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Insights

The Yo-Yo Life of the CTA: Back in Play – Or Not

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Yesterday, on January 23, 2025, the United States Supreme Court stayed one of the injunctions against enforcement of the Corporate Transparency Act (CTA) pending the completion of the appeal process at the Fifth Circuit Court of Appeals. Yet, a different nationwide injunction appears to remain in place, subject to an appeal that could still be filed. And yet, the change in Presidential administrations complicates the analysis even more, as some speculate that the Justice Department under the Trump Administration could decide not to appeal this second injunction and let things stand as they are a bit longer. Confused?

The Supreme Court addressed the injunction issued by the District Court for the Eastern District of Texas in the case of *Texas Top Cop Shop, Inc., et al. v. Merrick Garland, Attorney General of the United States* (Case No. 4:24-cv-478) before Judge Amos Mazzant. In a one paragraph ruling without elaboration, the stay of the injunction requested by the Government was granted. This order allows the Government's appeal of the District Court's injunction to continue at the Fifth Circuit Court of Appeals, which has scheduled oral arguments on this appeal for March 25, 2025. With the stay, this injunction has been neutralized for now, the CTA is back in play and FinCEN can enforce the CTA against those who do not comply.

In the meantime, in a different matter - *Smith v. United States Dep't of the Treasury, 2025 WL 41924, at *13* (E.D. Tex. Jan. 7, 2025), also in the Eastern District of Texas but before Judge Jeremy Kernodle - this District Court granted a motion to stay enforcement of the CTA against the plaintiffs while the lawsuit is pending. This Court distinguished the position of the plaintiffs in this matter – two individuals who had formed LLCs to hold real estate and did not engage in interstate commerce – and their arguments from those in the *Texas Top Cop Shop* case. This District Court then also evaluated the permissible scope of a stay and issued a stay of the effective date of the CTA while the matter is pending without narrowing it to the plaintiffs. Effectively, then, enforcement of the CTA appears to be stayed across the board. The time to appeal this stay has not run.

The question pops up: Does this District Court stay of the effective date of the CTA in the *Smith* case trump the Supreme Court's stay of the injunction against enforcing the CTA? Counsel to the plaintiffs in the Smith case seem to think so and say its case is unaffected by the Supreme Court action in *Texas Top Cop Shop* and the stay issued by Judge Knoble remains valid. The Supreme Court may have a different view.

As of the release of this Alert, FinCEN has not yet issued any guidance following the Supreme Court stay order. Reporting companies find themselves left in limbo about their next steps. FinCEN has reminded reporting companies that voluntary filings will be accepted. If the second stay gets lifted and the timelines set in FinCEN's prior response guide what it might do next after the dust hanging in the air from all of this

confusion settles down, reporting companies should have a short time to complete any filing required by the CTA – assuming it survives at all.

Krieg DeVault will continue monitoring the CTA landscape with attention to ongoing litigation and actions of the Supreme Court and will provide further alerts as developments occur.

If you have any questions regarding the CTA or obligations to comply with the BOI reporting requirements, please contact Robert A. Greising, Travis D. Lovett, Jacob W. O'Donnell, Thomas M. Abrams, Robert C. Ansani, or any member of our Business, Acquisitions and Securities Practice.

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