

CLIENT ALERT

Pressing Pause on the Corporate Transparency Act: Nationwide Preliminary Injunction and Government Appeal Cast Doubt on Future of Beneficial Ownership Reporting Requirements

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AUTHORS

Britt Mosman | **William H. Gump** | **Jeffrey S. Hochman** | **Eric Halperin**
Jeremy Bylund | **Lauren Waxman** | **Joshua Nelson**

On December 3, 2024, less than one month before a major deadline was to go into effect, the Eastern District of Texas issued a nationwide preliminary injunction temporarily pausing enforcement of the Corporate Transparency Act (“**CTA**”) and its implementing regulations.¹ Although the government has appealed the decision to the Fifth Circuit,² reporting companies are not—at least for now—required to comply with the CTA’s beneficial ownership reporting requirements. However, the future remains uncertain, exacerbating the challenges that various companies (especially those with complex structures) already face in complying with the CTA.

Many of our clients have asked how they should respond to these developments. We offer the following **key takeaways for reporting companies**:

- There is no requirement to *submit* or *update* beneficial ownership information (“**BOI**”) reports to the Financial Crimes Enforcement Network (“**FinCEN**”) while the nationwide injunction is in effect. This applies to all reporting companies, whether they have (i) an upcoming deadline in 2024 with respect to entities formed in 2024 and subject

¹ See *Texas Top Cop Shop v. Garland*, No. 4:24-cv-00478-ALM (E.D. Tex Dec. 3, 2024).

² *Texas Top Cop Shop v. Garland* ECF No. 32, No. 4:24-cv-00478-ALM (E.D. Tex Dec. 5, 2024).

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to a 90-day reporting deadline, (ii) reports due January 1, 2025 with respect to entities formed prior to 2024, or (iii) reports due later in 2025 with respect to entities formed in 2025 and subject to a 30-day deadline.³

- Reporting companies that have already filed BOI reports are not required to file any required updates at this time.
- If the government appeal is successful, and the CTA becomes enforceable again, the BOI reporting deadlines will come back into effect. While we believe it is likely that FinCEN will extend the reporting deadlines, it remains to be seen whether it will do so and the length of any such extension. Accordingly, it would be prudent for reporting companies to position themselves to be able to promptly complete any required filings.
- As the situation remains in flux, reporting companies that are not exempt should closely monitor future developments.

The Nationwide Injunction

Unlike the prior Alabama injunction (described in our Client Alert, [here](#)), the scope of the Texas injunction is nationwide, thereby pausing enforcement of the CTA for all reporting companies, not just for the plaintiffs in the case. The preliminary injunction is not a final determination that the CTA is unconstitutional; rather, the Texas court ruled that the plaintiffs had demonstrated a substantial likelihood of success on the merits of their challenge to the CTA's constitutionality, and that the Act should therefore not be enforced until the court is able to rule on the merits. While the injunction is not a final order, that does not mean that the injunction will necessarily be of short duration or limited scope. Preliminary injunctions may be appealed, including to the Supreme Court. The appeal may take some time, and important constitutional issues may be decided in the appellate process that may determine the ultimate outcome of the case despite the "preliminary" moniker.

In any case, given the court's description of the CTA, and the sweeping scope of the preliminary injunction issued, we expect that it will ultimately grant the plaintiffs' request for declaratory judgment that the CTA is unconstitutional and permanently enjoin its enforcement. The court described the CTA in an 80-page opinion as "unprecedented," "quasi-Orwellian" and "drastic," rejecting the government's arguments that the CTA is justified under the Commerce Clause and the Necessary and Proper Clause. The court further found that a nationwide injunction was appropriate because of the extent of the likely constitutional violation the plaintiffs have demonstrated, affecting more than 32 million reporting companies.

³ For additional details on these reporting deadlines and the BOI reporting requirements generally, see our prior Client Alerts available [here](#), [here](#), and [here](#).

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What's Next?

As noted above, the government has appealed the court's decision to the Fifth Circuit, but at this time has not requested a stay of the injunction. FinCEN, meanwhile, issued a statement confirming 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 order remains in force*” while reiterating its belief that the CTA is constitutional.⁴ FinCEN failed, however, to offer any guidance to reporting companies on next steps or signal whether it would extend the reporting deadlines while the litigation is ongoing.

More broadly, the Texas case is only one of several pending cases in which plaintiffs have challenged the CTA, and other district courts have denied requests to enjoin the CTA, ruling in favor of the Treasury Department.⁵ Additionally, FinCEN previously appealed the Alabama injunction to the U.S. Court of Appeals for the Eleventh Circuit, which heard oral arguments on September 27, 2024. The Eleventh Circuit's forthcoming decision will address similar issues as in the Texas case, given the parallel reasoning in the respective injunctions.⁶ If the Eleventh Circuit were to come to a different conclusion than the Texas district court about the same legal issues (even though the Texas case is not before the Eleventh Circuit), the result would entail a messy jurisdictional fight with significant uncertainty about how far the Texas injunction can geographically extend. Given the various court rulings both for and against the CTA, we expect that the constitutionality of the CTA may ultimately need to be decided by the Supreme Court assuming the new administration continues the litigation.

The CTA was originally passed in January 2021 over then President Trump's veto, meaning that the Justice Department under President Trump might choose to discontinue appealing the injunctions, even though it has an obligation to defend the constitutionality of federal statutes.⁷ But there is precedent for the Justice Department to decline to defend laws that the Executive Branch determines are unconstitutional. And with a change in leadership imminent, the incoming officials may agree that the CTA is constitutionally defective and decline to continue to defend it. Even if the appeals continue, it would not be surprising for the incoming administration to seek to limit or delay the effectiveness of the CTA through other means, such as advancing limiting “interpretations” of the CTA through guidance or as concessions during litigation.

We will continue to monitor for developments in response to the nationwide injunction in order to assist our clients in navigating the CTA's requirements.

⁴ See Beneficial Ownership Information, Alert: Impact of Ongoing Litigation – Deadline Stay – Voluntary Submission Only, FinCEN (last visited Dec. 8, 2024), <https://www.fincen.gov/boi>.

⁵ See *Community Associations Institute v. Yellen* ECF No. 40, No. 1:24-cv-01597-MSN-LRV (E.D. Va. Oct. 24, 2024) (denying plaintiffs' motion for a preliminary injunction of the CTA); *Firestone v. Yellen* ECF No. 18 No. 3:24-cv-1034-SI (denying a motion requesting the same).

⁶ See *National Small Business United v. U.S. Department of the Treasury*, No. 24-10736 (11th Cir. 2024).

⁷ The Attorney General's Duty to Defend and Enforce Constitutionally Objectionable Legislation, Department of Justice Office of Legal Counsel (July 30, 1980), <https://www.justice.gov/file/149186-0/dl?inline>.

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

Britt Mosman

202 303 1057

bmosman@willkie.com

William H. Gump

212 728 8285

wgump@willkie.com

Jeffrey S. Hochman

212 728 8592

jhochman@willkie.com

Eric Halperin

212 728 8952

ehalperin@willkie.com

Jeremy Bylund

202 303 1053

jbylund@willkie.com

Lauren Waxman

212 728 3375

lwaxman@willkie.com

Joshua Nelson

202 303 1045

jnelson@willkie.com

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