

Locke Lord QuickStudy: Federal District Court Enjoins ?Government From Enforcing Corporate Transparency Act

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The material set forth below was developed before the 2024 and 2025 district court injunctions regarding the CTA (which were subsequently stayed and continue to be litigated). As a result, the material set forth below, including filing deadlines, may not be current. Please consult FinCEN's [website](#) for the latest filing due dates and other information regarding the CTA and its requirements.

On December 3, 2024, a Texas based Federal District Court preliminarily enjoined the enforcement by the Financial Crimes Enforcement Network (FinCEN) of the Corporate Transparency Act (the CTA) and its implementing regulations (the Reporting Rule).^[1] The decision of the Court states that it is intended to have nationwide effect.

The Court amended its order on December 5, 2024^[2] keeping the preliminary injunction in place. The Government appealed both the original order and amended order to the United States Court of Appeals for the 5th Circuit. Separately, the Government advised the United States Court of Appeals for the 11th Circuit of the decision in the Texas District Court case, its appeal to the 5th Circuit in the Texas District Court case and its position that the Texas decision was "mistaken for the reasons given in the government's filings in [the 11th Circuit appeal]".^[3]

FinCEN has posted an "Alert" on its website^[4] concerning the preliminary injunction and the fact that voluntary beneficial ownership report filings can continue to be made by reporting companies while the preliminary injunction remains in effect.

The Texas Court found that based upon the information presented to it, Congress "likely" had no authority under its powers to regulate commerce, taxes and foreign affairs to adopt the CTA and that the CTA likely violated states' rights under the U.S. Constitution.

Using its power under Sections 705 and 706 of the federal Administrative Procedure Act, the order of the Texas Court also stayed the January 1, 2025 compliance deadline nationwide for entities in existence prior to January 1, 2024. While it did not directly address the 90 day deadline for filing beneficial ownership reports for entities formed in 2024, the 30 day deadline for filing beneficial ownership reports for entities formed after 2024, or the duty to update and amend beneficial ownership reports already filed with FinCEN, the broad reach of the Court's language in its order to the effect that the CTA "is hereby enjoined [and the] [e]nforcement of the Reporting Rule 31C.F.R. 1010.380 is also hereby enjoined, and the compliance deadline is stayed under §705 of the APA"^[5] may,

by implication, be read to affect filings required under the 90 and 30 day reporting provisions of the Reporting Rule. But, this is not clear at this time from the language of the opinion and order. Accordingly, each Reporting Company and its management and owners should seek advice from their own counsel and advisors concerning the scope and coverage of the Texas District Court's preliminary injunction, what CTA filing requirements are stayed, and what other actions that may be necessary as matters progress in the courts.

The Texas Court made clear that its preliminary injunction is not making an affirmative finding that the CTA is contrary to law or violates the U.S. Constitution, but that the CTA is "likely" unconstitutional solely for purposes of granting a preliminary injunction.

The appeals of the Texas District Court's orders and the Alabama District Court order in NSBU v. Yellen are now pending before two different Courts of Appeals and the Texas preliminary injunction remains subject to further action by the District Court in proceedings seeking a permanent injunction. In contrast to the decisions in Texas Top Cop, Inc. and NSBU, on September 20, 2024, in Firestone v. Yellen,^[6] an Oregon Federal District Court found that the plaintiffs failed to meet the threefold test requiring a showing (1) a likelihood of success on the merits; (2) a likelihood of irreparable injury; and (3) that the balance of hardships tips sharply in favor of the plaintiffs. An appeal of this Oregon decision is pending in the United States Court of Appeals for the 9th Circuit.^[7]

Pending further developments, it nevertheless may be prudent for managements and owners of Reporting Companies to continue to collect and prepare beneficial ownership information necessary to make complete CTA filings with FinCEN and then to decide if or when to file beneficial ownership reports whether or not the preliminary injunction continues in effect.

[1]Texas Top Cop Shop, Inc. v. Garland, 4:24-cv-00478-ALM Document 30 Filed 12/03/24 Page 1 of 79 PageID #: 356

[2] Texas Top Cop Shop. Inc. v. Garland, 4:24-cv00478-ALM Document 33 Filed 12/05/24

[3] National Small Business United, et. al., v. U.S. Department of the Treasury, USCA11 Case 24-10736 Document 104 Filed 12/05/2024.

[4] FinCEN Beneficial Ownership Information

[5] Texas Top Cop Shop, Inc. v. Garland, 4:24-cv-00478-ALM Document 30 Filed 12/03/24 at PageID #: 432

[6] Firestone v. Yellen, 3:24-cv-01034-SI (D. Ore. 09/20/24) Dkt. No. 18.

[7] Tayler Hayward, et al. v. U.S. Department of the Treasury, USCA 9 Case 24-6979

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