

Update on Federal Law on Corporate Transparency

On December 3, 2024, the U.S. District Court for the Eastern District of Texas, Sherman Division, in *Texas Top Cop Shop, Inc., et al. v. Garland, et al.*, Case No. 4:24-cv-00478-ALM, concluded that the Corporate Transparency Act (the “CTA”) is likely unconstitutional and barred enforcement of the CTA nationwide. The decision comes only weeks before a deadline for 32.6 million business entities to report their beneficial ownership information to the federal government.

Background

Congress passed the CTA in 2021 with the intention of combating terrorist financing, drug trafficking, and money laundering. It requires that specified business entities file reports providing information regarding their owners, officers, and other control persons with the U.S. Treasury’s Financial Crimes Enforcement Network (“FinCEN”). The final rule implementing the CTA established the reporting deadline for most entities as January 1, 2025.

The CTA is the first time non-public corporate entities created under state law have been required to disclose such information to federal regulators and has faced pushback both in the courts and from lawmakers. Some contend that FinCEN has not adequately publicized the requirements or clarified reporting procedures. Others have raised constitutional concerns, including that the reporting requirements violate the First Amendment, constitute an illegal search or seizure under the Fourth Amendment, and exceed congressional powers.

Two federal district courts have upheld the reporting requirements, while one, the U.S. District Court for the Northern District of Alabama, has enjoined enforcement as to the named plaintiffs and their members only in *National Small Business United v. Yellen*. The government has appealed that decision to the U.S. Court of Appeals for the Eleventh Circuit. In addition, several other lawsuits are still in their preliminary stages.

Texas Court Decision

In *Texas Top Cop Shop*, the U.S. District Court for the Eastern District of Texas, Sherman Division, ruled in favor of a group of six plaintiffs, including the National Federation of Independent Business, and found that the CTA “is likely unconstitutional as outside of Congress’s power.” It issued an order granting a nationwide preliminary injunction that, as characterized by FinCEN, enjoins the CTA, including enforcement of the statute and regulations implementing its beneficial ownership information reporting requirements and, specifically, stays all deadlines to comply with the CTA’s reporting requirements.

Business

Alert

This alert was prepared by Hand Arendall Harrison Sale’s Business Team. For further information or assistance, please contact the author or the attorney with whom you normally work.

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FinCEN's Response

FinCEN has posted an Alert on its website. In it, FinCEN observed that *Texas Top Cop Shop* is only one of several cases in which plaintiffs have challenged the CTA that are pending before courts around the country, with several federal district courts having denied requests to enjoin the CTA and ruled in favor of the U.S. Treasury, including the U.S. District Courts for the Eastern District of Virginia and the District of Oregon. FinCEN asserted that the government continues to believe the CTA is constitutional and announced that the U.S. Department of Justice, on behalf of the U.S. Department of the Treasury, filed a Notice of Appeal in *Texas Top Cop Shop* on December 5, 2024.

In its Alert, FinCEN expressly made clear that while *Texas Top Cop Shop* is ongoing, it will comply with the *Texas Top Cop Shop* court's order as long as it remains in effect, and that reporting companies are not currently required to file their beneficial ownership information with FinCEN and will not be subject to liability if they fail to do so while the preliminary injunction remains in effect. FinCEN notes, however, that reporting companies may continue to voluntarily submit beneficial ownership information reports.

What This Means

Since the government is apparently seeking a stay of the preliminary injunction issued in *Texas Top Cop Shop*, the U.S. Circuit Court of Appeals for the Fifth Circuit could uphold the nationwide preliminary injunction, lift it, or narrow its application to the parties before the court. If the Fifth Circuit Court of Appeals lifts or narrows the nationwide preliminary injunction, the CTA's reporting requirements could again be in effect and failure to comply with the requirements could lead to hefty fines.

Considering this uncertainty, businesses have the following three alternatives:

- *Wait and see.* Some businesses may choose to take a wait-and-see approach, relying on the nationwide preliminary injunction and waiting to see what happens with *Texas Top Cop Shop* before complying with the CTA.
- *Monitor and prepare.* Given the proximity to the deadline and the effort required to comply, some businesses may choose to continue to prepare their filings to be ready to comply with the CTA deadlines should the nationwide preliminary injunction be lifted or narrowed.
- *Move ahead with the filing.* Particularly for companies that are relying on our firm or other service providers to make their filings (some of which were already seeing multiple-day or -week delays to submit filings before the issuance of the nationwide preliminary injunction), some businesses may choose to go ahead and make the filing regardless of the nationwide preliminary injunction.

It is important to remember that the nationwide preliminary injunction only *temporarily* enjoins enforcement of the CTA and is subject to FinCEN's appeal and further procedural developments. Whether and when an appeal is actually filed, and the timing and outcome of an appeal, are all uncertain. Such developments may happen quickly or without advance notice, and any changes may or may not include an extension to the deadlines specified by the CTA. A reporting company with questions should seek legal counsel regarding CTA compliance and should consider any applicable confidentiality obligations if it chooses to file a beneficial ownership information report with FinCEN while the nationwide preliminary injunction is in effect.

Hand Arendall Harrison Sale will continue to monitor closely legal developments relating to the CTA and to be available to assist its clients in navigating the CTA. If you have any questions about the CTA or this Client Alert, please contact your Hand Arendall Harrison Sale attorney or any member of our CTA Team.