

CTA Update: Supreme Court Temporarily Lifts Injunction, but Requirements Remain Blocked

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On January 23, 2025, the U.S. Supreme Court issued a ruling that appears to settle – for now – a nearly two-month-long legal battle over the Corporate Transparency Act (CTA), which began with a nationwide preliminary injunction issued by the Eastern District of Texas in *Texas Top Cop Shop v. Garland et al.*, 4:24-cv-00478 (Dec. 3, 2024 E.D. Tex.).

In a brief, one-paragraph order, the Supreme Court effectively overturned a Fifth Circuit Court of Appeals decision, which denied the government’s request for an emergency stay of an injunction that temporarily relieved millions of businesses from filing beneficial ownership information reports (BOIRs) with the Financial Crimes Enforcement Network (FinCEN). Justice Gorsuch concurred in the order but wrote separately to say that the Court should have taken the case to resolve the issue of whether a district court can issue a universal injunction. Justice Jackson dissented and would have denied the stay.

However, while the government has won this particular legal battle, it has not yet won the war.

Specifically, there is another case, *Smith et al. v. DOT et al.*, proceeding on the same issue – whether the CTA is constitutional. No. 6:24-cv-00336 (E.D. Tex. Jan. 7, 2025). A few weeks ago, the judge in the *Smith* case issued a nationwide stay that has not yet been appealed. And, since yesterday’s Supreme Court order was limited only to the *Texas Top Cop Shop* litigation, the nationwide stay in the *Smith* case remains in effect. Today, FinCEN released a statement confirming that conclusion, writing that “reporting companies are not currently required to file beneficial ownership information with FinCEN despite the Supreme Court’s action in *Texas Top Cop Shop*.”

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Interestingly, FinCEN's statement provides no insight on whether it will continue defending the CTA in court.

Should the Trump Administration appeal the *Smith* stay, it seems less likely – given the Supreme Court's order – that the Fifth Circuit will affirm the stay, potentially allowing enforcement of the CTA once again. However, even if the *Smith* stay is overturned, any enforcement of the CTA may be short-lived. Indeed, the Supreme Court noted in its order that the government is permitted **only** to enforce the CTA **until** the Fifth Circuit issues an ultimate decision on the nationwide preliminary injunction originally issued in the *Texas Top Cop Shop* litigation. (For a full summary of the legal saga, which resulted in the CTA's reporting requirements being blocked, unblocked, and then blocked again, see our previous client alerts, which can be found here, here, here, and here.)

More importantly, **none** of these decisions address the ultimate merits issue, which is whether the CTA is constitutional. And it should be noted that all of these constitutional challenges may become moot if the new Republican-led Congress passes legislation to repeal the CTA (the "Repealing Big Brother Overreach Act" was re-introduced in Congress last week to do just that).

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