

FIFTH CIRCUIT REVERSES COURSE, REINSTATES INJUNCTION AGAINST CORPORATE TRANSPARENCY ACT

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IMPORTANT NOTICE: *As of March 2nd, 2025, the U.S. Treasury Department announced it will not pursue enforcement actions against domestic reporting companies or their beneficial owners for failing to file their Beneficial Ownership Information (BOI) reports by the deadline, and plans to narrow the scope of reporting requirements only to foreign reporting companies. Read the latest update [here](#), and we will keep you updated on the ongoing saga of uncertainty surrounding the status of the Corporate Transparency Act.*

In a dizzying development to the ongoing saga of uncertainty surrounding the Corporate Transparency Act (CTA), yesterday, December 26, 2024, the Fifth Circuit Court of Appeals vacated the stay, issued by a different panel of the Fifth Circuit on December 23rd, of the nationwide preliminary injunction issued by the Eastern District of Texas on December 3, 2024 that prevented the government from enforcing the CTA's upcoming reporting deadlines. This decision reinstated the December 3rd nationwide preliminary injunction issued by the District Court.

Key Developments:

The **CTA's reporting requirements are temporarily unenforceable** due to the reinstated injunction. On its website, FinCEN has stated that in "light of a recent federal court order [the Fifth Circuit's December 26th order reinstating the preliminary injunction], 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." In issuing its new ruling, the Fifth Circuit panel that will actually make a ruling on the merits of the preliminary injunction stated that it was vacating the stay of the injunction issued on December 23rd by a different panel of the Fifth Circuit "to preserve the

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Fifth Circuit Reverses Course, Reinstates Injunction Against Corporate Transparency Act

constitutional status quo while the merits panel considers the parties' weighty substantive arguments..." The ultimate result is FinCEN's motion to stay the District Court's preliminary injunction is vacated, the CTA is temporarily unenforceable, and an expedited appeal of the preliminary injunction is set to take place.

Appeal Process Timeline:

The Fifth Circuit has scheduled the following appeal process to resolve the CTA injunction. The timeline is currently as follows:

- **February 7, 2025:** Appellants' opening brief due, including submissions from the U.S. Department of Treasury, Attorney General Merrick Garland, and FinCEN.
- **February 21, 2025:** Appellees' response brief due, including submissions from Texas Top Cop Shop, Inc., and other plaintiffs.
- **February 28, 2025:** Appellants' reply brief due.
- **March 25, 2025:** Oral arguments calendared to begin at the Fifth Circuit.

Practical Implications for Companies:

The reinstated injunction means companies are not currently required to file reports under the CTA, and enforcement and penalties are suspended. However, FinCEN continues to accept voluntary filings, which companies may choose to complete to avoid monitoring compliance developments or potential technological issues with filing due to high traffic to the filing portal if deadlines are reinstated. Companies should remain vigilant, as the injunction could be stayed or overturned again, resulting in the need to comply with CTA requirements on short notice.

What To Do Now:

Reporting companies that have not yet filed should gather the necessary information for CTA compliance in anticipation of possible reinstatement of the filing deadlines. For companies that have already filed, be aware that if the CTA is ultimately found unconstitutional, prior filings will likely have no continuing obligations. New entities formed in 2024 or 2025 should monitor guidance closely, as compliance requirements may differ depending on the timing of the Fifth Circuit's final decision on this appeal. Entities that choose to file voluntarily during this period should proceed through FinCEN's portal and keep a record of their submission.

Looking Ahead:

As indicated by this most recent development, the CTA compliance landscape is constantly evolving and conflicting decisions are being issued at a rapid pace, leaving small businesses in a state of uncertainty concerning their compliance requirements under the CTA. For now, small businesses who have not filed their initial Beneficial Ownership Information reports with FinCEN are not required to do so. However, when and if

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the Fifth Circuit makes a determination on the merits of the preliminary injunction, the non-prevailing party will almost certainly appeal the matter to the U.S. Supreme Court. Additionally, multiple other cases challenging the CTA are also pending and any one of them could affect the CTA compliance landscape, as well as the incoming administration. We encourage companies to stay informed and consult their Conner & Winters attorney if they have any questions regarding how these developments impact their obligations under the CTA.