



J. William Callison

Senior Partner
303.295.8248
Denver
wcallison@hollandhart.com



Timothy Crisp

Partner
303.295.8000
Denver, Salt Lake City, Santa Fe
TSCrisp@hollandhart.com

What Does the Nationwide Preliminary Injunction of the Corporate Transparency Act Mean for Businesses?

Insight — December 5, 2024

On December 3, 2024, the U.S. District Court for the Eastern District of Texas granted a nationwide preliminary injunction barring enforcement of the Corporate Transparency Act (CTA)¹ and its key implementing regulations (Reporting Rule)² requiring all CTA “reporting companies” to submit required beneficial ownership information to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN.)

Key Takeaways

- In contrast to an earlier decision by a federal district court in Alabama which enjoined FinCEN from enforcing the CTA only as to the parties to that action, the preliminary injunction issued by the federal district court in Texas contains no such limitation—it applies on a nationwide basis to all reporting companies.
- It is important for CTA reporting companies to understand the Texas district court action is not a final resolution. The U.S. government almost certainly will file an appeal and the Alabama district court decision also remains on appeal. Thus, further court developments are likely and enforcement of the CTA and Reporting Rule could resume again with immediate effect.
- Accordingly, reporting companies should closely monitor these legal developments and may find it prudent to continue internal CTA compliance procedures to best position themselves if or when CTA enforcement resumes.

Background of the December 3, 2024 Decision

In *Texas Top Cop Shop, Inc. v. Garland*,³ the Court granted a nationwide preliminary injunction (Injunction) in favor of four small businesses scattered throughout the United States, the Libertarian Party of Mississippi, and the National Federation of Independent Businesses (NFIB), a tax-exempt organization with approximately 300,000 members throughout the United States. In terms of immediate impact, the Injunction enjoins FinCEN from enforcing the CTA or the Reporting Rule and grants a stay of the Reporting Rule's enforcement of the upcoming January 1, 2025 filing

deadline under Section 705 of the Administrative Procedures Act.

While it is important to note that this was not a final ruling of the CTA's constitutionality on the merits, in issuing the Injunction, the Court determined that the plaintiffs had met all of the elements for preliminary injunctive relief. That includes a likelihood of success on the merits, based on the Court's determination that "the CTA and Reporting Rule are likely unconstitutional for purposes of a preliminary injunction"⁴ because they exceed Congress's authority under the Commerce Clause and the Necessary and Proper Clause in conjunction with any enumerated power.

The Court's decision to grant a nationwide Injunction in favor of all of the "approximately 32.6 million existing reporting companies" potentially subject to the CTA, is sweeping and exceeds even the relief requested by the plaintiffs, who sought an injunction "on behalf of only the Plaintiffs before the Court."⁵ Nevertheless, the Court determined that a nationwide injunction was appropriate premised, in part, on the Court's agreement with the federal government that the Court could not "provide Plaintiffs with meaningful relief without, in effect, enjoining the CTA and Reporting Rule nationwide."⁶

Other CTA Court Challenges

Other recent federal district court decisions have rejected similar constitutional challenges to the CTA and its implementing regulations.⁷ But the decision in *Texas Top Cop Shop* follows the March 1, 2024 entry of a final declaratory judgment by the District Court for the Northern District of Alabama in *National Small Business United v. Yellen*, which also concluded that the CTA exceeds Congress's power and enjoined FinCEN from enforcing the CTA against the named plaintiffs in that case (including the members of the NSBU as of the date of the ruling).⁸ In contrast to the *NSBU* decision, however, the Court in *Texas Top Cop Shop* went far beyond the plaintiffs' requested remedy and explicitly enjoined FinCEN from any enforcement of the CTA or the Reporting Rule nationwide. The *NSBU* decision is currently pending appeal before the U.S. Court of Appeals for the Eleventh Circuit.⁹ In response to that decision, FinCEN issued a "Notice" indicating that it would "continue to implement the Corporate Transparency Act as required by Congress, while complying with the court's order" and that "[o]ther than the particular individuals and entities subject to the court's injunction, as specified below, reporting companies are still required to comply with the law and file beneficial ownership reports as provided in FinCEN's regulations."¹⁰ It is unclear whether FinCEN will issue a similar notice addressing the impact of the more expansive *Texas Top Cop Shop* decision.

Next Steps for Reporting Companies

The Injunction in *Texas Top Cop Shop* was issued less than a month before the CTA's statutory compliance date of January 1, 2025, for reporting companies that existed prior to January 1, 2024. It is possible, though unlikely, that the district court would reverse or stay its ruling, revoke the preliminary injunction, or fail to issue a permanent injunction. FinCEN has the right to immediately appeal the Injunction¹¹ and it is very

likely an appeal to the U.S. Court of Appeals for the Fifth Circuit is forthcoming.

Until further notice or court action, all CTA reporting companies are temporarily relieved from compliance with the CTA and its Reporting Rule. Nevertheless, reporting companies must remain vigilant. The *Texas Top Cop Shop* decision is not a final decision and could be reversed, stayed, or modified at any time, which may result in the CTA and Reporting Rule requirements being reinstated with immediate effect.

In light of this fact, CTA reporting companies should:

- **Closely Monitor Legal Developments:** It will be critical for companies to closely monitor court actions and administrative developments as courts and FinCEN navigate these issues. Should enforcement of the CTA and Reporting Rule resume, reporting companies may have very limited time to respond to changing circumstances and meet filing deadlines.
- **Maintain Internal Compliance Efforts:** It may be prudent for companies to continue their internal compliance efforts to ensure they are prepared to respond quickly when circumstances change.
 - Although companies that have already filed beneficial ownership reports need not take any immediate action, they should continue to track changes in their beneficial ownership information previously reported so updated BOI reports can be filed promptly if the Injunction is lifted.
 - Reporting companies that have not yet filed their initial BOI Report are not required to do so until CTA enforcement resumes. But (at least for the time being) reporting companies may still choose to do so voluntarily to avoid any last-minute rush in the event the Injunction is lifted or stayed prior to the end of the year. As of this writing, the FinCEN database is still accepting filings.
 - Even if a reporting company decides not to file its BOI Report by the prior year-end deadline due to the Injunction, companies should continue to internally assess their reporting obligations and collect beneficial ownership information, even if they are not submitting it to FinCEN at this time, so they are able to quickly respond if or when circumstances change.
 - Companies likely will find it helpful to also consult with their legal counsel regarding the most prudent course of action for their particular circumstances.

What's Next?

The Court's decision in *Texas Top Cop Shop* kicks off an upcoming period of uncertainty with respect to the future of the CTA and enforcement of its Reporting Rule as the constitutional questions it raises are resolved by the federal courts. But it seems unlikely the Injunction in the *Top Cop Shop* case marks the end of a national beneficial ownership database.

As in the district court actions where the federal government prevailed, appellate courts may be more receptive to its arguments in defense of the CTA. And while the upcoming administration could take a different approach to CTA enforcement, and potentially consider amendments to its implementing regulations (or choose to withdraw any appeals as to the constitutionality of the CTA), it is important to keep in mind that the CTA arose as part of the bipartisan Anti-Money Laundering Act of 2020.

The CTA also aligns with a number of the United States' international agreements and frameworks designed to promote financial transparency and combat money laundering worldwide. The United States—which considers itself a leader in anti-money laundering and combatting the financing of terrorism—still lags behind other foreign state members of the intergovernmental Financial Action Task Force in implementing a beneficial ownership database.

All of this makes it more likely that remedies, including legislative solutions, may be in play even if the CTA is ultimately determined to be unconstitutional in its current iteration. In short, while the CTA may momentarily be down, it is unlikely to be out.

¹ 31 U.S.C. § 5336.

² 31 C.F.R. § 1010.380.

³ Case No. 4:24-CV-478 (E.D. Tex. Dec. 3, 2024)

⁴ *Texas Top Cop Shop*, at 74, 77-78 (emphasis in original).

⁵ *Id.* at 74.

⁶ *Id.* at 77.

⁷ See *Cnty. Ass'ns Inst. v. Yellen*, No. 1:24-cv-1597 (E. D. Va. Oct. 24, 2024); *Firestone v. Yellen*, No. 3:24-cv-1034-SI, 2024 WL 4250192, (D. Or. Sept. 20, 2024).

⁸ *National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala. March 1, 2024).

⁹ See *NSBU v. Yellen*, No. 24-10736 (11th Cir.).

¹⁰ FinCEN Release, "Notice Regarding *National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.), available at <https://www.fincen.gov/news/news-releases/updated-notice-regarding->

national-small-business-united-v-yellen-no-522-cv-01448

¹¹ See 28 U.S.C. § 1292(a)(1).

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.