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## Attorneys at Law

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## ALERT

### TEXAS FEDERAL DISTRICT COURT ENJOINS ENFORCEMENT OF CORPORATE TRANSPARENCY ACT

On December 3, 2024, the United States District Court for the Eastern District of Texas (the “Court”) issued an opinion that enjoins the enforcement of the Corporate Transparency Act (the “CTA”) **nationwide**. (*Texas Top Cop Shop, Inc. v. Garland* , Civil Action No. 4:24-CV-478 (E.D. Tex.)) The CTA requires the vast majority of business entities to report to the Department of Treasury – Financial Crimes Enforcement Network (“FinCEN”) information concerning a company’s “beneficial owners” (i.e., those individuals owning, directly or indirectly, over twenty-five percent (25%) of the company or those individuals with “substantial control” over the company).



The Court found that the CTA, and its related reporting requirements, are likely unconstitutional (for purposes of a preliminary injunction) as the CTA does not come within the Commerce Clause or the Necessary and Proper Clause and was therefore an improper expansion of Congress’ powers. (*Tex. Top Cop Shop, Inc.* at 68 and 107). The Court granted the plaintiffs’ Motion for a Preliminary Injunction and held that, “Given the extent of the violation, the injunction should apply **nationwide**.” [emphasis added] (*Id.* at 112-113). This ruling will effectively prohibit the Department of Treasury and/or FinCEN from enforcing the CTA and the requirement for business entities to file Beneficial Ownership Information Reports by January 1, 2025. It should be noted that the Court **did not** make an affirmative finding that the CTA *is* contrary to law or that it amounts to a violation of the constitution (*Id.*). Instead, the Court has, in effect, granted temporary relief from compliance with the CTA, pending the further order of the Court.

Based upon the Court’s opinion in the *Texas Top Cop Shop, Inc.* case, business entities are not required to comply with the CTA **at this time**. However, the viability of this case on appeal is unclear. The Attorney General of the United States filed a Notice of Appeal on December 5, 2024. It is entirely possible that the United States Court of Appeals for the Fifth Circuit (the “Fifth Circuit”) may overturn the Court’s ruling and reinstate the January 1, 2025 filing deadline. If the Fifth Circuit overturns the ruling before the end of the year, businesses may be required to expedite the filing of Beneficial Ownership Information Reports in order to avoid penalties.

Due to the uncertain future of the enforcement of the CTA, the rapidly approaching January 1<sup>st</sup> deadline and the potential penalties associated with a failure to comply with the CTA's reporting requirement, businesses and individuals should consider carefully whether or not to comply with the CTA and file their initial Beneficial Ownership Information Reports with FinCEN prior to January 1, 2025. As a reminder, penalties of up to Five Hundred Dollars (\$500) per day (for each day that violation of the CTA continues) may be imposed or criminal penalties including, up to two (2) years in prison and/or a fine of up to Ten Thousand Dollars (\$10,000) may be applicable. Further, senior officers of a company may be held *individually* accountable for the company's failure to file the required report. For these reasons, it may be that the time, effort and cost of compliance with the CTA may pose less of a burden than the potential liabilities and/or penalties associated with non-compliance.

Brothers Smith LLP would be happy to address any questions or concerns you may have regarding the implications of the *Texas Top Cop Shop, Inc.* case, compliance with the CTA and/or preparation of a Beneficial Ownership Information Report. Please do not hesitate to contact our office if you would like to discuss this matter.



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