

## **Client Alert: Corporate Transparency Act Beneficial Ownership Information Reporting On Hold**

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### **Texas Top Cop Shop, Inc., et al. v. Garland, et al.**

On December 3, 2024 the U.S. District Court for the Eastern District of Texas issued a preliminary injunction effective nationwide staying the compliance deadline under the Corporate Transparency Act. The Court, in its decision, found that it is likely the plaintiffs in the case will succeed on the merits of their argument that Congress exceeded its powers in enacting the statute. After examining the plaintiff's standing, the Court found that imminent harm would occur and that the Government had failed to demonstrate the constitutionality of the statute under both the Commerce Clause and under the Necessary and Proper Clause of the Constitution.

While the Court noted the statute's laudable purpose of preventing money laundering and illicit use of anonymity provided under the corporate veil, the Court looked at the fact that the statute did not regulate a commercial *activity*, or an instrument of interstate commerce, but rather than it eroded the dual system of power in the United States and sought to expand Congressional authority into a realm (corporation law) that is firmly established as being within the purview of the states.

The Department of Justice, on behalf of the Department of the Treasury, filed an appeal on December 5, 2024. FinCEN notes on its website that it will comply with the injunction as long as it remains in effect. As a result, reporting companies are not currently required to file beneficial information and will not be subject to liability while the preliminary injunction remains in effect. Voluntary submission is still available.

### **What's next?**

Given the injunction is a nationwide prohibition on requiring reporting companies to submit BOI, we believe it would be best practice to refrain from making new filings to FinCEN for the current time. If the injunction is lifted, it is likely some form of a delay will be granted for filers. However it is too early to judge if such relief will be granted by FinCEN, or what period of time FinCEN may grant. The Court

that issued the injunction did note that final resolution on the merits will take some time. Any immediate change in the Court's decision depends on whether the Government seeks expedited relief at the Fifth Circuit Court of Appeals. Our advice is that reporting companies should continue to prepare their paperwork to be in a position to file and comply with the CTA's reporting obligations in the event the injunction is lifted.

We will continue to monitor any change that results and advise accordingly.

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