Corporate Law Update

January 2025

BOI Filing Requirements Under the Corporate Transparency Act Paused Again, but the Ping Pong Match is Not Over

On December 26, 2024, the ping pong match continued when a panel of the Fifth Circuit Court of Appeals issued an order vacating a portion of its December 23 decision and reinstating the nationwide injunction against enforcing the Corporate Transparency Act (CTA) initially issued by the lower court on December 3. As a result, the requirement to file beneficial ownership information with FinCEN by the January 13, 2025 deadline (the previously extended deadline) is on hold again.

FinCEN confirmed the status by posting the below on its website on December 27, 2024:

> *"In light of a recent federal court order, reporting companies are not currently required to file beneficial ownership information with FinCEN and are not subject to liability if they fail to do so while the order remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership information reports.*
>
> The Corporate Transparency Act (CTA) plays a vital role in protecting the U.S. and international financial systems, as well as people across the country, from illicit finance threats like terrorist financing, drug trafficking, and money laundering. The CTA levels the playing field for tens of millions of law-abiding small businesses across the United States and makes it harder for bad actors to exploit loopholes in order to gain an unfair advantage.
>
> On Tuesday, December 3, 2024, in the case of *Texas Top Cop Shop, Inc., et al. v. Garland, et al.*, No. 4:24-cv-00478 (E.D. Tex.), the U.S. District Court for the Eastern District of Texas, Sherman Division, issued an order granting a nationwide preliminary injunction. *Texas Top Cop Shop* is only one of several cases that have challenged the Corporate Transparency Act (CTA) pending before courts around the country. Several district courts have denied requests to enjoin the CTA, ruling in favor of the Department of the Treasury. The government continues to believe—consistent with the conclusions of the U.S. District Courts for the Eastern District of Virginia and the District of Oregon—that the CTA is constitutional. For that reason, the Department of Justice, on behalf of the Department of the Treasury, filed a Notice of Appeal on December 5, 2024 and separately sought of stay of the injunction pending that appeal.
>
> On December 23, 2024, a panel of the U.S. Court of Appeals for the Fifth Circuit granted a stay of the district court's preliminary injunction entered in the case of *Texas Top Cop Shop, Inc. v. Garland*, pending the outcome of the Department of the Treasury's ongoing appeal of the district court's order. FinCEN immediately issued an alert notifying the public of this ruling, and recognizing that reporting companies may have needed additional time to comply with beneficial ownership reporting requirements, FinCEN extended reporting deadlines. On December 26, 2024, however, a different panel of the U.S. Court of Appeals for the Fifth Circuit issued an order vacating the Court's December 23, 2024 order granting a stay of the preliminary injunction. Accordingly, as of December 26, 2024, the injunction issued by the district court in *Texas Top Cop Shop, Inc. v. Garland* is

> in effect and reporting companies are not currently required to file beneficial ownership information with FinCEN."

On December 31, 2024, the government filed an Application for Stay of the Injunction to the U.S. Supreme Court. It is impossible to predict when the Supreme Court will rule on the Application. Unless the Supreme Court provides relief to the government in the meantime, we do not expect more changes to the status of the CTA until at least the date of oral arguments before the Fifth Circuit, which is presently scheduled for March 25, 2025.

As we are becoming accustomed to surprises in the world of the CTA, we continue to believe it is prudent to gather and organize information in preparation for report submissions, particularly for entities with extensive analysis and data collection needs, such as those managing a large number of nonexempt entities. Voluntary filing during this period can position reporting companies favorably if the CTA deadline is reactivated and/or the CTA is ultimately upheld, thus alleviating the administrative burden of monitoring developments and addressing potential short compliance deadlines. However, some may independently make a business decision to "wait and see" before making any submissions.

We will continue providing updates as this matter evolves.

FOR MORE INFORMATION

For more information, please contact:

Ashley A. Weyenberg
614.469.3250
937.443.6913
Ashley.Weyenberg@ThompsonHine.com

Shelbie Harvey
937.443.6972
Shelbie.Harvey@ThompsonHine.com

Jennifer L. Maffett-Nickelman
937.443.6804
Jennifer.Maffett-Nickelman@ThompsonHine.com

Frank D. Chaiken
312.998.4249
513.352.6550
Frank.Chaiken@ThompsonHine.com

Mark A. Conway
937.443.6840
Mark.Conway@ThompsonHine.com

Lauren A. Davis
216.566.5721
Lauren.Davis@ThompsonHine.com

Amy G. McClurg
216.566.5791
Amy.McClurg@ThompsonHine.com

Kelsey Mehaffie
513.352.6567
Kelsey.Mehaffie@ThompsonHine.com

Jennifer S. Roach
216.566.5885
Jennifer.Roach@ThompsonHine.com

Alan Weeter
937.443.6915
Alan.Weeter@ThompsonHine.com