

The Drama Surrounding the Corporate Transparency Act Continues - Not Only Were Santa Claus and His Elves Busy This Holiday Season, So Were the Court and the Litigants in the Texas Top Cop Shop Case

12.27.24 01.07.26

INTRODUCTION

On [December 6, 2024](#), I reported that the U.S. District Court for the Eastern District of Texas, in *Texas Top Cop Shop, Inc. et al v. Merrick Garland, Attorney General of the United States et al*, issued a [79-page decision](#), including a preliminary injunction, creating a nationwide prohibition against the government enforcing the Corporate Transparency Act ("CTA"). As suspected, the government immediately filed an emergency appeal, asking the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit") to stay the injunction and to hear its arguments in favor of overturning the Texas court's decision.

FIFTH CIRCUIT EMERGENCY INJUNCTION & TREASURY'S RESPONSE

On December 23, 2024, the Fifth Circuit granted the government's emergency motion to stay the nationwide injunction and agreed to schedule, on an expedited basis, oral argument on the appeal of the underlying matter. The court stated:

"IT IS ORDERED that the government's emergency motion for a stay pending appeal is GRANTED. IT IS FURTHER ORDERED that this appeal is EXPEDITED to the next available oral argument panel (emphasis added)."

With the injunction lifted, that same day, in response to the Fifth Circuit's order, Treasury's Financial Crimes Enforcement Network ("FinCEN") extended some of the CTA compliance deadlines (e.g., the reporting deadlines for reporting companies formed prior to 2024 were extended from January 1, 2025, to January 13, 2025).

REQUEST FOR FIFTH CIRCUIT TO RECONSIDER

On December 24, 2024, the plaintiffs in the *Texas Top Cop Shop, Inc.* case filed a motion, asking the Fifth Circuit to reconsider its December 23 ruling, pending its deliberation of the underlying matter (i.e., the constitutionality of the CTA). While the Fifth Circuit's ultimate determination is unknown, it is expected that a Writ of Certiorari will eventually be filed by the losing party, asking the U.S. Supreme Court to review the matter. So, the drama will continue!

With all of the scurrying around this year-end by the plaintiffs, the government and the court, it is difficult to calibrate where the CTA stands today. After dissecting the court rulings and the government's pronouncements, as of end of business on December 24, 2024, subject to exceptions set forth in the CTA, the following general filing guidelines appear to apply to the CTA, which as of that date was alive and operational:

- Reporting companies formed prior to 2024 have until January 13, 2025, to comply
- Reporting companies formed in 2024 but prior to September 4, 2024, had 90 days after formation to comply
- Reporting companies formed on or after September 4, 2024, that had a filing deadline of later than December 2, 2024, but before December 24, 2024, have until January 13, 2025, to comply
- Reporting companies formed later than December 2, 2024, but before December 24, 2024, have an additional 21 days from the initial 90-day filing deadline to comply
- Reporting companies formed in 2024 but after December 23, 2024, have 90 days after formation to comply
- Reporting companies formed on or after January 1, 2025 have 30 days after formation to comply

NEWS FLASH

The voyage of the CTA is a lot like the iconic comedic Abbott and Costello routine *Who's On First*. At a time when the calendar year usually ends with holiday festivities and business comes to a halt (leaving attorneys and tax advisors with lots of work to complete before midnight on December 31), events that impact the CTA and reporting companies have been unfolding daily.

The CTA was enacted by lawmakers. Then, we saw attempts to legislatively repeal the law. To date, however, these attempts have been unsuccessful.

A court in Alabama determined the law with respect to members of the National Small Business Association is unconstitutional. Additionally, individuals in several other states filed lawsuits, seeking to strike down the CTA.

Most recently, the Texas court struck the law down and temporarily enjoined the government from enforcing it nationwide. That case was appealed to the Fifth Circuit. The Fifth Circuit lifted the injunction, pending its consideration of the constitutionality of the law. Then, when we thought we could finish 2024 with some grain of certainty, at the end of business on December 26, 2024, the Fifth Circuit reinstated the injunction.

That is not the end of the saga. The Fifth Circuit will hear oral arguments and render its ultimate decision on the CTA in the upcoming days. Last, it is almost certain that the losing party will file a Writ of Certiorari, asking the U.S. Supreme Court to put finality to the tumultuous ride of the CTA.

The wild ride of the CTA is not over. We need to keep our eyes on the moving target.

For most reporting companies, rather than waiting to learn the ultimate fate of the CTA and risk exposure to penalties, complying now is the best approach. For those reporting companies that adopt a wait and see approach, however, keeping a close eye on the target is needed. The penalties for noncompliance are not inconsequential.

I will continue to report the best I can on this modern rendition of Abbott and Costello's *Who's On First!*

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