

**CLIENT ALERT: TEXAS COURT BLOCKS ENFORCEMENT OF
THE CORPORATE TRANSPARENCY ACT**

Brian W. Bisignani, Esq. and Ryan W. Morris, Esq.

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On December 3, 2024, the United States District Court for the Eastern District of Texas issued a preliminary injunction temporarily suspending enforcement of the beneficial ownership information (“BOI”) reporting requirements enacted under the Corporate Transparency Act (“CTA”) and accompanying regulations pending further determination regarding the constitutionality of the CTA, which became effective on January 1, 2024. We are writing to provide additional information and recommendations in light of these developments.

The CTA Reporting Requirements

Under the CTA, entities formed or registered to do business in the U.S. are required to report certain information about themselves and their “beneficial owners” to the Financial Crimes Enforcement Network (“FinCEN”), which is part of the U.S. Department of the Treasury. Information required to be included in each BOI Report includes names, addresses, and identifying documents for individual(s) who either: (i) own at least twenty-five percent (25%) of the ownership interests in the reporting company; or (ii) exercise “substantial control” over the business, finances and/or structure of the reporting company. Entities formed prior to January 1, 2024 are generally required to file their BOI Reports on or before January 1, 2025, while entities formed on or after January 1, 2024 are required to file such reports within ninety (90) days of formation. In addition, the CTA requires submission of updated information with FinCEN within 30 days of a change in the previously submitted information. Failure to comply with the CTA’s reporting requirement carries substantial penalties, including civil penalties of up to \$500 per day for any period of noncompliance and the possibility of additional criminal penalties of up to \$10,000 in fines, imprisonment for up to two years, or both, for violations of the CTA.

The Texas Court Ruling

In *Texas Top Cop Shop v. Garland et al.* (E.D. Tex., No. 4:24-cv-00478), six (6) plaintiffs sought to have the CTA declared unconstitutional and to secure an injunction against enforcement of the CTA’s reporting requirement. In granting plaintiffs’ motion for preliminary injunction, the Texas Court found a “substantial threat of irreparable harm” inherent in the costs of complying with the reporting requirement, as well as the potential violation of constitutional rights that might result from enforcement of the CTA. The Texas Court also made repeated reference to an earlier opinion from the District Court for the Northern District of Alabama in *NSBU v. Yellen*, 721 F. Supp. 3d 1260, 1271 (N.D. Ala. 2024) stating that the CTA’s reporting requirement exceeded Congress’s constitutional authority under the Commerce Clause or the

Necessary and Proper Clause of the United States Constitution (which opinion is currently on appeal to the United States Court of Appeals for the Eleventh Circuit).

However, while the Texas Court expressed a “likelihood” that the CTA exceeded Congress’s constitutional authority, the Court ultimately stopped short of declaring the law unconstitutional. Instead, the Court’s injunction serves as a temporary halt to enforcement of the CTA’s reporting requirement pending further constitutional analysis of the statute. The government authorities and agencies named as defendants to the lawsuit are expected to file an expedited appeal of this decision to the United States Court of Appeals for the Fifth Circuit within sixty (60) days (similar to the appeal of the Alabama Court’s decision currently pending in the Eleventh Circuit). The Government’s appeal will also likely include an expedited motion for stay of the Texas Court’s injunction. If the Government’s motion for stay is granted, the CTA’s reporting requirements and deadlines will come back into effect, and all companies subject to those requirements may face enforcement measures for failure to comply.

What to Do Now

Given the possibility that the Texas Court’s injunction barring enforcement of the CTA’s reporting requirements may be stayed, narrowed or overturned, and in light of the fairly steep penalties that may be imposed as a result of noncompliance, we recommend that any nonexempt reporting companies which are subject to reporting requirements under the CTA continue planning and preparing to file their BOI Reports on or before the applicable filing deadlines until such time as a more definitive decision has been issued on this issue.

If you have any questions regarding the Corporate Transparency Act or require assistance in meeting reporting obligations, please contact Brian W. Bisignani, Chair of the Firm’s Financial Restructuring Practice Group (bbisignani@postschell.com), Ryan W. Morris (rmorris@postschell.com) of the Firm’s Business Law department, or the lawyer at the Firm with whom you regularly consult.

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