

GIBSON DUNN



Anti-Money Laundering Update

December 5, 2024

Corporate Transparency Act Enforcement Preliminarily Enjoined Nationwide

On December 3, 2024, a federal district court in Texas ruled that the Corporate Transparency Act (CTA) is likely unconstitutional and preliminarily enjoined its enforcement nationwide. Accordingly, the rule's requirements cannot currently be enforced against entities that would otherwise be subject to the rule. Thus, as it currently stands, reporting companies that were required to make a CTA filing by the end of the year are not required to do so, although that posture could change very quickly depending on the government's next steps. This update briefly describes the ruling and what it means for CTA compliance moving forward.^[1]

The Corporate Transparency Act, enacted in 2021, requires all corporations, limited liability companies, and certain other entities created (or, as to non-U.S. entities, registered to do business) in any U.S. state or tribal jurisdiction to file a beneficial ownership interest (BOI) report with the U.S. Financial Crimes Enforcement Network (FinCEN) identifying, among other information, the natural persons who are beneficial owners of the entity.^[2] A regulation, the Reporting Rule, helps implement the CTA by specifying compliance deadlines—including a January 1, 2025 deadline for companies created or registered to do business in the United States before January 1, 2024—and detailing what information must be reported to FinCEN.^[3]

On March 1, 2024, the U.S. District Court for the Northern District of Alabama ruled that the CTA is unconstitutional.^[4] The court permanently enjoined the government from enforcing the CTA, but only as to the plaintiffs in that case.^[5] The government appealed, and the Eleventh Circuit

heard oral argument on September 27. The Eleventh Circuit's decision in that case remains pending.

The December 3, 2024 Ruling

Six plaintiffs, among which include a small business named Texas Top Cop Shop, Inc. and the National Federation of Independent Business (NFIB), brought a lawsuit challenging the constitutionality of the CTA and the Reporting Rule on various grounds. On December 3, 2024, Judge Amos L. Mazzant of the U.S. District Court for the Eastern District of Texas granted the plaintiffs' motion for a preliminary injunction.^[6] Like the Northern District of Alabama, the court held that the CTA exceeds Congress's enumerated powers. Specifically, in a 79-page opinion, Judge Mazzant ruled that it was likely that the plaintiffs would be able to prove that:

- The CTA is not a proper exercise of Commerce Clause power because it does not regulate a channel or instrumentality of interstate commerce or any activity that substantially affects commerce^[7]; and
- The CTA cannot be justified under the Necessary and Proper Clause because, contrary to the government's assertions, it is not rationally related to any enumerated power to regulate commerce, conduct foreign affairs, or collect taxes.^[8]

The court's reasoning about the scope of the Commerce Clause, Necessary and Proper Clause, foreign affairs power, and taxing power echoed that of the Northern District of Alabama. While the Northern District of Alabama enjoined enforcement of the CTA against only the plaintiffs in that case, the Eastern District of Texas went further. Observing that an injunction pertaining to plaintiff NFIB's approximately 300,000 members would be tantamount to a nationwide injunction, the court concluded that it was appropriate to preliminarily enjoin enforcement of the CTA and the Reporting Rule nationwide.^[9] Moreover, the court invoked its power under the Administrative Procedure Act's stay provision, 5 U.S.C. § 705, to "postpone the effective date of" the Reporting Rule.^[10]

Potential U.S. Government Response

The government has 60 days to appeal the district court's preliminary injunction to the U.S. Court of Appeals for the Fifth Circuit, though it may do so earlier.^[11] The government may also ask the district court or the Fifth Circuit for an emergency stay of the district court's preliminary injunction in full or in part during the pendency of any appeal. Any such emergency application would be considered by the Fifth Circuit on an expedited basis. If the Fifth Circuit leaves the district court's order in place, the government could then seek emergency relief in the Supreme Court, which could also stay the injunction pending appeal.

In the meantime, FinCEN will likely issue a notice clarifying its position on the impact of the district court's order, including potentially extending the January 1, 2025 filing deadline.

Ultimately, the validity of the CTA is unlikely to be resolved nationwide without Supreme Court review or unanimous decisions from the federal courts of appeals who consider the question. Notably, district courts in Michigan,^[12] Oregon,^[13] and Virginia^[14] have denied similar requests for preliminary injunctions against enforcement of the CTA. The Eastern District

of Virginia, for example, concluded that the CTA is an exercise of Congress's Commerce Clause power because it regulates an activity—operating a corporate entity as a going concern—that in the aggregate substantially affects interstate commerce.^[15]

What the Ruling Means for Entities Subject to the CTA

Given the district court's nationwide preliminary injunction and stay of the Reporting Rule's effective date, **the rule's requirements cannot currently be enforced against entities that would otherwise be subject to the rule.** Thus, as it currently stands, reporting companies that were required to make a CTA filing are not required to do so.

Given the possibility of either the Fifth Circuit or the Supreme Court staying the district court's order pending appeal, however, reporting entities' legal obligations are subject to change on short notice, and as a general matter companies should not assume that the January 1, 2025 deadline will ultimately be extended without further guidance from FinCEN. If either the Fifth Circuit or Supreme Court stay the district court's order pending appeal, **the Reporting Rule will become enforceable again, and the rule's deadlines will become effective** as to all entities that are not parties to the litigation in the Northern District of Alabama—though FinCEN may adjust those deadlines depending on how long the district court's order remains in effect. It also remains to be seen whether the incoming administration will continue to defend the constitutionality of the CTA or not, although as a general rule the Department of Justice typically defends the constitutionality of federal statutes regardless of administration.^[16]

Entities that believe they may be subject to the Reporting Rule should closely monitor this matter, and consult with their CTA advisors as necessary, to understand whether and when they need to comply with the Reporting Rule's requirements and to allow for sufficient lead time in advance of any filing deadline.

We note that this ruling deals only with the federal CTA passed by Congress, not similar legislation passed by states such as New York, which have enacted similar requirements.^[17] Gibson Dunn will continue to monitor CTA developments closely.

^[1] Prior alerts by Gibson Dunn explaining the Corporate Transparency Act are available at: <https://www.gibsondunn.com/top-12-developments-in-anti-money-laundering-enforcement-in-2023>; <https://www.gibsondunn.com/the-impact-of-fincens-beneficial-ownership-regulation-on-investment-funds>; <https://www.gibsondunn.com/the-corporate-transparency-act-reminders-and-key-updates-including-fincen-october-3-faqs>.

^[2] See William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, Div. F., § 6403 (adding 31 U.S.C. § 5336).

^[3] 31 C.F.R. § 1010.380.

^[4] *Nat'l Small Business United v. Yellen*, 721 F. Supp. 3d 1260 (N.D. Ala. 2024); see <https://www.gibsondunn.com/corporate-transparency-act-declared-unconstitutional-what-it-means-for-you>.

[5] *Nat'l Small Business Union et al. v. Yellen et al.*, No. 5:22-cv-01448, Dkt. 52 (N.D. Ala. 2024).

[6] *Texas Top Cop Shop, Inc. et al. v. Garland et al.*, No. 4:24-CV-478, Dkt. 30 (E.D. Tex. Dec. 3, 2024).

[7] *Id.* at 35–53.

[8] *Id.* at 53–73.

[9] *Id.* at 74–75, 77.

[10] *Id.* at 78.

[11] Fed. R. App. P. 4(a)(1)(B).

[12] *Small Business Ass'n of Mich. et al. v. Yellen et al.*, No. 1:24-cv-00314-RJJ-SJB, Dkt. 24 (W.D. Mich. Apr. 26, 2024).

[13] *Firestone et al. v. Yellen et al.*, No. 3:24-cv-1034-SI, Dkt. 18 (D. Ore. Sept. 20, 2024).

[14] *Cmty. Ass'ns Inst. et al. v. Yellen et al.*, No. 1:24-cv-1597 (MSN/LRV), Dkt. 40 (E.D. Va. Oct. 24, 2024).

[15] *Id.* at 14; see also *Firestone*, *supra* note 13, at 12–14.

[16] See <https://www.gibsondunn.com/tools-of-transition-procedural-devices-could-help-president-elect-implement-agenda>.

[17] See S.995-B/A.3484-A

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Gibson Dunn has deep experience with issues relating to the Bank Secrecy Act, the Corporate Transparency Act, other AML and sanctions laws and regulations, and challenges to Congressional statutes and administrative regulations.

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