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CTA Update: DOJ Files SCOTUS Application to Stay Injunction

On December 26, 2024, a merits panel of the U.S. Court of Appeals for the Fifth Circuit reinstated a nationwide injunction against enforcement of the Corporate Transparency Act (CTA) that had been entered by the United States District Court for the District of Texas and subsequently vacated by a motions panel of the Fifth Circuit. The next stop on the winding path of this injunction will be the U.S. Supreme Court.

The Department of Justice has now filed with the Supreme Court an application to stay the injunction. If that application is granted, compliance with the CTA would be required during the pendency of court proceedings on the merits of the constitutionality of the CTA. In its stay application, the DOJ argued (i) the government is likely to succeed on the merits, (ii) the CTA requirements fall within Congress's authority under the Commerce Clause to regulate economic activities that substantially affect interstate commerce and are also necessary and proper to effectuate several of Congress's enumerated powers, including the power to regulate interstate and foreign commerce and to collect taxes, as well as Congress's powers with respect to foreign affairs, (iii) two other district courts had held that the CTA is likely constitutional and had denied preliminary injunction motions raising substantially similar constitutional claims, and (iv) the one other district court

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that held that the CTA violates the Constitution issued an injunction that covers only the plaintiffs in that case.

The DOJ's application requests that, "[t]he preliminary injunction entered by the district court (including its stay of the Reporting Rule's compliance deadline) should be stayed in full pending the consideration and disposition of the government's appeal and, if the court of appeals affirms, pending the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court. At a minimum, the injunction should be stayed except to the extent it protects respondents and the members of NFIB identified in the complaint."

For the time being, compliance with the CTA is not required due to the Fifth Circuit's reinstatement of the injunction. However, entities with reporting obligations under the CTA should be on alert for further developments.

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