

# BUSINESS AND TRANSACTIONS

## INFORMATION MEMO

JANUARY 24, 2025

### Corporate Transparency Act BOI Reports are Still Voluntary

Despite the Supreme Court's decision to stay the injunction issued against the enforcement of the Corporate Transparency Act (CTA), **reporting companies are still not required to file their BOI Reports**. In *Smith v. United States Department of the Treasury*, the United States District Court for the Eastern District of Texas issued a separate universal injunction on Jan. 7, 2025, which is still in place.

Though it appeared the Jan. 23, 2025 order from the Supreme Court of the United States in *McHenry v. Texas Top Cop Shop, Inc.* reinstated the filing requirements for many businesses since it lifted the Dec. 5, 2024 amended injunction issued by the United States District Court for the Eastern District of Texas, FinCEN, the division of the U.S. Department of the Treasury tasked with implementing and enforcing the CTA, issued an update on Jan. 24, 2025, clarifying that reporting is not required and that reporting companies will not face liability for failing to file at this time.

The Supreme Court's issuance of a stay of the injunction signals that the CTA reporting requirements may return in the near future unless other action is taken. If the Treasury Department appeals the injunction issued in *Smith*, as it did with that issued in *Texas Top Cop Shop*, an appeals court may lift the injunction because of the Supreme Court's order.

However, there are multiple other court cases, potential new legislation and a new administration that can also impact whether filing BOI Reports will ever become required again.

The back and forth seen in the last month is mostly related to a procedural issue of whether the CTA should be blocked while courts determine the constitutionality of it. Both the Fifth and Eleventh U.S. Circuit Courts of Appeals are currently weighing this constitutionality question. The Eleventh Circuit has already heard oral arguments, and the Fifth Circuit will conclude briefing on Feb. 28, 2025, with oral arguments scheduled for March 25, 2025. There are also appeals in the Fourth and Ninth U.S. Circuit Courts of Appeals from district courts that declined to issue injunctions, finding the CTA to be constitutional. Therefore, there is a good chance that there will be a circuit split, requiring the Supreme Court to eventually weigh in on this substantive question.

The "Repealing Big Brother Overreach Act" was re-introduced this month in the Senate by Tommy Tuberville and in the House by Warren Davidson to repeal the CTA. There have also been efforts in Congress to extend the BOI Reporting deadline. As of now, none of these efforts have reached a vote of either chamber nor made it to the President's desk, but there may be a renewed sense of urgency with the Supreme Court's latest decision.

Since the CTA was originally vetoed by President Trump in 2021 (but became law due to a veto-proof majority), it is possible that the new administration will take action to prevent the enforcement of the reporting requirements. It is also unclear whether the Department of Justice will pursue the appeal process as vigorously as it did under the Biden Administration.

While all of this plays out, we recommend that reporting companies, at the least, resume preparing to file BOI Reports. If this second injunction were to be lifted, reporting companies could face a tight deadline to prepare and file their BOI Reports. Reporting companies can also stay up to date by regularly visiting FinCEN's website at <https://fincen.gov/boi>.

Attorneys at Bond are monitoring the ongoing developments regarding the CTA. In the meantime, they are available to answer questions, analyze whether a BOI Report would be required, and, if necessary or desired, prepare and file BOI Reports.

We encourage you to contact an attorney in Bond's [business and transactions practice](#) or the Bond attorney with whom you are regularly in contact to determine how the CTA impacts your business.

