan. 13, 2025 and roughly 17 Amicus briefs were filed by various third parties. The Supreme Court granted the government's motion to stay the nationwide injunction on Jan. 23, 2025. *McHenry v. Texas Top Cop Shop, Inc.*, No. 24A653, 2025 WL 272062 (U.S. Jan. 23, 2025).

Other CTA case law

In addition to *NSBU v. Yellen and Firestone v. Yellen*, analyzed in the article "CTA Clock is Ticking - Are You Prepared?," Daily Journal, Nov. 18, 2024, the courts continue to rule for and against the CTA in different



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jurisdictions. The Eastern District of Virginia in *Community Associations Institute v. Yellen* denied a similar request for a preliminary injunction against enforcement of the CTA and ruled that the CTA is both constitutional and a justified exercise of Congress's power under the Commerce Clause. *Comty. Associations Inst. v. Yellen*, No. 1:24-CV-1597 (MSN/LRV), 2024 WL 4571412 (E.D. Va. Oct. 24, 2024). The case is currently on appeal to the 4th Circuit.

The Supreme Court's ruling against the TTCS preliminary injunction would have allowed FinCEN to enforce the CTA again. However, another preliminary injunction was issued by another U.S. District Court for the *Eastern District of Texas in Smith v. U.S. Department of the Treasury* on January 7, 2025. *Smith, et al v. United States Department of the Treasury, et al.*, 6:24-cv-00336 (E.D. Texas, Jan. 7, 2024). The government has yet to apply for a stay of this new preliminary injunction.

Proposed legislation

The Repealing Big Brother Overreach Act was first introduced in the House of Representatives, H.R.8147, on April 29, 2024, by Rep. Warren Davidson of Ohio along with 11 other Representatives and was referred to the House Committee on Financial Services. The related Senate Bill, S.4297, was introduced by Senator Tommy Tuberville of Alabama on May 9, 2024, and was referred to the Committee on Banking, Housing and Urban Affairs. The bills are based on claims that the CTA is a breach of privacy for small-business owners, that the language of the CTA is overly broad, and that the extremely high penalties are excessively harsh. On or around Jan. 15, 2025, U.S. Senators Tuberville and Rand Paul of Kentucky reintroduced the Repealing Big Brother Overreach Act, and Rep. Warren Davidson reintroduced the related bill in the House of Representatives in a renewed effort to repeal the CTA.

In addition to the Repealing Big Brother Overreach Act, multiple other pieces of legislation have been introduced to the House of Representatives. Most of the proposed legislation regards extending the filing deadline of BOIRs.

How to proceed

FinCEN acknowledged the Supreme Court's granting the stay of the preliminary injunction. However, due to the continuing unsettled case law, FinCEN has decided that compliance with the CTA will be voluntary until further notice. It is recommended that entities with a complex ownership structure prepare to file their BOIR if the CTA is enforced. First, draft an internal memorandum describing which individuals qualify as beneficial owners. Second, collect all of the information needed to file the BOIR. Lastly, prepare to amend the governing documents of the entity, such as bylaws or operating

agreements, to require beneficial owners to update their company's BOIR when there are changes to the reported information. Preparing to file a BOIR while allowing for caselaw to settle will give companies peace of mind that they are ready to file should it be required.

Blair Castellanos is an associate at *Steinbrecher & Span*.

