No. 24A

In the Supreme Court of the United States

MERRICK GARLAND, ATTORNEY GENERAL, ET AL., APPLICANTS

v.

TEXAS TOP COP SHOP, ET AL.

APPLICATION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

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TABLE OF CONTENTS

PARTIES TO THE PROCEEDING

Applicants are Merrick Garland, Attorney General; Department of the Treasury; Janet Yellen, Secretary of the Treasury; Financial Crimes Enforcement Network (FinCEN); and Andrea Gacki, Director of FinCEN.

Respondents are Texas Top Cop Shop, Inc.; Data Comm for Business, Inc.; Libertarian Party of Mississippi; Mustardseed Livestock, L.L.C.; National Federation of Independent Business, Inc.; and Russell Straayer.

RELATED PROCEEDINGS

United States District Court (E.D. Tex.):

Texas Top Cop Shop, Inc. v. *Garland*, No. 24-cv-478 (Dec. 5, 2024)

United States Court of Appeals (5th Cir.):

Texas Top Cop Shop, Inc. v. *Garland*, No. 24-40792 (Dec. 26, 2024)

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Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of Merrick Garland, Attorney General, et al.—respectfully files this application for a stay of the preliminary injunction issued by the U.S. District Court for the Eastern District of Texas (App., *infra*, 19a-97a), pending the consideration and disposition of the government's appeal to the United States Court of Appeals for the Fifth Circuit and, if the court of appeals affirms in whole or in part, pending the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court.

In 2021, Congress adopted the Corporate Transparency Act (CTA or Act), 31 U.S.C. 5336, to counter financial crimes. Congress found that malign actors often conceal their ownership of corporations and other entities to facilitate illicit activities such as money laundering, tax fraud, human and drug trafficking, and the financing of terrorism. Congress determined that requiring companies to report information about their owners would enable the government to detect and prosecute financial crimes, discourage the use of shell companies to conduct illicit activity, and facilitate

the government's national-security and intelligence efforts.

The CTA accordingly requires covered entities to report to the federal government information about their beneficial owners—*i.e.*, individuals who exercise substantial control over the entity or own or control 25% of its ownership interests. Specifically, covered entities must report their beneficial owners' names, dates of birth, addresses, and unique identifying numbers (*e.g.*, driver's license or passport numbers). An implementing rule provided that covered entities formed before 2024 were required to file initial reports by January 1, 2025.

Respondents—four entities subject to the Act, an individual affiliated with one of those entities, and a membership organization—brought this suit to challenge the Act's constitutionality. The district court granted respondents a preliminary injunction, holding that they were likely to succeed on the merits of their claim that the Act, on its face, exceeds Congress's enumerated powers. Although respondents had sought relief only on their own behalf, the court entered a universal injunction purporting to enjoin the Act itself and prohibiting the enforcement of the Act even against nonparties. A motions panel of the Fifth Circuit stayed that injunction, but days later a merits panel vacated the stay and reinstated the universal injunction without any analysis of the government's likelihood of success on the merits or the relative harms to the parties.

This Court should stay the district court's injunction. The government is likely to succeed on the merits of respondents' claim. The Act's reporting requirements are important to the government in preventing, detecting, and prosecuting crimes such as money laundering, tax fraud, and the financing of terrorism. The requirements therefore fall comfortably within Congress's authority under the Commerce Clause to regulate economic activities (here, the anonymous operation of business entities)

that substantially affect interstate commerce. The requirements 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. Even if there might be outlier circumstances in which the Act could be thought to exceed Congress's powers, the Act complies with the Constitution in most of its applications, which suffices to defeat respondents' facial challenge.

Indeed, the district court issued its universal injunction after two other district courts had held that the Act is likely constitutional and had denied preliminary-injunction motions raising substantially similar constitutional claims. See *Community Ass'ns Institute* v. *Yellen*, No. 24-cv-1597, 2024 WL 4571412, at *10 (E.D. Va. Oct. 24, 2024); *Firestone* v. *Yellen*, No. 24-cv-1034, 2024 WL 4250192, at *14 (D. Or. Sept. 20, 2024). A third district court denied a preliminary-injunction motion because the plaintiffs had failed to show irreparable harm. See ECF No. 25, at 50, *Small Business Ass'n* v. *Yellen*, No. cv-314 (W.D. Mich. Apr. 29, 2024). Although one district court held that the Act violates the Constitution, it issued an injunction that covers only the plaintiffs in that case, see *NSBU* v. *Yellen*, 721 F. Supp. 3d 1260, 1289 (N.D. Ala. 2024), and the Eleventh Circuit expedited briefing and argument to facilitate appellate review before the January 1, 2025, reporting deadline, see C.A. Doc. 26 at 2, *NSBU* v. *United States Department of the Treasury*, No. 24-10736 (Apr. 22, 2024).

The equities also heavily favor the issuance of a stay. The district court's universal injunction irreparably harms the federal government in multiple ways. It prevents the government from executing a duly enacted Act of Congress, impedes efforts to prevent financial crime and protect national security, undermines the United States' ability to press other countries to improve their own anti-money laundering

regimes, and severely disrupts the ongoing implementation of the Act. By contrast, the Act imposes only minimal burdens on respondents.

At a minimum, this Court should narrow the district court's vastly overbroad injunction. A court of equity may grant relief only to the parties before it. The district court violated that principle by issuing a universal injunction purporting to enjoin the Act itself and forbidding the enforcement of the Act even against non-parties. Several Members of this Court have recognized that such universal relief contradicts Article III and established equitable principles and have urged clarification of these principles in an appropriate case—but the Court's antecedent determination on a threshold procedural issue or the merits in prior cases has obviated the need to resolve the remedial question. Because the lower courts need guidance on the propriety of universal injunctions, this Court may additionally wish to treat this application as a petition for a writ of certiorari before judgment presenting the question whether the district court erred in entering preliminary relief on a universal basis.

STATEMENT

1. On January 1, 2021, Congress enacted an omnibus statute known as the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116–283, 134 Stat. 3388. That statute's provisions include the Anti-Money Laundering Act of 2020 (Anti-Money Laundering Act or AMLA), Div. F, 134 Stat. 4547, which in turn includes the CTA, Tit. LXIV, 134 Stat. 4604.

In the CTA, Congress found that "malign actors seek to conceal their ownership" of corporations and similar entities "to facilitate illicit activity, including money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption, harming the national security interests of the United

States." § 6402(3), 134 Stat. 4604. Congress further found that "money launderers and others involved in commercial activity intentionally conduct transactions through corporate structures in order to evade detection, and may layer such structures, much like Russian nesting 'Matryoshka' dolls, across various secretive jurisdictions." § 6402(4), 134 Stat. 4604. Congress determined that new federal reporting requirements were needed to "protect vital United States national security interests," "protect interstate and foreign commerce," "counter money laundering, the financing of terrorism, and other illicit activity," and "bring the United States into compliance with international anti-money laundering and countering the financing of terrorism standards." § 6402(5)(B)-(E), 134 Stat. 4604. The information collected under the Act, Congress explained, would provide investigators with "insight into the flow of illicit funds through [corporate] structures" and would "discourage the use of shell corporations as a tool to disguise and move illicit funds." AMLA § 6002(5)(A)-(B), 134 Stat. 4547.

The Act accordingly imposes federal reporting requirements upon any "reporting company," a term defined to include any "corporation, limited liability company, or other similar entity" that is created (or, in the case of a foreign entity, registered to do business) "by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe." 31 U.S.C. 5336(a)(11)(A). The Act makes some exceptions to those reporting requirements. See 31 U.S.C. 5336(a)(11)(B). For example, the requirements do not apply to entities, such as banks and credit unions, that are already subject to other reporting regimes. See 31 U.S.C. 5336(a)(11)(B)(iii) and (iv). And the requirements do not apply to certain domestic entities that are no longer engaged in business. See 31 U.S.C. 5336(a)(11)(B)(xxiii).

A reporting company must report information about its "beneficial owner[s]"

and (for certain companies) its "applicant[s]." 31 U.S.C. 5336(b)(2)(A). A beneficial owner is an individual who "(i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity." 31 U.S.C. 5336(a)(3)(A); see 31 U.S.C. 5336(a)(3)(B) (establishing certain exceptions). An "applicant" is an individual who files documents to register the entity. See 31 U.S.C. 5336(a)(2). For each beneficial owner and applicant, a reporting company must report the individual's name, date of birth, address, and unique identifying number (such as a driver's license number). See 31 U.S.C. 5336(a)(1) and (b)(2)(A). A reporting company must submit an updated report when ownership information changes. See 31 U.S.C. 5336(b)(1)(D). A person who willfully violates the reporting requirements is subject to civil and criminal penalties. See 31 U.S.C. 5336(h).

The Act empowers the Financial Crimes Enforcement Network (FinCEN), a bureau of the Department of the Treasury, to adopt regulations implementing its provisions. See 31 U.S.C. 5336(b). In 2022, FinCEN adopted a rule establishing deadlines by which reporting companies must submit initial reports. See *Beneficial Ownership Information Reporting Requirements*, 87 Fed. Reg. 59,498 (Sept. 30, 2022) (Reporting Rule). The rule provided that entities created or registered before 2024 must comply by January 1, 2025; entities created or registered during 2024 must comply within 90 days after formation or registration; and entities created or registered after 2024 must comply within 30 days after formation or registration. See 31 C.F.R. 1010.380(a)(1).

2. Respondents include four entities that claim to be subject to the Act's reporting requirements: Texas Top Cop Shop, Inc. (a firearms dealer); Data Comm for Business, Inc. (an information-technology company); Mustardseed Livestock, LLC (a company that runs a dairy farm); and the Libertarian Party of Mississippi (a polit-

ical party). See App., *infra*, 27a-29a.[1] Respondents also include Russell Straayer (a beneficial owner of Data Comm) and the National Federation of Independent Business (NFIB) (an organization suing on behalf of its members). See *id.* at 28a, 30a. Respondents filed this suit in the U.S. District Court for the Eastern District of Texas, claiming that the Act's reporting requirements exceed Congress's enumerated powers and violate the First and Fourth Amendments. See *id.* at 32a.

The district court issued a universal preliminary injunction prohibiting the enforcement of the Act's reporting requirements and FinCEN's corresponding Reporting Rule. See App., *infra*, 19a-97a. The court concluded that respondents were likely to succeed on the merits of their claim that the Act, on its face, exceeds Congress's enumerated powers. See *id.* at 50a-91a. The court rejected the government's argument that the Act falls within Congress's power under the Commerce Clause, U.S. Const. Art. I, § 8, Cl. 3, reasoning that the statute does not regulate economic activity. See App., *infra*, 53a-71a. The court also rejected the government's argument that the Act is authorized by the Necessary and Proper Clause, U.S. Const. Art. I, § 8, Cl. 18, reasoning that the statute has an insufficient link to Congress's enumerated powers. See *id.* at 71a-91a. Having held that the Act exceeds Congress's enumerated powers, the court found it unnecessary to address respondents' First and Fourth Amendment claims. See *id.* at 91a.

The district court next concluded that the equities supported injunctive relief. See App., *infra*, 41a-50a, 91a-96a. It determined that respondents faced irreparable harm because they would incur compliance costs under the Act. See *id.* at 41a-50a.

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[1] The CTA's reporting requirements do not apply to tax-exempt political organizations. See 31 U.S.C. 5336(a)(11)(B)(xix)(II). But the Mississippi Libertarian Party claims, for reasons that remain unclear, that it "is not classified" as a political organization under federal law. App., *infra*, 29a.

And it concluded that "the threatened injury to [respondents] outweighs any potential harm to [the government]." *Id.* at 91a.

Although respondents had sought relief from enforcement of the statute only on their own behalf, the district court concluded that a "nationwide injunction is appropriate." App., *infra*, 93a. The court emphasized that the Act and the Reporting Rule "apply nationwide" and that "NFIB's membership extends across the country." *Id.* at 95a. "Given the extent of the violation," the court concluded that "the injunction should [also] apply nationwide." *Ibid.* The court purported to enjoin the Act itself, stating: "[T]he CTA, 31 U.S.C. § 5336[,] is hereby enjoined." *Id.* at 97a. Invoking a provision of the Administrative Procedure Act (APA), 5 U.S.C. 705, the court also entered a universal "stay of the Reporting Rule's compliance deadline pending further order of the Court." *Id.* at 96a.

The government appealed to the Fifth Circuit. See App., *infra*, 11a. The district court denied the government's motion to stay the preliminary injunction pending appeal. See *id.* at 10a-18a. The court "acknowledge[d]" "concerns with nationwide injunctions," but again concluded that the nationwide scope of its injunction was appropriate "under the facts and circumstances of this case." *Id.* at 14a-15a.

2. A motions panel of the Fifth Circuit granted the government's motion to stay the preliminary injunction pending appeal. See App., *infra*, 3a-9a.

The motions panel determined that the government was likely to succeed on the merits of respondents' claim. See App., *infra*, 5a-7a. The court explained that the "ownership and operation of a business" are economic activities and that "a reporting requirement for entities engaged in these economic activities falls within 'more than a century of the Supreme Court's Commerce Clause jurisprudence.'" *Id.* at 5a (brackets and citation omitted). The court also explained that respondents' fa-

cial challenge was likely to fail because "the CTA at least operates constitutionally when it requires that corporations engaged in business operations affecting interstate commerce disclose their beneficial owner and applicant information." *Id.* at 7a.

The motions panel likewise determined that the equities supported a stay. See App., *infra*, 7a-9a. The court explained that "a last-minute injunction" against the enforcement of a federal statute "necessarily inflicts irreparable harm." *Id.* at 7a. The court also reasoned that "the harm that a stay would cause the [respondents] is minimal" and is outweighed by "the public's urgent interest in combatting financial crime and protecting our country's national security." *Id.* at 8a.

Judge Haynes concurred in part and dissented in part. See App., *infra*, 4a n.1. She agreed that "a national injunction is not appropriate here" and would have stayed the preliminary injunction "as to the non-parties." *Ibid.* But she would have denied a stay "as to the parties," "including the members of NFIB, as long as their identities are disclosed to the government." *Ibid.*

Recognizing that reporting companies may need additional time to comply with the Act given the period when the preliminary injunction was in effect, FinCEN extended the reporting deadlines in certain respects, including by extending the deadline for entities formed before 2024 from January 1, 2025, to January 13, 2025. See C.A. Doc. 105 at 1-2, *NSBU* v. *United States Department of the Treasury*, No. 24-10736 (11th Cir. Dec. 24, 2024).

3. Respondents filed a petition for rehearing en banc. See C.A. Doc. 143 (Dec. 24, 2024). While that petition was pending, a merits panel of the Fifth Circuit vacated the motions panel's stay—thus reinstating the district court's universal injunction—without any analysis of the government's likelihood of success on the merits or the harms to the parties. The merits panel stated only that its action was

warranted "in order to preserve the constitutional status quo while the merits panel considers the parties' weighty substantive arguments." App., *infra*, 2a. The merits panel issued a briefing schedule under which briefing will be completed by February 28, 2025, see C.A. Doc. 163, at 1 (Dec. 27, 2024), and scheduled oral argument for March 25, 2025, C.A. Doc. 165, at 1 (Dec. 27, 2024). After the merits panel reinstated the district court's injunction, respondents withdrew their petition for rehearing as moot. See C.A. Doc. 183 (Dec. 27, 2024).

ARGUMENT

To obtain a stay of a district court's injunction pending the disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that this Court would grant certiorari, (2) a likelihood of success on the merits, and (3) a likelihood of irreparable harm in the absence of a stay. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," the Court "will balance the equities and weigh the relative harms." *Ibid.* Those factors overwhelmingly support a stay here. At a minimum, this Court should grant a partial stay narrowing the district court's vastly overbroad injunction. And to provide clarity to lower courts on that recurring remedial issue—which has escaped review in prior cases because of the Court's antecedent procedural or merits rulings—the Court may additionally wish to construe this application as a petition for a writ of certiorari before judgment presenting the question whether the district court erred in entering preliminary relief on a universal basis and resolve that issue this Term.

A. This Court Has Traditionally Applied A Strong Presumption In Favor Of Allowing Challenged Acts Of Congress To Remain In Force Pending Final Review In This Court

In reviewing emergency applications, this Court has traditionally applied a strong presumption that "Acts of Congress * * * 'should remain in effect pending a

final decision on the merits by this Court.'" *Turner Broadcasting System, Inc.* v. *FCC*, 507 U.S. 1301, 1301 (1993) (Rehnquist, C.J., in chambers) (citation omitted); see *Wisconsin Right to Life, Inc.* v. *FEC*, 542 U.S. 1305, 1305-1306 (2004) (Rehnquist, C.J., in chambers); *Doe* v. *Gonzales*, 546 U.S. 1301, 1308-1309 (2005) (Ginsburg, J., in chambers); *Heart of Atlanta Motel, Inc.* v. *United States*, 85 S. Ct. 1, 2 (1964) (Black, J., in chambers). In "virtually all" cases where a lower court has held an Act of Congress unconstitutional, the Court has "granted a stay if requested to do so by the Government." *Bowen* v. *Kendrick*, 483 U.S. 1304, 1304 (1987) (Rehnquist, C.J., in chambers); see, *e.g.*, *Horseracing Integrity & Safety Authority, Inc.* v. *National Horsemen's Benevolent & Protective Ass'n*, No. 24A287, 2024 WL 4589181 (Oct. 28, 2024); *United States* v. *Comstock*, No. 08A863, 2009 WL 10801016 (Apr. 3, 2009) (Roberts, C.J., in chambers); *Walters* v. *National Ass'n of Radiation Survivors*, 468 U.S. 1323, 1324 (1984) (Rehnquist, J., in chambers); *Schweiker* v. *McClure*, 452 U.S. 1301, 1303 (1981) (Rehnquist, J., in chambers); *Rostker* v. *Goldberg*, 448 U.S. 1306, 1311 (1980) (Brennan, J., in chambers); *Marshall* v. *Barlow's, Inc.*, 429 U.S. 1347, 1348 (1977) (Rehnquist, J., in chambers).

That practice reflects the "presumption of constitutionality" which attaches to every Act of Congress. *United States* v. *Morrison*, 529 U.S. 598, 607 (2000). Judging the constitutionality of an Act of Congress is "the gravest and most delicate duty that this Court is called on to perform." *Blodgett* v. *Holden*, 275 U.S. 142, 148 (1927) (opinion of Holmes, J.). In performing that duty, the Court usually accords "great weight" to Congress's judgment that a statute is constitutional. *Rostker* v. *Goldberg*, 453 U.S. 57, 64 (1981) (citation omitted). The "presumption is in favour of every legislative act," and "the whole burthen of proof lies on him who denies its constitutionality." *Brown* v. *Maryland*, 12 Wheat. 419, 436 (1827) (Marshall, C.J.); see, *e.g.*, *Sink-*

ing-Fund Cases, 99 U.S. 700, 718 (1878) ("Every possible presumption is in favor of the validity of a statute.").

The presumption of constitutionality informs the analysis of each of the stay factors. First, whenever a court of appeals holds a federal statute unconstitutional, there is at least a reasonable probability that this Court will grant certiorari. This Court almost invariably grants review "when a lower court has invalidated a federal statute." *Iancu* v. *Brunetti*, 588 U.S. 388, 392 (2019). Second, the presumption of constitutionality is "a factor to be considered in evaluating success on the merits." *Walters*, 468 U.S. at 1324 (Rehnquist, J., in chambers). "Due respect" for Congress requires that a court find a federal statute unconstitutional "only upon a plain showing that Congress has exceeded its constitutional bounds." *Morrison*, 529 U.S. at 607. Finally, the presumption of constitutionality is "an equity to be considered in favor of applicants." *Walters*, 468 U.S. at 1324 (Rehnquist, J., in chambers). Whenever a sovereign is prevented "from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland* v. *King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers).

The practical realities of this Court's emergency docket underscore the importance of adhering to that traditional approach. Emergency applications usually require the Court to address issues "on a short fuse without benefit of full briefing and oral argument." *Does 1-3* v. *Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in the denial of application for injunctive relief). When the Court operates under such constraints, it should be especially respectful of Congress's judgment that a federal statute complies with the Constitution. "'Given the presumption of constitutionality granted to all Acts of Congress,'" it is therefore "appropriate that the statute remain in effect pending [this Court's] review." *Kendrick*, 483 U.S. at 1304 (Rehnquist, C.J.,

in chambers) (citation omitted).

B. If The Fifth Circuit Affirms The District Court's Injunction, This Court Would Likely Grant Certiorari And Reverse

If the Fifth Circuit affirms the district court's injunction, this Court would likely grant the government's petition for a writ of certiorari. As noted above, this Court usually grants review when a lower court holds an Act of Congress unconstitutional. See p. 12, *supra*. The Court has recently and repeatedly reviewed decisions invalidating federal statutes, even in the absence of a circuit conflict. See, *e.g.*, *SEC* v. *Jarkesy*, 144 S. Ct. 2117, 2127 (2024); *United States* v. *Rahimi*, 602 U.S. 680, 690 (2024); *Vidal* v. *Elster*, 602 U.S. 286, 292 (2024); *Haaland* v. *Brackeen*, 599 U.S. 255, 272 (2023); *Torres* v. *Texas Department of Public Safety*, 597 U.S. 580, 586 (2022).

This Court would also likely reverse a decision affirming the district court's injunction. Contrary to the district court's decision, the Commerce Clause and Necessary and Proper Clause empower Congress to adopt the CTA's reporting requirements. At the very least, the requirements do not violate the Constitution on their face.

1. The Commerce Clause empowers Congress to adopt the CTA's reporting requirements

a. The Commerce Clause empowers Congress to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. Art. I, § 8, Cl. 3. The power to regulate interstate commerce includes the power "to enact 'all appropriate legislation' for its 'protection or advancement,'" the power "to adopt measures 'to promote its growth and insure its safety,'" and the power "'to foster, protect, control, and restrain.'" *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 36-37 (1937) (citations omitted).

The Commerce Clause, as relevant here, authorizes Congress to regulate "intrastate economic activity" that, "viewed in the aggregate," "substantially affects in-

terstate commerce." *United States* v. *Lopez*, 514 U.S. 549, 559, 561 (1995). Applying that principle, this Court has held that Congress may regulate activities such as the growing of marijuana, see *Gonzales* v. *Raich*, 545 U.S. 1, 15-33 (2005); mining, see *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 275-283 (1981); loan sharking, see *Perez* v. *United States*, 402 U.S. 146, 150-157 (1971); the operation of hotels, see *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241, 253-262 (1964); and the production and consumption of homegrown wheat, see *Wickard* v. *Filburn*, 317 U.S. 111, 119-129 (1942).

That principle amply supports the CTA. The Act regulates an economic activity: the "anonymous ownership and operation of businesses." App., *infra*, 5a. That class of activities, in the aggregate, substantially affects interstate commerce by facilitating "illicit activity" such as "money laundering," "human and drug trafficking," and "securities fraud." CTA § 6402(3), 134 Stat. 4604. The Act therefore falls comfortably within the category of legislation permitted by "more than a century of [this] Court's Commerce Clause jurisprudence." App., *infra*, 5a (citation omitted).

Underscoring the CTA's constitutionality, the Act includes "formal findings" regarding the regulated activity's effects on interstate commerce. *Lopez*, 514 U.S. at 562. In the Act, Congress found that "malign actors seek to conceal their ownership" of corporations and similar entities; that "money launderers and others involved in commercial activity intentionally conduct transactions through corporate structures in order to evade detection"; and that "legislation providing for the collection of beneficial ownership information * * * is needed to * * * protect interstate and foreign commerce." CTA § 6402(3)-(5), 134 Stat. 4604. Although such findings are "not required," they reinforce "the legislative judgment that the activity in question substantially affect[s] interstate commerce." *Lopez*, 514 U.S. at 562-563.

Further confirming the CTA's constitutionality, the Act is an "essential part of a larger regulation of economic activity." *Lopez*, 514 U.S. at 561. The CTA forms part of the Anti-Money Laundering Act, a statute that (as its name suggests) establishes a regulatory framework for countering money laundering. "Money laundering is a quintessential economic activity. Indeed, it is difficult to imagine a more obviously commercial activity than engaging in financial transactions involving the profits of unlawful activity." *United States* v. *Goodwin*, 141 F.3d 394, 399 (2d Cir. 1997). The CTA's reporting requirements facilitate Congress's broader efforts to counter money laundering by enabling investigators to trace the flow of illicit funds and by discouraging the use of shell corporations to conceal transactions. See AMLA § 6002(5), 134 Stat. 4547. The Commerce Clause empowers Congress to adopt those requirements.

b. In holding that the CTA exceeds Congress's power to regulate interstate commerce, the district court relied on this Court's decision in *NFIB* v. *Sebelius*, 567 U.S. 519 (2012), that the Commerce Clause does not empower Congress to require individuals to buy health insurance. See App., *infra*, 61a. The district court reasoned that, like the mandate to purchase health insurance in *NFIB*, the Act regulates inactivity rather than economic activity. See *ibid.* That rationale is flawed.

The CTA regulates the anonymous ownership and operation of corporations and similar entities incorporated or registered under state or tribal law. A central purpose of the formation of such entities is to engage in economic activity. By definition, a corporation has legal authority to conduct economic transactions in its own name, including by making contracts, borrowing money, incurring liabilities, and transferring real and personal property. See, *e.g.*, Del. Code Ann. tit. 8, § 122. And it is hardly speculative that entities that incur the trouble and expense of filing papers to obtain authority to conduct economic transactions in their own name will go

on to exercise that authority. Respondents illustrate the point. Texas Top Cop Shop deals in firearms, Data Comm provides information-technology services, and Mustardseed operates a dairy farm. See pp. 6-7, *supra*. Even the Mississippi Libertarian Party holds assets and expends donated money. See App., *infra*, 29a.

The district court also overlooked the Act's exemptions. The Act's reporting requirements do not apply, for example, to many non-profit organizations, political organizations, and trusts. See 31 U.S.C. 5336(a)(11)(B)(xix). Nor do they apply to certain entities that are no longer engaged in active business and that do not otherwise hold assets. See 31 U.S.C. 5336(a)(11)(B)(xxiii). The Act, in addition, authorizes FinCEN to exempt any other "entity or class of entities" for which reporting would not "serve the public interest" and "would not be highly useful" in "efforts to detect, prevent, or prosecute" financial crimes. 31 U.S.C. 5336(a)(11)(B)(xxiv). "While these exemptions might not sweep in every single dormant corporate entity," they confirm that the Act regulates an economic activity—namely, "the ownership and operation of businesses." App., *infra*, 6a.

In all events, the Commerce Clause does not require Congress "to legislate with scientific exactitude." *Raich*, 545 U.S. at 17. Rather, "where a general regulatory statute bears a substantial relation to commerce, the *de minimis* character of individual instances arising under that statute is of no consequence." *Lopez*, 514 U.S. at 558 (citation and emphasis omitted). That is especially so when, as here, the "'total incidence' of a practice"—the formation of entities that may engage in commercial activity while hiding the identities of their beneficial owners—"poses a threat to the national market." *Raich*, 545 U.S. at 17 (citation omitted); see *id.* at 23 ("[W]here the class of activities * * * is within the reach of federal power, the courts have no power 'to excise, as trivial, individual instances' of the class.") (citation omitted).

2. The Necessary and Proper Clause empowers Congress to adopt the CTA's reporting requirements

a. The Necessary and Proper Clause empowers Congress to "make all Laws which shall be necessary and proper for carrying into Execution" the federal government's powers. U.S. Const. Art. I, § 8, Cl. 18. That Clause grants Congress "broad authority" to enact laws that implement its enumerated powers. *United States* v. *Comstock*, 560 U.S. 126, 133 (2010). In other words, the Clause empowers Congress to "make [its] legislation effectual." *Cohens* v. *Virginia*, 6 Wheat. 264, 427 (1821).

A law is a valid exercise of Congress's authority under the Necessary and Proper Clause if it is directed toward "carrying into Execution" a power conferred by the Constitution and is a "necessary" and "proper" means of achieving that end. U.S. Const. Art. I, § 8, Cl. 18; see *Jinks* v. *Richland County*, 538 U.S. 456, 461-465 (2003). A law is "necessary" if it is "convenient," "useful," or "conducive" to exercising an enumerated power. *McCulloch* v. *Maryland*, 4 Wheat. 316, 413, 418 (1819). And a law is "proper" if it comports with "the letter and spirit" of the Constitution. *Id.* at 421.

The Necessary and Proper Clause authorizes not only laws that effectuate a "single enumerated power," but also those that effectuate the "aggregate" of multiple powers. *Legal Tender Cases*, 12 Wall. 457, 535 (1870). For example, in *McCulloch*, this Court determined that the establishment of the Bank of the United States helped implement Congress's powers "to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies." 4 Wheat. at 407. And in *Comstock*, the Court explained that laws establishing and regulating federal prisons implement the various enumerated powers under which Congress has enacted criminal laws—the power "to regulate interstate and foreign commerce, to enforce civil rights, to spend funds for the general welfare, to establish

federal courts, to establish post offices, to regulate bankruptcy, to regulate naturalization, and so forth." 560 U.S. at 136.

The CTA's reporting requirements are similarly directed toward effectuating multiple enumerated powers. Most importantly, they counter "money laundering," "human and drug trafficking," "securities fraud," and "financial fraud," § 6402(3), 134 Stat. 4604, thus effectuating Congress's power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes," U.S. Const. Art. I, § 8, Cl. 3. The requirements also help prevent "serious tax fraud," § 6402(3), 134 Stat. 4604, effectuating Congress's power to "lay and collect Taxes," U.S. Const. Art. I, § 8, Cl. 1. The requirements address "the financing of terrorism," "proliferation financing," and "acts of foreign corruption," § 6402(3), 134 Stat. 4604, effectuating Congress's powers with respect to national security and international relations, see *Toll* v. *Moreno*, 458 U.S. 1, 10 (1982).

The CTA's reporting requirements carry into execution not only Congress's own powers, but also "other Powers vested by th[e] Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. Art. I, § 8, Cl. 18. Article II vests the President with the "executive Power" and directs him to "take Care that the Laws be faithfully executed." U.S. Const. Art. II, § 1, Cl. 1 and § 3. The reporting requirements help the President execute federal law by enabling the Executive Branch to trace the flow of illicit funds and detect and prosecute financial crimes. See § 6402(6)(A), 134 Stat. 4605. Article II also vests the President with broad authority in the fields of foreign affairs and national security. See *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 319-322 (1936). The Act effectuates those powers as well by facilitating the Executive Branch's "national security" and "intelligence" activities. § 6402(6)(A), 134 Stat. 4605.

The CTA's reporting requirements are "necessary" for implementing those powers. Congress found that "malign actors seek to conceal their ownership" of corporations and other entities "to facilitate illicit activity." CTA § 6402(3), 134 Stat. 4604. It further found that criminals "intentionally conduct transactions through corporate structures in order to evade detection," "layer[ing] such structures, much like Russian nesting 'Matryoshka' dolls, across various secretive jurisdictions, such that each time an investigator obtains ownership records for a domestic or foreign entity, the newly identified entity is yet another corporate entity." § 6402(4), 134 Stat. 4604. Congress found that collecting ownership information would "better enable critical national security, intelligence, and law enforcement efforts to counter" such "illicit activity." § 6402(5)(D), 134 Stat. 4604. It likewise explained that the requirements would "discourage the use of shell corporations as a tool to disguise and move illicit funds." AMLA § 6002(5)(B), 134 Stat. 4547. Congress's findings confirm that the Act's reporting requirements are "useful" and "convenient" for implementing the federal government's enumerated powers. *McCulloch*, 4 Wheat. at 413.

The CTA's reporting requirements fall well within the bounds of what is "proper" under the Clause. The requirements apply only to entities that must already file "a document with a secretary of state or a similar office" under state or tribal law to be formed or to do business in the United States, 31 U.S.C. 5336(a)(11)(A), and covered entities need report only the names, dates of birth, addresses, and unique identifying numbers of their applicants and beneficial owners, see p. 6, *supra*. The Act also effectuates the government's constitutional powers in direct and obvious ways. See pp. 18-19, *supra*. Nor are the Act's requirements affirmatively "prohibited" by other constitutional provisions. *Id.* at 134 (citation omitted). Although respondents argued that the requirements violate the First and Fourth Amendments, the

district court did not reach those claims, see App., *infra*, 91a, and other district courts have correctly rejected similar claims in other cases, see *Community Ass'ns Institute* v. *Yellen*, No. 24-cv-1597, 2024 WL 4571412, at *8 (E.D. Va. Oct. 24, 2024); *Firestone* v. *Yellen*, No. 24-cv-1034, 2024 WL 4250192, at *9-*10 (D. Or. Sept. 20, 2024).

b. Precedent and historical practice confirm that the Act's reporting requirements comply with the Constitution. Congress has often required private individuals and entities to provide information to the government, and this Court has upheld many such requirements under the Necessary and Proper Clause.

To take a familiar example, federal law requires "the submission of tax-related information that it believes helpful in assessing and collecting taxes." *CIC Services, LLC* v. *IRS*, 593 U.S. 209, 212 (2021). Taxpayers must file annual tax returns, see 26 U.S.C. 6012; employers must report their employees' wages, see 26 C.F.R. 31.6051-2; banks must report interest paid on deposits, see 26 C.F.R. 1.6049-1(a); and so forth. This Court has determined that such reporting requirements are necessary and proper for the collection of taxes. In *Sonzinsky* v. *United States*, 300 U.S. 506 (1937), the Court upheld a statute that taxed firearms dealers and required them to register with the federal government, explaining that the registration requirement was "obviously supportable as in aid of a revenue purpose." *Id.* at 513. And in *United States* v. *Kahriger*, 345 U.S. 22 (1953), the Court upheld a taxation-and-registration scheme for gambling businesses, observing that "[a]ll that is required is the filing of names, addresses, and places of business" and that "[s]uch data are directly and intimately related to the collection of the tax." *Id.* at 31-32.

This Court has likewise determined that Congress may implement its power to regulate interstate commerce by requiring private entities to provide information to the federal government. For example, in *ICC* v. *Brimson*, 154 U.S. 447 (1894), the

Court upheld a statute requiring witnesses to provide evidence during proceedings of the Interstate Commerce Commission. The Court explained that the requirement was "appropriate and plainly adapted to the protection of interstate commerce." *Id.* at 473. Similarly, in *Electric Bond & Share Co.* v. *SEC*, 303 U.S. 419 (1938), the Court upheld a statute requiring holding companies to file reports with the Securities and Exchange Commission. It explained that a "requirement of information" is a "permissible and useful type of regulation" to protect interstate commerce. *Id.* at 439.

Taxation and commerce are far from the only contexts in which this Court has held that Congress may require private individuals to provide information to the government. Congress has enacted, and this Court has upheld, reporting requirements that implement a variety of other enumerated powers. For example:

- *Power to raise armies.* Federal law requires men between the ages of 18 and 26 to register with the Selective Service System and to report their dates of birth, addresses, and social security numbers. See 50 U.S.C. 3802. This Court has determined that those requirements are necessary and proper to effectuate the power to "raise and support Armies." U.S. Const. Art. I, § 8, Cl. 12; see *United States* v. *O'Brien*, 391 U.S. 367, 377 (1968).
- *Power to govern the armed forces.* Federal law requires certain sex offenders to register and to provide information such as their names, addresses, and social security numbers. See 34 U.S.C. 20913, 20914. This Court has upheld those requirements, as applied to military offenders, as necessary and proper to effectuate the power to "make Rules for the Government and Regulation of the land and naval Forces." U.S. Const. Art. I, § 8, Cl. 14; see *United States* v. *Kebodeaux*, 570 U.S. 387, 393-399 (2013).
- *Power to establish post offices.* In *Lewis Publishing Co.* v. *Morgan*, 229 U.S.

288 (1913), this Court upheld a statute requiring senders of second-class mail to report the names of their stockholders, bondholders, and officials to the Postmaster General. The Court explained that the collection of such information was incidental to the power to "establish Post Offices," U.S. Const. Art. I, § 8, Cl. 7, because the reports helped ensure that those who sent second-class mail were eligible to do so. See *id.* at 313-316.

- *Power to regulate federal elections.* Federal law requires campaigns to report contributions and expenditures. See 52 U.S.C. 30104. This Court has determined that the Necessary and Proper Clause empowers Congress to adopt such requirements. See *Burroughs* v. *United States*, 290 U.S. 534, 547-548 (1934).

Congress has enacted many more statutes that require individuals to provide information to the federal government, but that have not been challenged in this Court. Since the Founding, consistent with the maxim that "the public has a right to every man's evidence," Congress has exercised the power "to compel persons to testify in court or before grand juries." *Kastigar* v. *United States*, 406 U.S. 441, 443 (1972); see Judiciary Act of 1789, ch. 20, § 30, 1 Stat. 88. Similarly, Congress has long prohibited misprision of felony—*i.e.*, concealing a felony and failing to report it to appropriate authorities. See 18 U.S.C. 4; Crimes Act of 1790, ch. 9, § 6, 1 Stat. 113. Congress has required individuals to provide demographic information as part of the decennial census mandated by the Constitution, including information unrelated to the apportionment of congressional seats. See U.S. Const. Art. I, § 2, Cl. 3; 13 U.S.C. 221(a); *Department of Commerce* v. *New York*, 588 U.S. 752, 760 (2019). Congress also has required individuals to respond to questionnaires as part of other federal surveys, such as the American Community Survey. See 13 U.S.C. 193, 221(a).

Congress has imposed even more extensive reporting obligations on artificial persons. For instance, publicly traded companies must file reports with the Securities and Exchange Commission, see, *e.g.*, 15 U.S.C. 78m; banks must file reports with the Federal Deposit Insurance Corporation, see, *e.g.*, 12 U.S.C. 1831m(a); credit unions must file reports with the National Credit Union Administration, see, *e.g.*, 12 U.S.C. 1782(a); and manufacturers, distributors, and retailers must file reports with the Consumer Product Safety Commission, see, *e.g.*, 15 U.S.C. 2064(b). The CTA's reporting requirements similarly apply to artificial persons.

In sum, "requiring the submission of information" is a "familiar category" of regulation. *Electric Bond*, 303 U.S. at 437. The Necessary and Proper Clause empowers Congress to adopt such a requirement when, as here, the "[i]nformation bear[s] upon activities which are within the range of congressional power." *Ibid.*

c. The district court's contrary reasoning lacks merit.

First, the district court relied on this Court's decision in *NFIB* that the Necessary and Proper Clause does not empower Congress to require individuals to buy health insurance. See App., *infra*, 73a-74a. The court concluded that, like the insurance mandate in *NFIB*, the CTA improperly regulates inactivity by imposing obligations upon companies "simply because those companies exist in their natural state." *Id.* at 73a. As discussed above, the court erred in categorizing the establishment and operation of a business entity as a form of inactivity. See pp. 15-16, *supra*. Even putting that point aside, the court overlooked the distinction between a law requiring inactive individuals "to engage in commerce," *NFIB*, 567 U.S. at 540, and a law requiring "the submission of information," *Electric Bond*, 303 U.S. at 437. While laws requiring individuals to engage in commerce are novel, see *NFIB*, 567 U.S. at 549 (opinion of Roberts, C.J.), laws requiring them to submit information are "familiar,"

Electric Bond, 303 U.S. at 437. Thus, Congress may require private persons—even those who simply "exist in their natural state" without engaging in economic activity, App., *infra*, 73a—to register for Selective Service or to provide evidence in agency proceedings. Congress may likewise require purportedly inactive private entities to report the information required by the CTA. And Congress reasonably determined that the affirmative act of incorporation or similar formation is an appropriate occasion on which to require reporting concerning who has substantial ownership of or control over the entity, so that the information would be available when the entity does engage in economic activity and so that those individuals would be deterred from using the companies for illegal purposes.

Second, the district court reasoned that the Act improperly intrudes into the field of corporate law, an arena "traditionally controlled by the states." App., *infra*, 83a. In *McCulloch*, however, this Court rejected a similar argument that Congress's creation of the Bank of the United States improperly intruded upon the States' "power of creating a corporation." 4 Wheat. at 409. In any event, the CTA does not displace state laws defining the types of business entities that individuals may establish, the requirements that such entities must fulfill, or the procedures for incorporating such entities. As the district court recognized, the Act neither "adds [any]thing to, nor detracts in any way from, the registration process under State law." App., *infra*, 60a. The Act simply provides that, once a corporation or similar entity has been established in accordance with state law, it must report information about its applicants and beneficial owners to the federal government. See pp. 5-6, *supra*.

Finally, the district court perceived an insufficient link between the Act and Congress's enumerated powers. See App., *infra*, 90a. But the Necessary and Proper Clause "vests Congress with broad discretion over the manner of implementing its

enumerated powers." *Armstrong* v. *Exceptional Child Care Center, Inc.*, 575 U.S. 320, 325 (2015). If, as here, "the means adopted are really calculated to attain the end," then "the degree of their necessity" and the "closeness of the[ir] relationship" to the end are generally "matters for congressional determination." *Burroughs*, 290 U.S. at 548. A court should ask only "whether the statute constitutes a means that is rationally related to the implementation of a constitutionally enumerated power." *Comstock*, 560 U.S. at 134. For the reasons discussed above, the Act easily satisfies that test. See p. 18-19, *supra*.

3. Respondents have not satisfied the high standard for bringing a facial challenge

Respondents have chosen to litigate this case as a facial challenge, see App., *infra*, 32a, and "that decision comes at a cost," *Moody* v. *NetChoice, LLC*, 603 U.S. 707, 723 (2024). "For a host of good reasons, courts usually handle constitutional claims case by case, not en masse." *Ibid.* "'Claims of facial invalidity often rest on speculation' about the law's coverage and its future enforcement." *Ibid.* (citation omitted). "And 'facial challenges threaten to short circuit the democratic process' by preventing duly enacted laws from being implemented in constitutional ways." *Ibid.* (citation omitted).

"This Court has therefore made facial challenges hard to win." *NetChoice*, 603 U.S. at 723. Indeed, a facial challenge to a statute is the "most difficult challenge to mount successfully." *Rahimi*, 602 U.S. at 693 (citation omitted). The challenger must "establish that no set of circumstances exists under which the Act would be valid." *Ibid.* (citation omitted). If the Act complies with the Constitution in even "some of its applications," the facial challenge fails. *Ibid.* That standard applies to claims that Congress has exceeded its enumerated powers. See *Sabri* v. *United States*, 541 U.S.

600, 608-610 (2004).

The CTA's reporting requirements plainly have at least "some" valid applications. *Rahimi*, 602 U.S. at 693. The Act, at a minimum, complies with the Constitution as applied to entities—such as the reporting-company respondents and presumably the vast majority of NFIB's members—that are "engaged in business operations affecting interstate commerce." App., *infra*, 7a. That defeats the facial challenge.

C. The Equities Support A Stay

1. The district court's injunction subjects the government to serious and irreparable harm. A sovereign "suffers a form of irreparable injury" whenever it is "enjoined by a court from effectuating statutes enacted by representatives of its people." *New Motor Vehicle Board* v. *Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers). The injury here is particularly stark: The court held a federal statute invalid on its face and enjoined its enforcement nationwide.

Concretely, the district court's injunction harms the government by prohibiting the enforcement of a statute that seeks to protect national security. Congress explicitly found that the CTA's reporting requirements are "needed to * * * protect vital United States national security interests" and to "better enable critical national security, intelligence, and law enforcement efforts." CTA § 6402(5)(B) and (D), 134 Stat. 4604. The Executive Branch agrees with that assessment. Thus, in the Reporting Rule, FinCEN explained that the Act's requirements "impede illicit actors' ability to use legal entities to conceal proceeds from criminal acts that undermine U.S. national security and foreign policy interests, such as corruption, human smuggling, drug and arms trafficking, and terrorist financing." 87 Fed. Reg. at 59,500. And in a declaration filed in the district court, FinCEN's Director explained that the Act furnishes "essential information to the intelligence and national security professionals who

work to prevent terrorists and other illicit actors from raising, hiding, or moving money in the United States through anonymous shell or front companies." App., *infra*, 100a.

FinCEN has provided specific examples to illustrate the threat that the use of "shell or front companies" poses to "national security." 87 Fed. Reg. at 59,498. For instance, since "Russia's unlawful invasion of Ukraine in February 2022," "Russian elites, state-owned enterprises, and organized crime" "have attempted to use U.S. and non-U.S. shell companies to evade sanctions imposed on Russia." *Ibid.* One "sanctioned Russian oligarch" "used shell companies" to "avoid bank oversight of U.S. dollar transactions." *Ibid.* The "Iranian government" has similarly used "shell companies" "to obfuscate the source of its funds and hide its involvement in efforts to generate revenue." *Id.* at 59,502. In one case, "the Department of Justice charged 10 Iranian nationals with running a nearly 20-year-long scheme to evade U.S. sanctions on the Government of Iran by disguising more than $300 million worth of transactions—including the purchase of two $25 million oil tankers—on Iran's behalf through front companies in California" and other jurisdictions. *Id.* at 59,503. Such "sanctions evasion" poses "a significant threat to the national security of the United States and its partners." *Id.* at 59,498.

The CTA also seeks to facilitate the prevention, detection, and prosecution of financial crimes. Congress found that the Act's reporting requirements are "needed" "to counter money laundering * * * and other illicit activity." CTA § 6402(5)(D), 134 Stat. 4604. FinCEN has similarly observed that "a lack of uniform beneficial ownership information reporting requirements * * * hinders the ability of * * * law enforcement to swiftly investigate * * * entities created and used to hide ownership for illicit purposes." 87 Fed. Reg. at 59,498. And FinCEN's Director has explained that

the collection of information about beneficial owners "is crucial to identifying linkages between potential illicit actors and opaque business entities." App., *infra*, 100a.

Again, FinCEN has provided specific examples that illustrate how criminals use shell companies to conceal their crimes. See 87 Fed. Reg. at 59,499. In one case, a group of individuals stole "$24 million of COVID-19 relief money by using synthetic identities and shell companies they had created years earlier to commit other bank fraud." *Id.* at 59,499. In another, a group of individuals "used multiple shell entities" to file "at least 63 fraudulent loan applications" and to obtain "over $3 million" in "COVID-19 pandemic relief funds." *Ibid.* In a third case, the government "investigated the alleged misappropriation of more than $4.5 billion in funds" that "were allegedly laundered through a series of complex transactions and shell companies with bank accounts located in the United States and abroad." *Id.* at 59,503.

FinCEN has "devoted major resources over several years to ensure the CTA is implemented effectively, in particular by educating the public about its requirements." App., *infra*, 107a. For example, it has "published a range of guidance materials," has "engaged in over 200 outreach events" regarding the Act, and has conducted "an expansive public service announcement * * * campaign to increase public awareness" about the Act's requirements. *Id.* at 103a. FinCEN has invested "over 4.3 million dollars in that campaign," and its officials have "dedicated thousands of hours * * * to addressing questions from potential filers." *Id.* at 103a, 105a. "These efforts have been successful, with an exponential increase in reporting since the multimedia campaign began, increasing the filing rate to nearly one million reports filed per week" in the weeks preceding the district court's injunction. *Id.* at 105a.

"If the injunction remains in place for any significant length of time," however, "these resources will have been largely squandered." App., *infra*, 107a. "The injunc-

tion has already created—and will continue to engender—widespread confusion among the public, including regulated parties." *Id.* at 105a. "If CTA implementation is suspended for a significant length of time, FinCEN would have substantial practical difficulty in resuming implementation, re-educating the public about the reporting requirements, and effectively enforcing compliance." *Ibid.*

The district court's injunction also impairs the United States' foreign-policy interests. The United States is a founding member of the Financial Action Task Force (FATF), "the international standard-setting body" for efforts to counter money laundering and the financing of terrorism. 87 Fed. Reg. at 59,513. In 2016, FATF identified "the lack of beneficial ownership information reporting requirements" as "one of the fundamental gaps" in the United States' anti-money laundering regime. App., *infra*, 106a. In adopting the Act, Congress sought to "bring the United States into compliance" with FATF's standards. CTA § 6402(5)(E), 134 Stat. 4604. By barring implementation of the Act, the injunction undermines the United States' credibility among other nations and impairs our "ability to push other countries to reform their anti-money laundering and counterterrorism regimes." App., *infra*, 8a-9a. Further, 159 countries have implemented or are planning to implement laws requiring corporations to report beneficial ownership information to the government. See Open Ownership, *Open Ownership map: Worldwide action on beneficial ownership transparency*, https://www.ownership.org/en/map. The district court's injunction threatens to leave the United States as an international outlier, making the United States more "attractive" than other jurisdictions to international criminals seeking to launder their ill-gotten gains. 87 Fed. Reg. at 59,501.

2. On the other side of the ledger, the district court relied on the fact that respondents would incur "compliance costs" in the absence of an injunction. App.,

infra, 41a. But the court did not deny that those costs would be minimal. FinCEN has estimated that it would take a company with a simple corporate structure around 90 minutes to comply with the Act: "40 minutes to read the form and understand the requirement, 30 minutes to identify and collect information about beneficial owners and company applicants, [and] 20 minutes to fill out and file the report." 87 Fed. Reg. at 59,589. There is no fee for filing the form, but FinCEN has estimated that the time needed for compliance is equivalent to "$85.14." *Id.* at 59,573. Respondents "neither contend that they have more complex structures that would require more time or money, nor state their potential costs with any particularity." App., *infra*, 8a. Any harm to respondents is plainly outweighed by "the public's urgent interest in combatting financial crime and protecting our country's national security." *Ibid.*

The timing of respondents' suit underscores that conclusion. Congress adopted the CTA in January 2021, and FinCEN issued the Reporting Rule in September 2022. See pp. 4, 6, *supra*. Yet respondents filed this suit only in May 2024, more than three years after the enactment of the statute and almost two years after the issuance of the rule. Respondents' delay in suing undermines their claims of irreparable harm—but has greatly increased the harm to the government by prompting the issuance of a universal preliminary injunction shortly before the compliance deadline.

3. In its order vacating the motions panel's stay, the merits panel discussed neither the government's likelihood of success on the merits nor the harms to the parties. The court instead simply stated that vacatur of the stay was warranted "in order to preserve the constitutional status quo while the merits panel considers the parties' weighty constitutional arguments." App., *infra*, 2a. That rationale is flawed. See *Labrador* v. *Poe*, 144 S. Ct. 921, 930-931 (2024) (Kavanaugh, J., concurring).

The CTA has been in place since 2021, and the Reporting Rule has been in

place since 2022. Although most existing entities need comply with the requirement to report beneficial-ownership information only by January 2025, the requirement that newly formed entities report such information has been in effect since the beginning of 2024. See 31 C.F.R. 1010.380(a)(1). And even as to existing entities, the status quo included the requirement that covered entities comply no later than January 2025, as millions of entities have already done. The district court's injunction has severely disrupted rather than preserved the status quo.

Even putting that point aside, this Court has never applied "a blanket rule of 'preserving the status quo.'" *Poe*, 144 S. Ct. at 931 (Kavanaugh, J., concurring). A court has no warrant to block the enforcement of "constitutional and democratically enacted laws" simply in order to preserve "the status quo before enactment of the new law." *Id.* at 930. To the contrary, a court should exercise "the utmost circumspection" before it "delay[s] the will of Congress to put its policies into effect at the time it desires." *Heart of Atlanta Motel*, 85 S. Ct. at 2 (Black, J., in chambers).

D. At A Minimum, This Court Should Grant A Partial Stay Of The District Court's Vastly Overbroad Injunction

For the reasons discussed above, this Court should stay the district court's injunction in full. At a minimum, the Court should grant a partial stay, narrowing the vastly overbroad injunction to cover only respondents and the members of NFIB who were identified in respondents' complaint. See *Poe*, 144 S. Ct. at 921 (staying a universal injunction except to the extent it protected the plaintiffs); App., *infra*, 4a n.1 (noting that Judge Haynes would have issued a partial stay in this case).

1. The district court entered a "nationwide injunction," prohibiting the enforcement of the CTA not only against respondents, but also against non-parties. App., *infra*, 93a. As Members of this Court have recognized, such universal remedies

exceed "the power of Article III courts," conflict with "longstanding limits on equitable relief," and impose a severe "toll on the federal court system." *Trump* v. *Hawaii*, 585 U.S. 667, 713 (2018) (Thomas, J., concurring); see *DHS* v. *New York*, 140 S. Ct. 599, 599-601 (2020) (Gorsuch, J., concurring).

Under Article III, "a plaintiff's remedy must be 'limited to the inadequacy that produced his injury.'" *Gill* v. *Whitford*, 585 U.S. 48, 66 (2018) (brackets and citation omitted); see *Lewis* v. *Casey*, 518 U.S. 343, 360 (1996) (narrowing an injunction that improperly granted "a remedy beyond what was necessary to provide relief" to the injured parties). This Court recently granted a stay of an injunction to the extent it provided relief to non-parties. See *Poe*, 144 S. Ct. at 921. Justice Gorsuch described the Court's action as "remind[ing] lower courts of the foundational rule that any equitable remedy they issue" must be tailored to "the plaintiff's injuries." *Id.* at 927 (Gorsuch, J., concurring).

Principles of equity reinforce that constitutional limitation. A federal court's power to grant equitable relief is generally limited to the types of relief that were "traditionally accorded by courts of equity." *Grupo Mexicano de Desarrollo, S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 319 (1999). Courts of equity traditionally adhered to the principle that relief must, at most, be "no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano* v. *Yamasaki*, 442 U.S. 682, 702 (1979). And courts of equity traditionally "did not provide relief beyond the parties to the case." *Hawaii*, 585 U.S. at 717 (Thomas, J., concurring). Universal relief is irreconcilable with those principles.

Universal relief also creates other legal and practical problems. It circumvents the rules governing class actions in federal courts. See Fed. R. Civ. P. 23. It undercuts the rule that non-mutual issue preclusion does not run against the government—

i.e., the rule that the government may relitigate an issue against one party even if it has previously lost on that issue against a different party. See *United States* v. *Mendoza*, 464 U.S. 154, 159-160 (1984). It encourages forum shopping. It empowers a single district court to pretermit meaningful litigation on the same issue in other courts, thereby preventing further percolation of the issues before this Court decides whether to step in. See *New York*, 140 S. Ct. at 600 (Gorsuch, J., concurring). And it operates asymmetrically; the government must prevail in every suit to keep its policy in force, but plaintiffs can block a federal statute or regulation nationwide with just a single lower-court victory. See *Id.* at 601.

The universal injunction in this case represents a particularly stark departure from traditional equitable principles. The district court granted universal relief to respondents even though respondents did not ask for it. See App., *infra*, 92a ("Plaintiffs seek injunctive relief on behalf of the individual Plaintiffs, as well as all of NFIB's members."). Respondents are five entities and an individual, but the court enjoined the enforcement of the Act with respect to an estimated "32.6 million existing reporting companies" nationwide. *Id.* at 95a (citation omitted). Even though respondents are all domestic persons, the court's injunction encompasses foreign persons, precluding the government from enforcing the Act against U.S. entities formed by foreign citizens and against foreign entities that register to do business in the United States. See *id.* at 97a. And the district court's universal injunction effectively supersedes the decisions of other district courts rejecting challenges to the Act or declining to enjoin its enforcement on a universal basis. See p. 3, *supra*.

Compounding its error, the district court purported to enjoin the CTA itself. The court stated: "[T]he CTA, 31 U.S.C. § 5336[,] is hereby enjoined." App., *infra*, 97a. The court had no power to enter such an order. "Consistent with historical

practice, a federal court exercising its equitable authority may enjoin named defendants from taking specified unlawful actions. But under traditional equitable principles, no court may * * * purport to enjoin challenged 'laws themselves.'" *Whole Woman's Health* v. *Jackson*, 595 U.S. 30, 44 (2021) (citation omitted); see *California* v. *Texas*, 593 U.S. 659, 672 (2021) ("Remedies * * * do not simply operate 'on legal rules in the abstract.'") (citation omitted).

The district court reasoned that, because the purportedly unconstitutional Act of Congress extends "nationwide," "the injunction should [also] apply nationwide." App., *infra*, 95a. Under Article III, however, "courts are not roving commissions assigned to pass judgment on the validity of the Nation's laws." *Broadrick* v. *Oklahoma*, 413 U.S. 601, 610-611 (1973). "Constitutional judgments" are instead "justified only out of the necessity of adjudicating rights in particular cases between the litigants." *Id.* at 611. The district court thus had no authority to grant relief to persons who were not "plaintiff[s] in this lawsuit, and hence were not the proper object of [the court's] remediation." *Lewis*, 518 U.S. at 358.

The district court further reasoned that universal relief is appropriate because "NFIB's membership extends across the country." App., *infra*, 95a. That is a non sequitur. Even assuming that the court properly enjoined the enforcement of the Act against NFIB's "300,000 members," *id.* at 30a—but see pp. 35-36, *infra*—the court had no basis for also enjoining the enforcement of the Act against the remainder of the "approximately 32.6 million existing reporting companies" subject to the Act, *id.* at 95a (citation omitted).

Finally, the district court sought to justify universal relief from the compliance deadline in FinCEN's implementing regulation by pointing to the APA—specifically, to 5 U.S.C. 705, which authorizes a reviewing court to "issue all necessary and appro-

priate process to postpone the effective date of an agency action" pending judicial review. See App., *infra*, 96a. But Section 705 authorizes interim relief only "to the extent necessary to prevent irreparable injury." 5 U.S.C. 705. Universal relief running to every covered entity in the Nation is in no way called for to "prevent irreparable injury" to respondents. *Ibid.*

2. The district court further erred in granting relief to NFIB's members. NFIB has approximately "300,000 members." App., *infra*, 30a. Only two of those members (Texas Top Cop Shop and Data Comm) are named in the complaint as challenging the Act, and only one further member (Grazing Systems Supply, Inc.) is identified in the body of the complaint. See App., *infra*, 30a; Compl. ¶ 120. The court should not have granted injunctive relief to members who were not identified in the complaint and who did not agree to be bound by the judgment.

The district court's contrary decision "raises constitutional concerns." *FDA* v. *Alliance for Hippocratic Medicine*, 602 U.S. 367, 399 (2024) (Thomas, J., concurring). Article III confines courts to "adjudicating rights in particular cases between the litigants brought before the Court." *Broadrick*, 413 U.S. at 611. The district court, however, granted relief to hundreds of thousands of members of NFIB that were never "brought before the Court." *Ibid.*

The district court's remedial approach also "upsets other legal doctrines." *Alliance*, 602 U.S. at 399 (Thomas, J., concurring). For example, it "subverts the class-action mechanism" by allowing NFIB "to effectively bring a class action without satisfying any of the ordinary requirements" for class certification. *Id.* at 402. It also "creates the possibility of asymmetrical preclusion," enabling NFIB's members to enjoy the benefits of a favorable judgment while escaping the burdens of an adverse one. *Ibid.* In fact, given that NFIB has not identified all its members, it is unclear whether

one or more of its members have been plaintiffs in other suits in which courts have concluded that the CTA is likely constitutional. See p. 3, *supra*. And NFIB's membership presumably includes entities that already have filed reports without objecting, and indeed may believe that the Act is valid and support the full scope of its requirements.

Finally, extending relief to NFIB's absent members is in substantial tension with the rule that "[e]very order granting an injunction" must "state its terms specifically" and "describe in reasonable detail * * * the act or acts restrained or required." Fed. R. Civ. P. 65(d)(1). That rule exists to ensure that "an ordinary person reading the court's order [can] ascertain from the document itself exactly what conduct is proscribed." 11A Charles Alan Wright et al., *Federal Practice & Procedure* § 2955 (3d ed. 2024). Because NFIB has not identified its 300,000 members, the government would have no way to know whom an injunction protecting those members covers.

E. This Court May Wish To Grant Certiorari Before Judgment To Consider The Lawfulness Of Universal Relief

Regardless of whether this Court grants this stay application in full, grants it in part, or denies it, the Court may wish to treat the application as a petition for a writ of certiorari before judgment presenting the question whether the district court erred in entering preliminary relief on a universal basis. That approach would enable the Court to settle the lawfulness of universal injunctions this Term.

For a number of years, the propriety of universal relief has been a recurring issue in the lower courts. Several Members of this Court have urged that the Court grant review on that issue in an appropriate case. See, *e.g.*, *Griffin* v. *HM Florida-ORL, LLC*, 144 S. Ct. 1, 2 & n.1 (2023) (statement of Kavanaugh, J.) ("[The issue] is an important question that could warrant our review in the future."); *New York*, 140

S. Ct. at 600 (Gorsuch, J., concurring) ("[T]his Court must, at some point, confront these important objections to this increasingly widespread practice."); *Hawaii*, 585 U.S. at 713 (Thomas, J., concurring) ("If [the] popularity [of universal injunctions] continues, this Court must address their legality."). Members of the Court have recognized that universal remedies not only violate Article III and traditional principles of equity, but also "take a toll on the federal court system." *Hawaii*, 585 U.S. at 713 (Thomas, J., concurring). As this case well illustrates, universal injunctions often force the government "to seek immediate relief from one court and then the next, with the finish line in this Court"—lest "a law that the people's elected representatives have adopted * * * remain ineffectual." *Poe*, 144 S. Ct. at 927 (Gorsuch, J., concurring). As a result, universal injunctions exert substantial pressure on this Court's emergency docket, and they visit substantial disruption on the execution of the laws. And also as a result, such injunctions "tend to force judges into making rushed, high-stakes, low-information decisions." *New York*, 140 S. Ct. at 600 (Gorsuch, J., concurring). In short, "the routine issuance of universal injunctions is patently unworkable, sowing chaos for litigants, the government, courts, and all those affected by these conflicting decisions." *Ibid.*

Yet the issue whether district courts may award universal relief has evaded this Court's review. In previous cases where a lower court has issued universal relief, this Court has resolved the case on the merits or on threshold procedural grounds, obviating the need to address the scope of the remedy. See, *e.g.*, *United States* v. *Texas*, 599 U.S. 670, 686 (2023) (holding, in a case where a lower court had issued universal relief, that the plaintiffs lacked standing); *Hawaii*, 585 U.S. at 711 ("Our disposition of the case makes it unnecessary to consider the propriety of the nationwide scope of the injunction issued by the District Court."). The "patently unworka-

ble" practice of issuing universal injunctions has accordingly persisted. *New York*, 140 S. Ct. at 600 (Gorsuch, J., concurring).

This case, in its current posture, would provide an ideal vehicle for addressing the lawfulness of universal relief if the Court concludes, in light of the persistence of the practice and the ample percolation of the relevant issues, that the time has come to resolve the propriety of such relief. If this Court grants certiorari only after the court of appeals issues its decision, the Court could resolve this case on the merits at that time, and the universal-relief issue would once again evade the Court's review. By contrast, treating this stay application as a petition for a writ of certiorari before judgment, limited to the question whether the district court erred by granting universal relief, would ensure that the Court could settle the remedial issue this Term.[2]

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[2] The government has also filed a petition for a writ of certiorari presenting (among multiple questions presented) the question whether universal relief under the APA is lawful. See *Department of Education* v. *Career Colleges & Schools of Texas*, No. 24-413 (filed Oct. 10, 2024). But the remedial issue in this case independently warrants review by presenting the distinct question whether traditional principles of equity permit universal remedies against the enforcement of statutes. See *Griffin*, 144 S. Ct. at 2 & n.1 (statement of Kavanaugh, J.) (stating that the question whether a district court may "enjoin the government from enforcing [a] law against non-parties" is "distinct from the issue of a court's setting aside a federal agency's rule" under a separate provision of the APA, 5 U.S.C. 706).

CONCLUSION

The 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. Finally, the court may wish to treat the application as a petition for a writ of certiorari before judgment on the question whether the district court lacked authority to enter a universal injunction, grant the petition, and set the remedial question for argument this Term.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

DECEMBER 2024

APPENDIX

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
December 26, 2024
Lyle W. Cayce
Clerk

No. 24-40792

TEXAS TOP COP SHOP, INCORPORATED; RUSSELL STRAAYER; MUSTARDSEED LIVESTOCK, L.L.C.; LIBERTARIAN PARTY OF MISSISSIPPI; NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INCORPORATED; DATA COMM FOR BUSINESS, INCORPORATED,

Plaintiffs—Appellees,

versus

MERRICK GARLAND, *U.S. Attorney General*; TREASURY DEPARTMENT; DIRECTOR FINCEN ANDREA GACKI, DIRECTOR OF THE FINANCIAL CRIMES ENFORCEMENT NETWORK; FINANCIAL CRIMES ENFORCEMENT NETWORK; JANET YELLEN, *Secretary, U.S. Department of Treasury*,

Defendants—Appellants.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:24-CV-478

ORDER:

On December 3, 2024, the district court entered an order enjoining enforcement of the Corporate Transparency Act and its corresponding Reporting Rule. *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-CV-478, 2024

WL 5049220 (E.D. Tex. Dec. 5, 2024). The Government requested a stay of the preliminary injunction, which the district court denied. *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-CV-478, 2024 WL 5145951 (E.D. Tex. Dec. 17, 2024).

The Government appealed, and on December 23, 2024, a motions panel of this court granted the government's emergency motion for a stay pending appeal. *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792, 2024 WL 5203138 (5th Cir. Dec. 23, 2024) The order also expedited the appeal to the next available oral argument panel.

The merits panel now has the appeal, which remains expedited, and a briefing schedule will issue forthwith. However, in order to preserve the constitutional status quo while the merits panel considers the parties' weighty substantive arguments, that part of the motions-panel order granting the Government's motion to stay the district court's preliminary injunction enjoining enforcement of the CTA and the Reporting Rule is VACATED.

LYLE W. CAYCE, CLERK
United States Court of Appeals
for the Fifth Circuit
/s/ Lyle W. Cayce

ENTERED AT THE DIRECTION OF THE COURT

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
December 23, 2024
Lyle W. Cayce
Clerk

No. 24-40792

TEXAS TOP COP SHOP, INCORPORATED; RUSSELL STRAAYER; MUSTARDSEED LIVESTOCK, L.L.C.; LIBERTARIAN PARTY OF MISSISSIPPI; NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INCORPORATED; DATA COMM FOR BUSINESS, INCORPORATED,

Plaintiffs—Appellees,

versus

MERRICK GARLAND, *U.S. Attorney General*; TREASURY DEPARTMENT; ANDREA GACKI, DIRECTOR OF THE FINANCIAL CRIMES ENFORCEMENT NETWORK; FINANCIAL CRIMES ENFORCEMENT NETWORK; JANET YELLEN, *Secretary, U.S. Department of Treasury*,

Defendants—Appellants.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:24-CV-478

UNPUBLISHED ORDER

Before STEWART, HAYNES, and HIGGINSON, *Circuit Judges*.[1]

PER CURIAM:

The Corporate Transparency Act ("CTA") obliges certain nonexempt companies to report the identity of their beneficial owners and applicants for incorporation. 31 U.S.C. § 5336. On December 3, 2024—less than one month before the crucial January 1, 2025 reporting deadline—the district court granted Plaintiffs-Appellees' (the "Businesses") motion for a preliminary injunction and entered a nationwide injunction enjoining the CTA and the corresponding Reporting Rule. *Id.*; 31 C.F.R. § 1010.380. The district court concluded that both are unconstitutional and issued nationwide injunctions against each, despite no party requesting it do so and despite every other court to have considered this issue tailoring relief to the parties before it or denying relief altogether.[2]

The government, Defendants-Appellants, filed an emergency motion with this court seeking a stay. Because the government has met its burden under *Nken v. Holder*, 556 U.S. 418 (2009), we GRANT its motion for a temporary stay of the district court's order and injunction pending appeal.

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[1] JUDGE HAYNES joins in part and disagrees in part. She agrees for an expedited appeal and agrees that a national injunction is not appropriate here, so she would grant a temporary stay of the preliminary injunction pending the decision of the merits panel regarding whether to deny a stay pending appeal as to the non-parties. However, she would deny the temporary stay as to the parties (while, of course, deferring to the merits panel on this point as well), including the members of NFIB, as long as their identities are disclosed to the government.

[2] Three other district courts have assessed the CTA's constitutionality. Two held that the CTA is likely constitutional and denied motions for preliminary injunctions. *Firestone v. Yellen*, 2024 WL 4250192, at *10 (D. Ore. Sept. 20, 2024); *Cmty. Ass'ns Inst. v. Yellen*, 2024 WL 4571412, at *14 (E.D. Va. Oct. 24, 2024)). One held that it is unconstitutional, but only issued an injunction that covered the plaintiffs in that case. *Nat'l Small Bus. United v. Yellen*, 721 F. Supp. 3d 1260, 1289 (N.D. Ala. 2024).

When deciding a motion to stay pending appeal, we consider four factors:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Nken, 556 U.S. at 434 (internal quotation marks omitted).

On the first factor, the government has made a strong showing that it is likely to succeed on the merits in defending CTA's constitutionality.[3] When Congress passed the bipartisan statute in 2021, it used its "broad authority under the Commerce Clause" to regulate economic activity. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 549 (2012). As stated, the CTA requires certain corporate entities to report their beneficial ownership interest in order to target illicit financial activity. *See* 31 U.S.C. § 5336. In doing so, it regulates anonymous ownership and operation of businesses. Those "are part of an economic class of activities that have a substantial effect on interstate commerce." *See Gonzales v. Raich*, 545 U.S. 1, 17 (2005) (internal quotation marks omitted). Thus, a reporting requirement for entities engaged in these economic activities falls within "more than a century of [the Supreme] Court's Commerce Clause jurisprudence." *See id.* at 29 n.38.

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[3] At minimum, the government has made a "substantial case" on the merits. *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. Unit A June 1981) ("On motions for stay pending appeal the movant need not always show a 'probability' of success on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay.")

The Businesses misapply *Sebelius* to the present case when they contend otherwise. In the context of the Affordable Care Act's health insurance mandate, the Supreme Court concluded that Congress was attempting to regulate individuals "whose commercial inactivity rather than activity is [their] defining feature." 567 U.S. at 556–57 (2012). The CTA, however, established reporting requirements for corporate entities whose "defining feature" is their ability and propensity to engage in commercial activity. *See id.* None of the Businesses have claimed that they do not engage in commercial activity, or economic activity more broadly. And although some corporate entities might abstain from economic activity, the CTA excludes many of those from its definition of a "reporting company," thereby absolving them of the Act's reporting obligations. 31 U.S.C. § 5336(a)(11)(B). The CTA also allows the federal government to exempt any other "entity or class of entities" for which reporting would not "serve the public interest" and "would not be highly useful" in "efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes." *Id.* § 5336(a)(11)(B)(xxiv). While these exemptions might not sweep in every single dormant corporate entity, they strongly support the government's argument that the CTA regulates the ownership and operation of businesses by imposing modest disclosure requirements to a facilitate a regulatory scheme aimed at combatting financial crimes. Because Congress only needs a "rational basis" to conclude that a regulated activity "substantially affects interstate commerce," enacting the CTA was within its commerce power. *See Raich*, 545 U.S. at 16–17, 19.[4]

[4] The government also argues that the CTA is necessary and proper for executing Congress's foreign commerce powers, tax powers, and foreign affairs interests, as well as the President's law-enforcement and national-security powers. We pretermit discussion of these arguments here because the government's Commerce Clause analysis satisfies its burden under the first *Nken* factor.

Independently, the government has made a strong showing against the Businesses' facial challenge to the CTA.[5] The Supreme Court has been clear that a successful facial "challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). In other words, "[t]he fact that [a statute] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid." *Id.*; *see also United States v. Rahimi*, 602 U.S. 680, 701 (2024) (confirming that, when assessing facial challenges, courts must "consider the circumstances in which [the statute is] most likely to be constitutional" instead of "focus[ing] on hypothetical scenarios where [the statute] might raise constitutional concerns."). Here, the CTA at least operates constitutionally when it requires that corporations engaged in business operations affecting interstate commerce disclose their beneficial owner and applicant information to the Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"). *See Raich*, 545 U.S. at 17. Thus, the statute is likely constitutional on its face. *See Salerno*, 481 U.S. at 745.

Moving on, the government satisfies the second *Nken* factor because a last-minute injunction of a statute proposed and passed by the people's representatives necessarily inflicts irreparable harm. *See Maryland v. King*, 567 U.S. 1301, 1303 (2012). Indeed, "any time a [government] is enjoined by a court from effectuating statutes enacted by representatives of its people, it

[5] Notably, the district court skipped over the Businesses' as-applied challenge and only assessed the CTA's facial validity. In doing so, it erroneously departed from what it acknowledged is the normal rule that "we generally decide the as-applied challenge first because it is the narrower consideration." *Buchanan v. Alexander*, 919 F.3d 847, 852 (5th Cir. 2019).

suffers a form of irreparable injury." *Id.* (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.,* 434 U.S. 1345, 1351 (1977)).

Similarly, the government has satisfied the third and fourth *Nken* factors by showing that "that the balance of the equities weighs heavily in favor of granting the stay." *See Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. Unit A June 1981). To start, the harm that a stay would cause the Businesses is minimal. FinCEN estimated that a typical, simple company would spend about ninety minutes (or about $85 worth of time) to complete and file CTA's required report, which may be filed for free. 87 Fed. Reg. 59498, 59589–90 (Sept. 30, 2022). The Businesses neither contend that they have more complex structures that would require more time or money, nor state their potential costs with any particularity.[6]

When balancing this harm against the public's urgent interest in combatting financial crime and protecting our country's national security, equity favors a stay. As the government explains, and the district court recognizes, a last-minute nationwide preliminary injunction would undermine our ability to push other countries to reform their anti-money

[6] Because the district court has not yet addressed the CTA's constitutionality as applied to the Businesses' First and Fourth Amendment claims, any additional harm that they allege they face from the CTA infringing those rights is immaterial to our stay analysis. *See Nken*, 556 U.S. at 434; *Google v. Hood*, 822 F.3d 212, 228 (5th Cir. 2016) ("[I]nvocation of [constitutional injury] cannot substitute for the presence of an imminent, non-speculative irreparable injury.").

laundering and counterterrorism regimes and to address the most fundamental gap in our own regime.[7]

Accordingly, the government has demonstrated that a stay is warranted. *See Nken*, 556 U.S. at 434.

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.

[7] The Businesses warn that lifting the district court's injunction days before the compliance deadline would place an undue burden on them. They fail to note, however, that they only filed suit in May 2024 and the district court's preliminary injunction has only been in place for less than three weeks as compared to the nearly four years that the Businesses have had to prepare since Congress enacted the CTA, as well as the year since FinCEN announced the reporting deadline.

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

TEXAS TOP COP SHOP, INC., ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:24-CV-478
	§	Judge Mazzant
MERRICK GARLAND, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.,	§	
	§	
	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendants' Motion to Stay Preliminary Injunction Pending Appeal (Dkt. #35). Having considered the Motion, the pleadings, and the applicable law, the Court concludes that the Motion should be **DENIED.**

BACKGROUND

On May 28, 2024, Plaintiffs filed suit against Defendants, various representatives of the Federal Government and Government entities (collectively, "the Government"), seeking a declaratory judgment that the Corporate Transparency Act ("CTA") and its implementing regulations (the "Reporting Rule") are unconstitutional and an injunction against their enforcement (Dkt. #1). On June 3, 2024, Plaintiffs sought a preliminary injunction against the CTA and Reporting Rule (Dkt. #6). The Government filed a Response (Dkt. #18), Plaintiffs replied (Dkt. #19), and on October 9, 2024, the Court held a hearing on the matter. On December 3, 2024, the Court entered an Order enjoining enforcement of the CTA and Reporting Rule nationwide (Dkt. #30). The Government appealed (Dkt. #32). The Court amended its Order to correct a

minor error that did not impact the Court's analysis or holding (Dkt. #33). The Government filed an Amended Notice of Appeal (Dkt. #34).

At 8:05 p.m. CST on December 11, 2024, the Government filed the instant Motion to Stay Preliminary Injunction Pending Appeal (Dkt. #35). In the Motion, the Government asserted that if the Court did not grant a stay of its Order enjoining the CTA and Reporting Rule by December 12 or 13, 2024, the Government would move for a stay of the Order in the Fifth Circuit Court of Appeals (Dkt. #35 at p. 1). Because Plaintiffs had not yet had an opportunity to file a response, the Court Ordered Plaintiffs to respond to the Government's Motion by December 16, 2024, at 12:00 p.m. CST (Dkt. #36). On December 13, 2024, the Government filed a Motion to stay the Court's Order enjoining enforcement of the CTA and Reporting Rule in the Fifth Circuit Court of Appeals. Defendants-Appellants' Emergency Motion for Stay Pending Appeal, *Texas Top Cop Shop v. Garland*, No. 24-40792 (5th Cir. Dec. 13, 2024), ECF No. 21. On December 16, 2024, at 8:08 a.m. CST, Plaintiffs timely filed their Response in Opposition to the Government's Motion to Stay Preliminary Injunction (Dkt. #37). On December 17, 2024, the Government filed its Reply (Dkt. #38). The Court now takes up the Government's Motion (Dkt. #35).

LEGAL STANDARD

"A stay pending appeal is extraordinary relief for which [the movant] bear[s] a heavy burden." *Plaquemines Par. v. Chevron USA, Inc.*, 84 F.4th 362, 372 (5th Cir. 2023) (internal quotations omitted). "A stay is an intrusion into the ordinary processes of administration and judicial review, and accordingly is not a matter of right, even if irreparable injury might otherwise result to the appellant." *Nken v. Holder*, 556 U.S. 418, 427 (2009) (internal quotations omitted). A stay is "an exercise of judicial discretion, and the propriety of its issue is dependent upon the

circumstances of the particular case. The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion." *Id.* at 433–34 (internal quotations omitted). Where "there is even a fair possibility that the stay . . . will work damage to someone else[,]" the party seeking a stay "must make out a clear case of hardship or inequity in being required to go forward." *Landis v. N. Am. Co.*, 299 U.S. at 248, 255 (1936); *see Ind. State Police Pension Tr. v. Chrysler LLC*, 556 U.S. 960, 961 (2009) (internal quotations omitted) ("'A stay is not a matter of right, even if irreparable injury might otherwise result.' It is instead an exercise of judicial discretion, and the 'party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.'").

In determining whether to grant a stay, district courts must consider four factors (known in the Fifth Circuit as the "*Nken* factors"): "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Plaquemines Par.*, 84 F.4th at 373 (quoting *Nken*, 556 U.S. at 434). The Supreme Court and Fifth Circuit alike have made clear that "'[t]he first two factors . . . are the most critical.'" *Id.* (quoting *Nken*, 556 U.S. at 434). In articulating this standard, the Fifth Circuit has stated that it is "important[]" to recall that:

> on motions for stay pending appeal the movant need not always show a "probability" of success on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities ***weighs heavily*** in favor of granting the stay.

Id. (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. Unit A 1981)). With these principles in mind, the Court addresses each factor in turn.

ANALYSIS

I. Likelihood of Success on the Merits

As the Court has acknowledged, this case involves a novel constitutional question of first impression in the Fifth Circuit (Dkt. #33 at p. 3). Though Plaintiffs brought an array of challenges against the CTA and Reporting Rule, to date, the Court has only addressed Plaintiffs' argument that the CTA exceeds Congress's enumerated powers (Dkt. #33 at p. 79). As discussed in detail by the Court's Order enjoining the CTA and Reporting Rule (Dkt. #33), both are likely unconstitutional; Plaintiffs have thus carried their burden to show a substantial likelihood of success on the merits. The Government has not.

The Government urges that the Court reconsider its conclusion on the merits but reiterates arguments that the Court has already rejected. For example, in the context of the Commerce Clause, the Government has still not articulated what *activity* the CTA regulates (*See* Dkt. #35 at p. 6). Similarly, in the context of the Necessary and Proper clause, the Government has yet to offer a viable argument that the CTA derives from one of Congress's enumerated powers and is a proper exercise of that power, as it must (*See* Dkt. #35). *See United States v. Comstock*, 560 U.S. 126, 147 (2010). Broadly, the Government has not offered any tenable explanation for how the CTA and Reporting Rule align with our dual system of government. The Government also argues that the Court did not apply the proper standard for a facial challenge (Dkt. #35 at p. 6). But at this juncture, there appears "no set of circumstances" under our written Constitution in which Congress would have the power to enact the CTA. *See United States v. Salerno*, 481 U.S. 739, 745 (1987).

The Government further argues that the Court erred in "not giv[ing] sufficient weight" to Congress's findings (Dkt. #35 at p. 7). But the Government does not cite any authority for the notion that Congress's findings alone may authorize it to legislate however it so wishes. In fact,

countless cases discussing Congress's constitutional limits provide the exact opposite. *See, e.g.*, *United States v. Morrison*, 529 U.S. 598, 614 (2000) ("[T]he existence of congressional findings is not sufficient, by itself, to sustain the constitutionality of Commerce Clause legislation.") (quoting *United States v. Lopez*, 514 U.S. 549, 557 n.2 ("Simply because Congress may conclude that a particular activity substantially affects interstate commerce does not make it so.")). The Court gave Congress its due deference but acted as it must to fulfill its judicial responsibility.

Further, while the Government contends that the Court erred simply because it disagreed with the reasoning in *Firestone v. Yellen*, No. 3:24-cv-1034-SI, 2024 WL 4250192 (D. Or. Sept. 20, 2024) and *Cmty. Ass'ns Inst. v. Yellen*, No. 1:24-cv-1597, 2024 WL 4571412 (E.D. Va. Oct. 24, 2024), the Government overlooks the reasoning in *Nat'l Small Bus. United v. Yellen*, 721 F. Supp. 3d 1260 (N.D. Ala. 2024) ("*NSBU v. Yellen*"). The Court believes that the reasoning in *NSBU v. Yellen* is persuasive and correct. This disagreement among the district courts is not enough to suggest that this Court erred.

The Government finally submits that the Court erred in enjoining the CTA and Reporting Rule nationwide (Dkt. #35 at pp. 7–8). Once more, the Court stands behind its Order (Dkt. #33). The Government is right to point out the concerns with nationwide injunctions (*See* Dkt. #35 at p. 7). The Court acknowledges those concerns. The Court enjoined enforcement of the CTA and Reporting Rule nationwide because it appears appropriate under the law and the facts of this case.[1] The Government's Reply argues that "Defendants did not concede that [nationwide] relief was

[1] Ironically, the Declaration the Government filed in support of its Motion shows why anything short of nationwide relief would be impracticable. Though, of course, the scope of an injunction does not turn on practicalities alone. *See Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). The Declaration of Andrea Gacki states that "[r]eporting companies must clearly understand and have certainty about their compliance obligations for a reporting regime to be effective" (Dkt. #35-1 at p. 9). After all, the AMLA sought "to establish *uniform* beneficial ownership information reporting requirements." Pub. L. No. 116-283, div. F. 134 Stat. 4547, § 6002(5) (2021) (emphasis added).

necessary or appropriate" (Dkt. #38 at p. 1). The Court agrees, which is why the Court did not categorize the Government's statement that enjoining enforcement of the CTA and Reporting Rule only against Plaintiffs, including NFIB's members, was "'effectively' a form of nationwide relief" as a concession (Dkt. #38 at p. 1–2; Dkt. #33 at p. 75). This does not change the practical effect of Plaintiffs' request, nor does it persuade the Court that the scope of the injunction is inappropriate under the facts and circumstances of this case.

As the Court has decided, the merits favored Plaintiffs when the Court issued its injunction. Today is no different. The Government has not "made a strong showing that [it] is likely to succeed on the merits." *See Plaquemines Par.*, 84 F.4th at 373. Accordingly, the first *Nken* factor weighs against issuance of a stay.

II. The Equities

Turning to the remaining factors (the "equities"), the Court determines that a stay is not warranted. As the Court has concluded and as precedent indicates, the public interest lies in protecting the public from laws that are likely unconstitutional, and Plaintiffs will face irreparable harm if the Court were to grant a stay (which would effectively nullify its prior Order) (*See* Dkt. #33). Thus, the third and fourth *Nken* factors weigh against issuance of a stay.

Accordingly, the Court turns to the Second *Nken* factor—the risk of the Government suffering irreparable harm (the only remaining factor). *Plaquemines Par.*, 84 F.4th at 373. The Government contends that the burdens that it has undertaken to achieve compliance with the CTA constitute irreparable injury if the Court does not permit the CTA and Reporting Rule to become effective once again by issuing a stay. The Government advances two broad arguments under this factor. First, the Government argues that an injunction against laws "enacted by representatives of [the] people" constitutes irreparable harm (Dkt. #35 at p. 3) (internal quotation omitted).

Indeed, as the Fifth Circuit has stated, "[w]hen a statute is enjoined, the [Government] necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws." *Book People, Inc. v. Wong*, 91 F.4th 318, 341 (5th Cir. 2024).

Second, the Government argues that "the injunction would significantly disrupt FinCEN's implementation of the CTA, and FinCEN would not be able to fully remediate that disruption even if the injunction were lifted at the conclusion of the appeal" (Dkt. #35 at p. 3). In support of this point, the Government notes that FinCEN has engaged in nationwide media outreach in an attempt to achieve compliance with the CTA and it has expended $4.3 million dollars to date in furtherance of those efforts (Dkt. #35 at p. 4). The Government also argues that the injunction would "prevent the United States from fulfilling international standards for countering money laundering and terrorist financing" (Dkt. #35 at p. 5). That is a familiar argument that the Court addressed in its Order (*See* Dkt. #33 at pp. 56–65).

But for the first time in the life of this case, the Government has offered more than a threadbare claim that the CTA helps the United States comply with international standards. The Declaration of Andrea Gacki, the Director of FinCEN, which the Government attached as an exhibit to its Motion to Stay states:

> The United States is currently preparing for its upcoming Financial Action Task Force ("FATF") mutual evaluation, with its written technical submission currently due mid-2025. The United States is a founding member of FATF, which is the leading international, inter-governmental task force whose purpose is the development and promotion of international standards and the effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, the financing of proliferation, and other related threats to the integrity of the international financial system. Among other things, FATF has established standards on transparency and BOI [(Beneficial Ownership Information)] of legal persons, intended to deter and prevent the misuse of corporate vehicles.

(Dkt. #35-1 at pp. 9–10). The Declaration also states that FATF rated the United States "non-compliant" with FATF's "requirements" (Dkt. #35-1 at p. 10). According to Andrea Gacki's Declaration, the injunction "risks causing the United States to receive negative ratings on related portions of an upcoming FATF evaluation" (Dkt. #35-1 at p. 10). A lower rating, according to the Declaration, could result in the United States being "added to the FATF grey list, a public list of countries with significant failings in their AML/CFT [(anti-money laundering and countering the financing of terrorism)] regimes" (Dkt. #35-1 at p. 10). That, the Declaration argues, "would undermine the United States' ability to push other countries to make reforms to their AML/CFT regimes . . ." (Dkt. #35-1 at p. 10). Finally, the Declaration notes that, for "nearly a decade," FATF has identified the lack of BOI reporting as the "most fundamental gap" in the United States's AML/CFT regime (Dkt. #35-1 at p. 10). Though Plaintiffs did not stipulate to the factual contentions in the Declaration, their Response does not dispute those statements.

The efforts that FinCEN has made to increase compliance with the CTA since the Reporting Rule have gone into effect appear to be significant by their terms and, of course, in service of a laudable end. FinCEN has been collecting BOI reports since January 1, 2024 (Dkt. #35-1 at p. 5). And while Plaintiffs have not provided the Court with any reason to suggest that the Government could completely remediate any harm as a result of the injunction, the law is clear that "it is always in the public interest to prevent a violation of a party's constitutional rights." *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014) (quoting *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012)), *overruled on other grounds by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). Moreover, irreparable injury is not dispositive in deciding whether to grant a stay. *Ind. State Police Pension Tr.*, 556 U.S at 961. Accordingly, any interest the

Government has in preserving its efforts in furtherance of the CTA are superseded by the CTA's grave constitutional flaws. Thus, on balance, the factors do not favor issuance of a stay.

Notwithstanding this four-factor analysis, the Court is mindful of the Fifth Circuit's statement in *Ruiz v. Estelle* that, at this stage, the movant "need not always show a 'probability' of success on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities ***weighs heavily*** in favor of granting the stay." *Plaquemines Par.*, 84 F.4th at 373 (quoting *Ruiz*, 650 F.2d at 565). This case, no doubt, presents a serious legal question. Given the Court's prior reasoning (Dkt. #33), it does not appear that the Government has a "substantial case on the merits," at least as to Plaintiffs' enumerated powers challenge. But even assuming *arguendo* that the Government does have a substantial case on the merits, the equities here do not "weigh heavily" in favor of granting a stay. *See id.* Accordingly, the Court will not stay its Order enjoining enforcement of the CTA and Reporting Rule (Dkt. #33).

CONCLUSION

It is therefore **ORDERED** that Defendants' Motion to Stay Preliminary Injunction Pending Appeal (Dkt. #35) is hereby **DENIED.**

IT IS SO ORDERED.

SIGNED this 17th day of December, 2024.

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

TEXAS TOP COP SHOP, INC., ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:24-CV-478
	§	Judge Mazzant
MERRICK GARLAND, ATTORNEY GENERAL OF THE UNITED STATES, ET AL.,	§	
	§	
	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Pending before the Court is Plaintiffs' Motion for Preliminary Injunction (Dkt. #6). Through it, Plaintiffs seek to enjoin the Government from enforcing the Corporate Transparency Act and its Implementing Regulations. Having considered the Motion, the arguments of counsel, and the applicable law, the Court concludes that the Motion should be **GRANTED.**

"Great nations, like great men, should keep their word." *Fed. Power Comm'n v. Tuscarora Indian Nation*, 362 U.S. 99, 142 (1960) (Black, J., dissenting). Ours is a written Constitution. The promises it makes to the People and the States alike are not hidden. The Court must enforce them. "The powers of the legislature are defined, and limited: and . . . those limits may not be mistaken, or forgotten, the [C]onstitution is written." *Marbury v. Madison*, 5 U.S. 137, 176 (1803). While the Court defers to Congress on matters of policy, interpretation of the Constitution is an area where Congress enjoys no authority. *Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33 (2008) ("[I]t is not for [the Court] to substitute [its] view of . . . policy for the legislation which has been passed by Congress."); *Marbury*, 5 U.S. at 177. Legislative ingenuity, dispatched to meet

today's problems, is not measured by any other standard than our written Constitution. Modern problems may well warrant modern solutions, but modernity does not grant Congress a roving license to legislate outside the boundaries of our timeless, written Constitution. *See, e.g.*, *Louisiana v. Biden*, 55 F.4th 1017, 1032 (5th Cir. 2022) ("The Constitution is not abrogated[, even] in a pandemic."). The Constitution must stand firm.

In the matter before the Court, Plaintiffs challenge an unprecedented law known as the Corporate Transparency Act ("CTA"). It represents Congress's attempt to combat bad actors' ability to cloak their criminal activities in a veil of corporate anonymity. At its most rudimentary level, the CTA regulates companies that are registered to do business under a State's laws and requires those companies to report their ownership, including detailed, personal information about their owners, to the Federal Government on pain of severe penalties. Though seemingly benign, this federal mandate marks a drastic two-fold departure from history. First, it represents a Federal attempt to monitor companies created under state law—a matter our federalist system has left almost exclusively to the several States. Second, the CTA ends a feature of corporate formation as designed by various States—anonymity. For good reason, Plaintiffs fear this flanking, quasi-Orwellian statute and its implications on our dual system of government. As a result, Plaintiffs contend that the CTA violates the promises our Constitution makes to the People and the States. Despite attempting to reconcile the CTA with the Constitution at every turn, the Government is unable to provide the Court with any tenable theory that the CTA falls within Congress's power. And even in the face of the deference the Court must give Congress, the CTA appears likely unconstitutional. Accordingly, the CTA and its Implementing Regulations must be enjoined.

BACKGROUND

I. The Corporate Transparency Act

This case begins and ends with the CTA. The constitutionality of the CTA and its accompanying regulations is an issue of first impression in the Fifth Circuit. Thus, this case necessitates a robust explanation of the CTA. In January of 2021, Congress passed the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 ("NDAA"). Pub. L. No. 116-283. Congress included the Anti-Money Laundering Act of 2020 ("AMLA") in the NDAA. Pub. L. No. 116-283, div. F, 134 Stat. 4547 (2021).

The AMLA's stated purposes are many. First, through the AMLA, Congress sought "to improve coordination and information sharing among the agencies tasked with administering anti-money laundering . . . requirements." *Id.* § 6002(1). Second, in passing the AMLA, Congress sought "to modernize anti-money laundering and countering the financing of terrorism laws." *Id.* 6002(2). Third, the AMLA seeks "to encourage technological innovation and the adoption of new technology by financial institutions to more effectively counter money laundering and the financing of terrorism." *Id.* § 6002(3). Fourth, Congress designed the AMLA to "reinforce that the anti-money laundering" and terrorism financing "policies, procedures, and controls of financial institutions shall be risk-based." *Id.* § 6002(4). Fifth, and most importantly as it relates to the CTA, Congress intended the AMLA "to establish uniform beneficial ownership information reporting requirements" to further four ends: (1) "transparency . . . concerning corporate structures and insight into the flow of illicit funds through those structures"; (2) "discourag[ing] the use of shell corporations[1] as a tool to disguise and move illicit funds"; (3) "assist[ing] national security,

[1] "Shell companies" are entities "that have no physical presence beyond a mailing address, generate little to no independent economic value, and generally are created without disclosing their beneficial owners." 87 Fed. Reg. at 59

intelligence, and law enforcement with the pursuit of crimes"; and (4) "protect[ing] the national security of the United States." *Id.* § 6002(5). The sixth and final stated purpose of the AMLA is to "establish a secure, nonpublic database at FinCEN[2] for beneficial ownership information." *Id.* § 6002(6).

Nestled between the 1,482 pages of the NDAA lays the CTA. 134 Stat. at 4604–625 (codified as amended at 31 U.S.C. § 5336). In short, the CTA requires a vast array of companies to disclose otherwise private stakeholder information to FinCEN. *See* 31 U.S.C. § 5336(b)(1). Congress compels these disclosures to control financial crime. Indeed, the CTA says as much. *See* NDAA § 6402. Because text reigns supreme in statutory interpretation, rather than summarize the CTA's purpose, it is wiser to grasp the CTA's objectives from its plain text. *See Carter v. United States*, 530 U.S. 255, 271 (2000). The CTA provides that "it is the sense of Congress" that:

> (1) more than 2,000,000 corporations and limited liability companies are being formed under the laws of the States each year;
>
> (2) most or all States do not require information about the beneficial owners of the corporations, limited liability companies, or other similar entities formed under the laws of the State;
>
> (3) malign actors seek to conceal their ownership of corporations, limited liability companies, or other similar entities in the United States to facilitate illicit activity, including money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption, harming the national security interests of the United States and the allies of the United States;
>
> (4) money launderers and others involved in commercial activity intentionally conduct transactions through corporate structures in order to evade detection,

501. Thus, according to Congress, shell companies "can be used to conduct financial transactions while concealing [the] true beneficial owners' involvement." *Id.*

[2] "FinCEN" is an abbreviation for the enforcement arm of the Department of the Treasury called the "Financial Crimes Enforcement Network."

and may layer such structures, much like Russian nesting "Matryoshka" dolls, across various secretive jurisdictions such that each time an investigator obtains ownership records for a domestic or foreign entity, the newly identified entity is yet another corporate entity, necessitating a repeat of the same process;

(5) Federal legislation providing for the collection of beneficial ownership information for corporations, limited liability companies, or other similar entities formed under the laws of the States is needed to—

A. set a clear, federal standard for incorporation practices;

B. protect vital United States national security interests;

C. protect interstate and foreign commerce;

D. better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity; and

E. bring the United States into compliance with international anti-money laundering and countering the financing of terrorism standards.

(6) beneficial ownership information collected under the amendments made by this title is sensitive information and will be directly available only to authorized government authorities, subject to effective safeguards and controls to—

A. facilitate important national security, intelligence, and law enforcement activities; and

B. confirm beneficial ownership information provided to financial institutions to facilitate the compliance of the financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law.

NDAA § 6402.

In service of these admirable ends, the CTA regulates "reporting companies." 31 U.S.C. § 5336(b). Under the CTA, a "reporting company" is a "corporation, limited liability company, or other similar entity that is created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe or formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state

or a similar office under the law of a State or Indian Tribe." *Id.* § 5336(a)(11). The CTA's text excludes from the definition of "reporting companies" several types of entities, including but not limited to political organizations as defined in Section 527(e)(1) of the Internal Revenue Code. *See id.* § 5336(a)(11)(B). These reporting companies must "submit to FinCEN a report" that "identif[ies] each beneficial owner of . . . the reporting company . . . by full legal name, date of birth, current . . . residential or business street address, and [a] unique identifying number from an acceptable identification document or FinCEN identifier." *Id.* § 5336(b)(2).[3]

The CTA defines the term "beneficial owner" as "an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, exercises substantial control over the entity; or owns or controls not less than [twenty-five] percent of the ownership interests of the entity." *Id.* § 5336(a)(3)(A). The CTA excepts from "beneficial owner" status those who are minors, persons acting on behalf of another individual such as agents and custodians, employees, those whose only interest in the company is through a right of inheritance, and creditors. *Id.* § 5336(a)(3)(B). In turn, an "acceptable identification document" is a nonexpired: (1) United States Passport; (2) identification document issued by a State, local government, or Indian Tribe for purposes of identification; (3) driver's license issued by a State; or (4) a passport issued by a foreign government, if the individual in question does not have any of the previous forms of identification. *Id.* § 5336(a)(1). The term "unique identifying number" refers to "the unique identifying number from an acceptable identification document"—i.e., a passport number or the like. *Id.* § 5336(a)(13). Finally, while the CTA itself does not define "substantial control," the final rule implementing the CTA, (the "Reporting Rule") does. Under the Reporting

[3] Reporting companies can file BOI reports for free through FinCEN's website.

Rule, "substantial control" means: (1) serving as a "senior officer of the reporting company"; (2) having authority to hire and fire senior officers, the majority of the board of directors, or a similar body; or (3) directing, determining, or having substantial influence over "important decisions made by the reporting company." 31 C.F.R. § 1010.380(d)(1). Further, "any other form of substantial control over the reporting company" constitutes "substantial control," under the Reporting Rule, be it direct or indirect. *Id.* § 1010.380(d)(1)(i)(D), (d)(1)(ii).

The CTA delegates authority to the Secretary of the Treasury to establish an effective date for filing and updating beneficial ownership information reports and to promulgate regulations regarding these reports. *Id.* § 5336(b)(1). Pursuant to that authority, FinCEN's regulations state that "any domestic reporting company created before January 1, 2024, and any entity that became a foreign reporting company before January 1, 2024[,] shall file a report not later than January 1, 2025." Reports of Beneficial Ownership Information, 31 C.F.R. § 1010.380(a)(1)(iii) (2024). The remainder of FinCEN's regulations give teeth to the CTA as codified. *Compare* 31 U.S.C. § 5336 *with* 31 C.F.R. §1010.380.

Under the Reporting Rule, the content of a reporting company's beneficial owner report must include the legal name of the company, that company's trade names, the address of its principal place of business or primary location in the United States, the State, Tribal, or foreign jurisdiction of the company's formation, and the company's Internal Revenue Services Taxpayer Identification Number. 31 C.F.R. § 1010.380(b)(1)(i). Further, the report must include the full legal name of each beneficial owner of the company, their date of birth, their business or residential address, their unique identifying number from an approved identification document, and a

photograph of that document. *Id.* § 1010.380(b)(1)(ii). Covered entities have a continuing obligation to update their beneficial owner reports. *Id.* § 1010.380(b)(3).

FinCEN "shall . . . maintain[]" this information for at least five years after "the date on which the reporting company terminates." 31 U.S.C. § 5336(c)(1). The CTA permits FinCEN to disclose any beneficial ownership information upon request from state, local, federal, or international law enforcement entities. 31 U.S.C. § 5336(c)(2). The CTA also mandates that FinCEN take certain precautions with the beneficial ownership information to avoid inappropriate disclosure of that information. 31 U.S.C. § 5336(c)(2)(C).

Failure to comply with the CTA is fraught with peril. The CTA makes it illegal to: (1) "willfully provide, or attempt to provide, false or fraudulent beneficial ownership information"; and (2) "willfully fail to report complete or updated beneficial ownership information." 31 U.S.C. § 5336(h)(1). Any individual who is guilty of violating either provision is civilly liable and may be fined up to $500 a day for each day that "the violation continues or has not been remedied." *Id.* § 5336(h)(3)(A)(i). Further, any individual who is guilty of violating either provision may be incarcerated for up to two years and fined up to $10,000. *Id.* § 5336(h)(3)(A)(ii). The CTA also proscribes unauthorized disclosure of beneficial ownership information and subjects any person who knowingly discloses such information without authorization to criminal and civil penalties. *Id.* §§ 5336(h)(2), (h)(3)(B).

According to FinCEN, the CTA "will have a significant economic impact on a substantial number of small entities." Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498, 59550 (Sept. 30, 2022). "FinCEN estimates that there will be approximately 32.6

million existing reporting companies[,] and 5 million new reporting companies formed each year." *Id.* at 59585. Further,

> [a]ssuming that all reporting companies are small businesses, the burden hours for filing BOI [(beneficial ownership information)] reports would be 126.3 million in the first year of the reporting requirement (as existing small businesses come into compliance with the rule) and 35 million in the years after. FinCEN estimates that the total cost of filing BOI reports is approximately $22.7 billion in the first year and $5.6 billion in the years after.

Id. at 59585–86. Per company, "FinCEN estimates it would cost . . . approximately $85.14–$2,614.87 each to prepare and submit an initial report for the first year that the BOI reporting requirements are in effect." *Id.* at 59586. Finally, "FinCEN estimates it would cost approximately $37.84–$560.81 for entities to file updated BOI reports." *Id.* According to FinCEN, these estimates include "professional expertise that will be sought out to comply with the reporting requirements" such as lawyers and accountants. *Id.*

II. The Parties

There are six plaintiffs in this case, comprised of one private individual and five entities. First, Texas Top Cop Shop, Inc. ("TTCS") is a family-run, Texas corporation that maintains its principal place of business and all of its operations in Conroe, Texas (Dkt. #1 at p. 5). Since 2017, TTCS has sold equipment to first responders out of its single storefront in Conroe (Dkt. #1 at p. 16). In addition, TTCS is a licensed dealer of firearms (Dkt. #1 at p. 16). TTCS does not transact any business through the internet, nor does it sell its merchandise outside of Texas (Dkt. #1 at p. 16). Only four employees, including the owners, work at TTCS (Dkt. #1 at p. 16). Though TTCS has determined on its own that it is a reporting company under the CTA, to date, it has not filed a beneficial ownership report with FinCEN (Dkt. #1 at p. 17).

The second plaintiff, Data Comm for Business, Inc. ("Data Comm"), is a Delaware corporation that operates in both Illinois and Texas (Dkt. #1 at p. 17). It is also registered with the Illinois Secretary of State to engage in business as a foreign corporation (Dkt. #1 at p. 17). Data Comm provides small business, individuals, utility companies, and federal agencies with "technical support, information technology, and communications products" (Dkt. #1 at p. 17). It employs ten individuals (Dkt. #1 at p. 18). Like TTCS, while Data Comm has determined that it is a reporting company subject to the CTA's disclosure requirements, it has yet to file a beneficial ownership report with FinCEN (Dkt. #1 at p. 18). Further, Data Comm advocates for the repeal of the CTA as a corporation to protect the privacy of its beneficial owners (Dkt. #1 at p. 18).

The third plaintiff, Russel Straayer ("Straayer"), is an individual who resides in Conroe, Texas and is closely tied to Data Comm—the company for which he serves as Chief Executive Officer (Dkt. #1 at pp. 18–19). He has determined that he is a beneficial owner of Data Comm, though he is not the only beneficial owner of Data Comm (Dkt. #1 at p. 19). Straayer claims that he is a beneficial owner of additional reporting companies not involved in this case (Dkt. #1 at p. 19). Though Straayer is an outspoken opponent of the CTA, one of the reporting companies of which Straayer is a beneficial owner "does not wish to be associated with" his position against the CTA (Dkt. #1 at p. 19). Straayer has not filed a report with FinCEN (Dkt. #1 at p. 19).

The fourth plaintiff is Mustardseed Livestock, LLC ("Mustardseed") (Dkt. #1 at. p. 19). Mustardseed is a Wyoming limited liability company that has operated as a small dairy farm exclusively in Lingle, Wyoming since 2020 (Dkt. #1 at p. 19). It does not transact interstate business (Dkt. #1 at p. 20). While it generally produces dairy products for its own use, it "occasionally sells surplus raw milk" to Wyoming customers (Dkt. #1 at p. 20). In 2023,

Mustardseed's gross income from surplus milk sales did not exceed $30,000, and its projected income from all of its offerings will not exceed $50,000 (Dkt. #1 at p. 20). Though it has determined that it is a reporting company under the CTA, to date, it has not filed a beneficial ownership report (Dkt. #1 at p. 20). Like Data Comm, Mustardseed advocates for the repeal of the CTA as a corporate entity in to protect its beneficial owners' privacy (Dkt. #1 at p. 20).

The fifth plaintiff is the Libertarian Party of Mississippi ("MSLP") (Dkt. #1 at p. 21). MSLP dubs itself a "political organization," though it notes that it is not classified as such under § 527 of the Internal Revenue Code (Dkt. #1 at pp. 21–22). Therefore, by its own admission, it is a reporting company under the CTA (Dkt. #1 at pp. 21–22). MSLP is organized under Mississippi law and is registered with the Mississippi Secretary of State as a nonprofit corporation (Dkt. #1 at pp. 21, 23). It has no physical office (Dkt. #1 at p. 22). Instead, it relies on its members to conduct its activities (Dkt. #1 at p. 22). The members of MSLP "seek to advance the platform of the National Libertarian Party within the State of Mississippi" (Dkt. #1 at p. 21). Thus, MSLP and its members advocate for a plethora of positions on political issues and ideals (Dkt. #1 at p. 21). One such issue is the CTA, which MSLP advocates against (Dkt. #1 at p. 22). Because it operates as a political organization, individuals and entities alike donate to MSLP (Dkt. #1 at p. 22). In turn, MSLP uses those donations to promote its political agendas (Dkt. #1 at p. 22). MSLP has "less than $20,000 in assets," which are the product of donations used only for political expenditures (Dkt. #1 at p. 22). None of these expenditures promote activities out of the state of Mississippi, and MSLP does not engage in any economic activity outside of Mississippi (Dkt. #1 at p. 23). Like its co-plaintiffs, MSLP has not filed a beneficial owner report with FinCEN (Dkt. #1 at p. 23).

The sixth and final Plaintiff—the National Federation of Independent Business ("NFIB")—is distinct from its co-plaintiffs in that it is an organization suing on behalf of its members, who are not a party to this lawsuit (Dkt. #1 at p. 24). NFIB is a tax-exempt organization under § 501(c) of the Internal Revenue Code (Dkt. #1 at p. 24). Thus, the CTA does not compel it to file a report with FinCEN (Dkt. #1 at p. 24). Approximately 300,000 members comprise NFIB (Dkt. #1 at p. 24). TTCS and Data Comm—both of which are plaintiffs here—are members of NFIB (Dkt. #1 at p. 24). NFIB also notes that its members include companies like Grazing Systems Supply, Inc. ("Grazing Systems Supply") a Louisiana corporation with its principal place of business in Batesville, Indiana (Dkt. #1 at p. 24). Grazing Systems Supply is a family-run agricultural supply business with five employees that must comply with the CTA (Dkt. #1 at p. 24). NFIB and its members advocate against the CTA, and NFIB has publicly argued for its repeal on behalf of its members (Dkt. #1 at p. 24).

None of the five individual Plaintiffs here have filed beneficial ownership reports with FinCEN (Dkt. #1 at pp. 17–24). Further, each Plaintiff claims that if enforcement of the CTA is not enjoined, Plaintiffs' obligations under the CTA would compel them to incur compliance costs and would violate their constitutional rights (Dkt. #1 at pp. 17–24).

Defendants are comprised of several United States representatives and the governmental entities that they serve. First, Defendant Merrick Garland is the United States Attorney General who Plaintiffs sue in his official capacity, as he is responsible for the administration and enforcement of United States federal criminal law, including the CTA (Dkt. #1 at p. 6). Second, Defendant Janet L. Yellen is the United States Secretary of the Treasury, who Plaintiffs sue in her official capacity as the head of the U.S. Department of the Treasury (Dkt. #1 at p. 6). Plaintiffs also

sue Defendant U.S. Department of the Treasury, an agency under the Executive Branch that administers and enforces the CTA and its accompanying regulations (Dkt. #1 at p. 6). Fourth, Defendant Andrea Gacki is the Director of FinCEN, who Plaintiffs sue in her official capacity as the head of FinCEN (Dkt. #1 at p. 6). Finally, Plaintiffs sue Defendant FinCEN as a bureau of a federal agency that administers and enforces the CTA and its implementing regulations (Dkt. #1 at p. 6). Collectively, the Court refers to Defendants as "the Government."

III. Procedural History

On May 28, 2024, Plaintiffs initiated this lawsuit seeking a declaratory judgement that the CTA is unconstitutional and an injunction against its enforcement (Dkt. #1). On June 3, 2024, Plaintiffs moved the Court to enter a preliminary injunction against enforcement of the CTA and Reporting Rule (Dkt. #6). On June 26, 2024, Defendants responded, opposing the issuance of any injunctive relief (Dkt. #18). Plaintiffs replied, maintaining that a preliminary injunction is warranted (Dkt. #19). On September 24, 2024, Defendants notified the Court of supplemental persuasive authority: *Firestone v. Yellen*, No. 3:24-cv-1034-SI, 2024 WL 4250192, (D. Or. Sept. 20, 2024) (Dkt. #22). After the Court set this matter for a hearing, the parties jointly filed stipulations that negated the need to call witnesses at the hearing (Dkt. #24). On October 9, 2024, the Court heard the arguments of counsel. Finally, on October 24, 2024, Defendants notified the Court of further supplemental persuasive authority: *Cmty. Ass'ns Inst. v. Yellen*, No. 1:24-cv-1597, 2024 WL 4571412 (E. D. Va. Oct. 24, 2024) (Dkt. #27).

LEGAL STANDARD

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 24 (2008). A party seeking a preliminary injunction must

establish four elements: (1) a substantial likelihood of success on the merits; (2) a substantial threat that they will suffer irreparable harm absent injunctive relief; (3) that the threatened injury outweighs any damage that the injunction might cause the defendant; and (4) that the injunction will not harm the public interest. *Nichols v. Alcatel USA, Inc.*, 532 F.3d 364, 372 (5th Cir. 2008). "A preliminary injunction . . . should only be granted if the plaintiffs have clearly carried the burden of persuasion on all four requirements." *Id.* Nevertheless, a movant "is not required to prove his case in full at a preliminary injunction hearing." *Fed. Sav. & Loan Ins. Corp. v. Dixon*, 835 F.2d 554, 558 (5th Cir. 1987) (quoting *Univ. of Tex. v. Comenisch*, 451 U.S. 390, 395 (1981)). The decision of whether to grant a preliminary injunction lies within the sound discretion of the district court. *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 320 (1982).

ANALYSIS

Plaintiffs challenge the CTA on several grounds. Namely, Plaintiffs assert that the CTA is unconstitutional both facially and as applied because: (1) the CTA intrudes upon States' rights under the Ninth and Tenth Amendments; (2) the CTA compels speech and burdens Plaintiffs' right of association under the First Amendment; and (3) the CTA violates the Fourth Amendment by compelling disclosure of private information (Dkt. #1 at pp. 25–31). For each of these reasons, independently and collectively, Plaintiffs assert that FinCEN's Reporting Rule, which implements the CTA, is also unconstitutional and should be set aside under § 706 of the Administrative Procedure Act ("APA") (Dkt. #1 at p. 31).

Whether the CTA and the Reporting Rule are absolutely unconstitutional is a question for another day. Today, it is enough for the Court to determine whether Plaintiffs have demonstrated a substantial likelihood of success on the merits of any of their claims, in addition to satisfying the

three additional elements necessary for a preliminary injunction. *See Nichols*, 532 F.3d at 372. Before the Court can reach the merits of Plaintiffs' arguments, it must dispense with two threshold matters. Namely, the Court must perform a dual-pronged standing inquiry. First, it must assess whether the individual Plaintiffs have standing. Second, the Court must ensure that NFIB has associational standing to participate in this litigation on behalf of its members.

I. Standing

"A preliminary injunction, like final relief, cannot be requested by a plaintiff who lacks standing to sue." *Speech First, Inc. v. Fenves*, 979 F.3d 319, 329 (5th Cir. 2020). Though Defendants do not contest that Plaintiffs have standing, "it is well established that [the Court] has an independent obligation to assure that standing exists, regardless of whether it is challenged by any of the parties." *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009). Here, Plaintiffs consist of both individuals and an association. While an individual's standing is an independent legal inquiry, whether an organization has standing hinges in part on whether its members alone would have standing. *See Ctr. for Biological Diversity v. United States Env't Prot. Agency*, 939 F.3d 533, 536 (5th Cir. 2019). Because two of the individual Plaintiffs here are members of NFIB, the associational standing inquiry builds off of the individual standing assessment to some extent. Thus, the Court first asks whether each individual Plaintiff has standing. Then, the Court will assess whether NFIB has standing. For the reasons that follow, the Court concludes that every Plaintiff has standing.

A. Individual Standing

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1993). Article III of the United States Constitution mandates that federal courts may only hear "Cases" and "Controversies." U.S. CONST. art. III, § 2. "The doctrine of standing gives meaning to these

constitutional limits by 'identifying those disputes which are appropriately resolved through the judicial process.'" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)). Thus, Article III standing is a "bedrock constitutional requirement." *United States v. Texas*, 599 U.S. 670, 675 (2023). A matter is only justiciable if a plaintiff establishes every element of standing. *See id.*

To establish standing, an individual plaintiff must satisfy the "familiar three-part test" under Article III. *Gill v. Whitford*, 585 U.S. 48, 65 (2018). The plaintiff must have: "'(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.'" *Career Colls. & Schs. of Tex. v. United States Dep't of Educ.*, 98 F.4th 220, 234 (5th Cir. 2024) (quoting *Gill*, 585 U.S. at 65); *Summers*, 555 U.S. at 493. These requirements "constitute 'an essential and unchanging part of the case-or-controversy requirement of Article III.'" *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024) (quoting *Lujan*, 504 U.S. at 560)). The party invoking federal jurisdiction carries the burden of establishing that they have standing. *Id.* at 561. And because the elements of standing "are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported . . . with the manner and degree of evidence required at the successive stages of litigation." *Lujan*, 504 U.S. at 562. A court may only issue a preliminary injunction if the plaintiff makes a "clear showing that the plaintiff is entitled to such relief." *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 178 (5th Cir. 2020) (quoting *Barber v. Bryant*, 860 F.3d 345, 352 (5th Cir. 2017)). Thus, at this stage, "[P]laintiffs must make a 'clear showing' of standing to maintain the injunction." *Id.* Plaintiffs have met that burden here.

1. Injury in Fact

The first element of standing is an injury in fact. *Gill*, 585 U.S. at 65. An alleged injury must meet three requirements to constitute an injury in fact. First, the injury must be "'concrete,' meaning that it must be real and not abstract." *FDA*, 602 U.S. at 381 (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424 (2021)). Second, the injury must be "particularized." *Lujan*, 504 U.S. at 560, n.1. That is, "the injury must affect 'the plaintiff in a personal and individual way' and not be a generalized grievance." *FDA*, 602 U.S. at 381 (quoting *id.*). To demonstrate, the Supreme Court has noted that "[a]n injury in fact can be a physical injury, a monetary injury, an injury to one's property, or an injury to one's constitutional rights, to take a few common examples." *Id.* Third and finally, the injury must be "actual or imminent, not speculative—meaning that the injury must have already occurred or be likely to occur soon." *Id.* (citing *Clapper v. Amnesty Int'l USA*, 568 U.S., 398, 420–22 (2013)). In cases such as this one, "when a plaintiff seeks prospective relief such as an injunction, the plaintiff must establish a sufficient likelihood of future injury." *Id.*

With this in mind, a plaintiff may challenge a federal statute before it has been enforced if they can "demonstrate a realistic danger of sustaining a direct injury [from the federal statute's] enforcement." *Babbit v. United Farm Workers Nat'l Union*, 442 U.S. 298, 298 (1979). This rule makes sense, as certainly, Article III's standing requirements do not require a plaintiff to "expose himself to actual arrest or prosecution to be entitled to challenge" the statute. *Steffel v. Thompson*, 415 U.S. 452, 459 (1974). Thus, in cases involving pre-enforcement challenges, a plaintiff satisfies the injury-in-fact requirement if they "'intend to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by statute, and there exists a credible threat of prosecution thereunder.'" *Paxton v. Dettelbach*, 105 F.4th 708, 711 (5th Cir. 2024) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014)).

Independently, "'an increased regulatory burden typically satisfies the injury[-]in[-]fact requirement.'" *Texas v. Equal Emp. Opportunity Comm'n*, 933 F.3d 433, 446 (5th Cir. 2019) (quoting *Contender Farms, L.L.P. v. U.S. Dep't of Agric.*, 779 F.3d 258, 266 (5th Cir. 2015)). As the Fifth Circuit has recognized, where a "new Rule requires at least some degree of preparatory analysis, staff training, and reviews of existing compliance protocols," the injury-in-fact requirement is satisfied. *Career Colls. & Schs. of Tex.*, 98 F.4th at 234 (internal citation omitted). This too makes sense, as "these are precisely the types of concrete injuries that [the Fifth Circuit] has consistently deemed adequate to provide standing in regulatory challenges." *Id.*

Here, each of the five individual Plaintiffs have met their burden to satisfy the injury-in-fact requirement for two reasons. *First*, Plaintiffs' Complaint and Declarations show that they "intend to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by statute." *See Susan B. Anthony List*, 573 U.S. at 159. Specifically, each individual Plaintiff has not filed a beneficial ownership information report with FinCEN and refuses to file such a report absent a judicial declaration that they must comply with the CTA (*See* Dkt. #6 at pp. 17, 18, 19, 21, 24; Dkt. #6-4 at p. 2; Dkt. #6-5 at p. 2; Dkt. #6-6 at p. 4; Dkt. #6-7). Plaintiffs recognize that the CTA compels them to tender a BOI report to FinCEN (*See* Dkt. #6 at pp. 17, 18, 19, 21, 24; Dkt #6-4 at p. 2; Dkt. #6-5 at p. 2; Dkt. #6-6 at p. 4; Dkt. #6-7). Nonetheless, Plaintiffs refuse to do so because they contend that the CTA violates their rights under the First, Fourth, Ninth, and Tenth Amendments to the United States Constitution. (*See* Dkt. #6 at pp. 17, 18, 19, 21, 24; Dkt. #6-4 at p. 2; Dkt. #6-5 at p. 2; Dkt. #6-6 at p. 4; Dkt. #6-7). The parties agree that Plaintiffs' intended course of action subjects Plaintiffs to criminal and civil liability under the CTA (*See* Dkt. #6 at p. 2; Dkt. #18 at p. 5). And "there is no doubt that the CTA will be applied

with its full force." *NSBU v. Yellen*, 721 F. Supp. 3d 1260, 1271 (N.D. Ala. 2024). It is axiomatic that the Government does not defend the CTA in this litigation simply for the sake of litigating—the CTA and its implementing regulations would be aspirational were it not for its robust penalty provisions. *See* 31 U.S.C. § 5336(h). Thus, "the [P]laintiffs' fear of prosecution [is] not imaginary or wholly speculative." *See Susan B. Anthony List*, 573 U.S. at 160.[4] Accordingly, Plaintiffs have clearly established an injury in fact sufficient to satisfy this prong of the standing inquiry.

Second, the CTA's enforcement would require Plaintiffs to incur increased regulatory burdens, which alone are sufficient to confer standing. *See Contender Farms L.L.P.*, 779 F.3d at 266. The CTA and Reporting Rule, by FinCEN's own admission, will cause reporting companies to incur at least some compliance costs. "FinCEN estimates that it will cost the majority of the 32.6 million domestic and foreign reporting companies that are estimated to exist as of the January 2024 effective date approximately $85 apiece to prepare and submit an initial [beneficial owner information] report." 87 Fed. Reg. at 59550, 59562. FinCEN also estimates that it will take approximately twenty minutes to read a beneficial ownership report form and understand it, thirty minutes to collect information about a company's beneficial owners, and twenty minutes to fill out and file the report, resulting in a seventy-minute endeavor. *Id.* at 59569.[5] FinCEN acknowledges, however, that the more complex the reporting company's structure, the greater the costs. According to FinCEN, more complicated reporting companies may take at least 650 minutes to file a report and incur approximately $2,614.87 in compliance costs. *Id.* at 59473. Here, Plaintiffs confirm that they will incur such compliance costs, among others, if the CTA and Reporting Rule

[4] Straayer, as the only Plaintiff who is a natural person, also faces the CTA's criminal penalty provisions. *See* 31 U.S.C. § 5336(h).

[5] But the Court notes that as a practical matter, it takes far longer than seventy minutes simply to read the CTA and Reporting Rule alone.

are not enjoined (Dkt. #6 at p. 9). These costs are "precisely the types of concrete injuries that [the Fifth Circuit] has consistently deemed adequate to provide standing in regulatory challenges." *See Career Colls. & Schs. of Tex.*, 98 F.4th at 234. Thus, Plaintiffs have satisfied the injury-in-fact requirement because of the increased regulatory burden that the CTA and Reporting Rule imposes on Plaintiffs. *See id.*

2. Causation & Redressability

The second and third elements of standing—causation and redressability—"are often 'flip sides of the same coin.'" *FDA*, 602 U.S. at 380–81 (quoting *Spring Commc'ns Co. v. APCC Servs., Inc.*, 544 U.S. 269, 288 (2008)). "If a defendant's action causes an injury, enjoining the action or awarding damages for the action will typically redress that injury." *Id.* In cases such as this one, where Plaintiffs sue the Government seeking relief from one of its regulations, these two elements are "easy to establish." *Id.* at 382 (citing *Lujan*, 504 U.S. at 561–62; *Susan B. Anthony List*, 573 U.S. at 162–63). Indeed, "Government regulations that require or forbid some action by the plaintiff almost invariably satisfy the . . . causation requirement[]." *Id.* Because the Government's statute (the CTA) and regulation (the Reporting Rule) aggrieve Plaintiffs, and because the Court's relief may redress Plaintiffs' alleged injuries, Plaintiffs have satisfied Article III's causation and redressability requirements. *See id.* Accordingly, the individual Plaintiffs here have standing to bring the instant lawsuit.

B. Associational Standing

Having determined that the individual Plaintiffs in this lawsuit have standing, the Court now turns to the issue of whether NFIB has associational standing such that it may partake in this litigation on behalf of its members. As both the Supreme Court and Fifth Circuit have recognized, an association (such as NFIB) has standing to sue on behalf of its members when three elements

are satisfied. *See Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977); *Ctr. for Biological Diversity v. EPA*, 937 F.3d 533, 536 (5th Cir. 2019). First, the association's members must "independently meet" Article III's standing requirements. *Hunt*, 432 U.S. at 343. Second, the interests the association "seeks to protect [must be] germane to the organization's purpose[.]" *Id.* Third, "neither the claim asserted nor the relief requested [may] require[] the participation of individual members in the lawsuit." *Id.* Here, all three elements are satisfied.

First, NFIB's members appear to independently satisfy Article III's standing requirements. Just like the individual Plaintiffs that filed this lawsuit, NFIB's members—among whom are TTCS and Data Comm—are reporting companies that fall subject to the CTA and Reporting Rule (Dkt. #6-7). One additional example is Grazing Systems Supply, which is a reporting company (Dkt. #6-7 at p. 2). Just like the individual Plaintiffs discussed above, *see supra* Section I.A, NFIB's members will incur compliance costs to comply with the CTA (Dkt. #6-7 at p. 2). Similarly, their grievance is against the CTA and the Reporting Rule, which are Government regulations (Dkt. #6-7). Thus, NFIB's members individually satisfy Article III's standing requirements. *See Hunt*, 432 U.S. at 343; *Ctr. for Biological Diversity*, 937 F.3d at 536; *FDA*, 602 U.S. at 382.

Second, the interests that NFIB seeks to protect through its participation in this litigation are certainly germane to NFIB's purpose. *See Hunt*, 432 U.S. at 343. NFIB's purpose, in large part, is to "advocate[] for small businesses" (*See* Dkt. #6 at p. 9). Accordingly, "NFIB and its members oppose the CTA, and NFIB has advocated publicly for its repeal on behalf of its members that must comply with the Act and its implementing regulations" (Dkt. #6-7 at p. 2; Dkt. #6-7, Exhibit A). The precise interest that NFIB seeks to protect through its participation in this litigation is to ensure its members do not need to comply with the CTA and the Reporting Rule—which NFIB

and its members contend is unconstitutional (*See* Dkt. #6-7 at p. 2; Dkt. #6-7, Exhibit A). That is pertinent to NFIB's purpose, especially as FinCEN notes the CTA will impact small businesses. *See* 87 Fed. Reg. at 59550. Thus, the second prong of associational standing is satisfied here. *See Hunt*, 432 U.S. at 343; *see also Assoc. of Am. Physicians & Surgeons, Inc.*, 627 F.3d 547, 551 n.2 (5th Cir. 2010) (noting that the germaneness prong is low and requires only a "mere pertinence" between the litigation at issue and the organization's purpose).

Third and finally, the Court asks whether the claim asserted, or the relief requested, would require NFIB's individual members to participate in the lawsuit. *See Hunt*, 432 U.S. at 343. This concern is not constitutional, but prudential. *Assoc. of Am. Physicians & Surgeons*, 627 F.3d at 550 (citing *United Food & Com. Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 555 (1996)). This final element concerns "matters of administrative convenience and efficiency." *Brown Grp.*, 517 U.S. at 555. In determine whether this prong of the standing analysis is satisfied, courts "examin[e] both the relief requested and the claims asserted." *Assoc. of Am. Physicians & Surgeons*, 627 F.3d at 551. While "'an association's action for damages running solely to its members would be barred for want of the association's standing to sue,'" where the association seeks declaratory or injunctive relief, the third prong is usually satisfied. *Id.* (quoting *Brown Grp.*, 517 U.S. at 546). Here, because NFIB seeks the equitable remedies of injunctive and declaratory relief, there is no need for its individual members to participate in the lawsuit. *See id.* Accordingly, NFIB has satisfied its burden to meet Article III's standing requirements. Thus, the Court may safely continue to the merits of the case.

II. Plaintiffs' Challenges to the Corporate Transparency Act and Reporting Rule

The Court now turns to the question of whether it should issue a preliminary injunction. The answer to that question turns on whether Plaintiffs have carried their burden to prove: (1) that

the CTA and Reporting Rule substantially threaten Plaintiffs with irreparable harm; (2) a substantial likelihood of success on the merits of any of their challenges; (3) that the threatened harm outweighs any damage the injunction might have on the Government; and (4) that preliminary injunctive relief will not harm the public. *See Nichols*, 532 F.3d at 372. The Government disputes that Plaintiffs have carried their burden to satisfy each element (Dkt. #5 at pp. 7, 10, 29). The Court addresses each element seriatim.

A. Substantial Threat of Irreparable Harm

Plaintiffs must demonstrate that they are "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is "'harm for which there is no adequate remedy at law.'" *Louisiana v. Biden*, 55 F.4th 1017, 1033–34 (5th Cir. 2022) (quoting *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013)). In the Fifth Circuit, "the nonrecoverable costs of complying with a putatively invalid regulation typically constitute irreparable harm." *Rest. Law Ctr. v. United States Dep't of Lab.*, 66 F.4th 593, 597 (5th Cir. 2023). That makes sense, as compliance costs may constitute irreparable injury "where they cannot be recovered in the ordinary course of litigation' *Rest. Law Ctr.*, 66 F.4th at 597. Such is the case in regulatory challenges and suits against the United States (like this one) because the federal government "generally enjoy[s] sovereign immunity for any monetary damages." *Wages & White Lion Invs., L.L.C. v. FDA*, 16 F.4th 1130, 1142 (5th Cir. 2021). Thus, as the Fifth Circuit has recognized time over, "complying with a regulation later held invalid almost *always* produces the irreparable harm of nonrecoverable compliance costs." *Rest. Law Ctr.*, 66 F.4th at 597 (quoting *Louisiana v. Biden*, 55 F.4th at 1034 (citing *Texas v. EPA*, 829 F.3d 405, 433 (5th Cir. 2016)) (emphasis in original). To constitute irreparable harm, however, such compliance costs "must be more than 'speculative." *Id.* (quoting *Texas v. EPA*, 829 F.3d at 433). Instead,

plaintiffs must have "'more than an unfounded fear'" of incurring such costs. *Id.* (quoting *Texas v. EPA*, 829 F.3d at 433). Separately, "[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Book People, Inc. v. Wong*, 91 F.4th 318, 340 (5th Cir. 2024) (quoting *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012))).

Here, Plaintiffs allege that the CTA and Reporting Rule, if not enjoined, will irreparably harm them in two ways. First, Plaintiffs contend simply that, absent an injunction, they will be forced to comply with the CTA and the Reporting Rule (Dkt. #6 at p. 29). As a result, Plaintiffs would have to "expend resources" and "spend time and effort to make the required filings" (Dkt. #6 at p. 29). In furtherance of their compliance efforts, Plaintiffs aver that they would also incur legal expenses (Dkt. #6 at p. 29). Every individual Plaintiff filed a Declaration in which they swore that they would incur these costs should the CTA and Reporting Rule remain in force (*See* Dkt. #6-2 at p. 2; Dkt. #6-3 at p. 2; Dkt. #6-4 at p. 2; Dkt. #6-5 at p. 2; Dkt. #6-6 at p. 4). Similarly, NFIB filed a Declaration in which it swore that if the CTA and Reporting rule are not enjoined, its members would incur compliance costs and legal expenses associated with fulfilling its obligations under the CTA and Reporting Rule (Dkt. #6-7 at p. 2). The Government stipulated that the Plaintiffs would have testified to the same at the Court's October 9 hearing should they have testified (Dkt. #24).

The second manner that the CTA and Reporting Rule allegedly threaten Plaintiffs with irreparable harm is that the CTA and Reporting Rule violate their rights under the First, Fourth, Ninth, and Tenth Amendments to the Constitution (Dkt. #6 at p. 29). To Plaintiffs, "the mere

'threat'" of "revealing protected information on pain of criminal punishment" constitutes irreparable harm (Dkt. #6 at p. 29) (quoting *Book People, Inc.*, 91 F.4th at 341).

The Government sees it quite differently. According to it, neither of Plaintiffs' bases for irreparable harm are sufficient.[6] First, the Government contends that Plaintiffs cannot establish irreparable harm due to compliance costs (Dkt. #18 at p. 19). It argues that "the evidence Plaintiffs cite in support [of the compliance costs they would incur under the CTA and Reporting Rule] is wholly conclusory, consisting of a single statement in the non-associational Plaintiffs' declarations," it argues (Dkt. #18 at p. 19). Second, the Government submits that any compliance costs Plaintiffs would incur are *de minimis* (Dkt. #18 at p. 19). In support, the Government notes that Plaintiffs, by their own admissions, have already determined that they are reporting companies subject to the CTA and Reporting Rule (Dkt. #18 at p. 19). The beneficial ownership report form is free, and the information the Plaintiffs would have to disclose is, in the Plaintiffs' own words, "readily available," the Government argues (Dkt. #18 at p. 19). In essence, because the Government believes that the reporting process is simple, any costs Plaintiffs incur are *de minimis*, militating against a finding that Plaintiffs have proved they will suffer irreparable harm, so the argument goes (*See* Dkt. #18 at p. 19).

But the Fifth Circuit rejected both arguments wholesale just last year, characterizing them as "meritless." *See Rest. Law Ctr.*, 66 F.4th at 598. To demonstrate irreparable harm, Plaintiffs need not plead a specific dollar amount representing the total amount of compliance costs they

[6] Initially, the Government also argued that "Plaintiffs' delay in seeking preliminary relief following passage of the CTA weighs heavily against any argument that they might suffer imminent, irreparable injury absent emergency relief" (Dkt. #18 at p. 18). Accordingly, the Government suggested that Plaintiffs did not demonstrate the necessity of a preliminary injunction because there was enough time for the Court to resolve the case through dispositive motions (Dkt. #18 at p. 18). The Government advanced this argument when it filed its Response in late June of 2024. The Court's schedule, however, prevented it from being able to have a hearing prior to October of 2024. As a result, the Government abandoned this argument at the Court's October 9 hearing.

might incur. *Id.* at 600. "Stringently insisting on a precise dollar figure reflects an exactitude that our law does not require." *Id.* Thus, it is enough that each Plaintiff swore in their Declarations that they will incur compliance costs and legal costs should they have to comply with the CTA and Reporting Rule. *See id.* Further, the Government's assertion that NFIB—the associational Plaintiff in this matter—did not discuss compliance costs in its Declaration is demonstrably false and does not change this conclusion (*See* Dkt. #18 at p. 19). NFIB swore that its members would incur compliance costs should the CTA and Reporting Rule remain in force (*See* Dkt. #6-7 at p. 2). This too is sufficient. *See id.*

Moreover, the Court and the Government need not accept Plaintiffs' sworn word for it—FinCEN itself concedes that reporting companies will incur compliance costs of the same sort that Plaintiffs describe in their Declarations as a result of the CTA and Reporting Rule. *See* 87 Fed. Reg. at 59585–86 ("FinCEN estimates that the total cost of filing BOI reports is approximately $22.7 billion in the first year and $5.6 billion in the years after."). This concession bolsters the Plaintiffs' belief that they will suffer irreparable harm. *See Rest. Law Ctr.*, 66 F. 4th at 600. It is ironic that the Government suggests that Plaintiffs must plead their compliance costs with greater specificity. Indeed, the Government itself only provides "estimates" in the form of broad ranges of compliance costs. *See* 87 Fed. Reg. at 59585–86. The Government seeks to hold the Plaintiffs to a standard that the law does not require. That Plaintiffs' Declarations do not include a specific dollar figure in no way reduces their showing of irreparable harm. *See id.*

The Court also disagrees with the Government's position that it would, in essence, be too easy for the Plaintiffs to comply with the CTA and Reporting Rule for their obligations to constitute irreparable harm. In support of its position that any harm Plaintiffs would incur is *de minimis*, the

Government directs the Court to the Northern District of Texas case, *Second Amend. Found., Inc. v. ATF* (Dkt. #18 at p. 19) (citing No. 3:21-cv-0116, 2023 U.S. Dist. LEXIS 202589, at *48–49 (N.D. Tex. Nov. 13, 2023)). That case does nothing to suggest that the costs Plaintiffs face here are, in fact, *de minimis*. There, the Court noted that the record "simply [did] not illustrate the nature of [the plaintiff's] compliance costs, let alone that they [were] not more than *de minimis*." *Id.* Having no evidence to suggest that the regulation at issue there would actually force the plaintiff to suffer compliance costs, the district court concluded that the plaintiff did not show irreparable harm. *See id.* There, consistent with Fifth Circuit precedent, the district court did not define the contours of "*de minimis.*" *See id.*; *Rest. Law Ctr.*, 66 F.4th at 599–600 (declining to define a specific dollar amount for what constitutes more than *de minimis* compliance costs). Here, the record contains sufficient evidence to show that the compliance costs Plaintiffs face exceed some *de minimis* value.

The Court declines the Government's invitation to make a bright-line value judgement as to what quantum of pecuniary injury constitutes "more than *de minimis*" compliance costs. *See Louisiana v. Biden*, 55 F.4th at 1035. To be sure, the Plaintiffs' alleged compliance costs must be "more than *de minimis*" to rise to the level of irreparable harm. *Id.* But it would be inconsistent with precedent to define a specific dollar figure. The key inquiry here is "not so much the magnitude but the irreparability that counts." *Texas v. EPA*, 829 F.3d at 433–34. And in any event, deprivations of constitutional rights come a few dollars at a time. Setting a bright-line rule thus makes little sense in this context. Plus, FinCEN acknowledges that companies *will* incur compliance costs like those that Plaintiffs allege. *See* 87 Fed. Reg. at 59585–86. The Government

does not dispute that Plaintiffs cannot recover these costs (*See* Dkt. #18 at p. 19). *See also Wages & White Lion Invs.*, 16 F.4th at 1142. Thus, the Government's argument on this point is unavailing.

Next, the Government claims that compliance is not a heavy lift for the Plaintiffs (Dkt. #18 at p. 19). But that is not the standard. To reiterate, "complying with a regulation later held invalid almost *always* produces the irreparable harm of nonrecoverable compliance costs." *Rest. Law Ctr.*, 66 F.4th at 597 (quoting *Louisiana v. Biden*, 55 F.4th at 1034 (citing *Texas v. EPA*, 829 F.3d 405, 433 (5th Cir. 2016))) (emphasis in original). There is nothing in these facts or at law to suggest that the Court should treat this as an abnormal case not subject to this general rule. The compliance costs Plaintiff alleges are unrecoverable and more than *de minimis*. *See Rest. Law Ctr.*, 66 F.4th at 599–600. The costs are far more than speculative, as FinCEN itself acknowledges, and the Government wisely does not dispute. *See* 87 Fed. Reg. 59585–86. Thus, Plaintiffs have met their burden to show that, absent injunctive relief, they will suffer irreparable harm.

Despite having determined that Plaintiffs have met their burden to show impending irreparable harm in the form of compliance costs, for the avoidance of doubt, the Court will address Plaintiffs' second theory of irreparable harm. Plaintiffs alternatively alleged that they will suffer irreparable harm because the CTA and Reporting Rule putatively violate their constitutional rights (Dkt. #6 at p. 29). To the Government, however, an alleged constitutional violation alone will not suffice (Dkt. #18 at p. 19). The Government notes, "'the invocation of the First Amendment cannot substitute for the presence of an imminent, non-speculative injury.'" (Dkt. #18 at p. 19) (quoting *Google, Inc. v. Hood*, 822 F.3d 212, 228 (5th Cir. 2016)). Hence, the Government argues, it would be improper to hold that Plaintiffs would suffer "irreparable harm solely [based on Plaintiffs'] allegation that [their] constitutional rights have been violated" (Dkt. #18 at p. 19).

In support, the Government cites two opinions. First, it points the Court to *Castro v. City of Grand Prairie*, an unpublished case (Dkt. #18 at p. 19) (citing No. 3:21-CV-885, 2021 WL 1530303, at *2 (N.D. Tex. Apr. 19, 2021)). There, a *pro se* plaintiff sought a temporary restraining order ("TRO") and brought claims under 42 U.S.C. § 1983. *Castro*, 2021 WL 1530303, at *1. The plaintiff, a candidate for political office, alleged that the city of Garland violated his rights under the First Amendment and Equal Protection Clause when a county sheriff threatened to remove the plaintiff's campaign signs across the county. *Id.* He further alleged that the city violated his rights when a county official removed his campaign signs that were placed on private property. *Id.* The district court denied emergency relief for two reasons. First, the plaintiff's "TRO Application consist[ed] of one page of conclusory assertions, and his Complaint [was] devoid of any allegations that would satisfy the requirements for liability under section 1983." *Id.* at *2. Second and as a result of his "conclusory" allegations, Plaintiff failed to prove that he faced a substantial threat of irreparable harm. *Id.*

The Government also relies on *Sheffield v. Bush* for the same proposition (Dkt. #18 at p. 19) (citing 604 F. Supp. 3d 586, 609 (S.D. Tex. 2022)). There, two homeowners challenged an order issued by the Texas General Land Office that impacted the homeowners' property. *Id.* at 595. The homeowners sought a preliminary injunction against the order's enforcement and a declaratory judgment that the order amounted to an unconstitutional taking that also violated both the Fourth Amendment and the Due Process Clause. *Id.* The court denied the plaintiffs' motion for preliminary injunction for what appear to be two principal reasons, at least as relevant here. First, the court was "not yet convinced" that plaintiffs had shown a constitutional violation. *Id.* at 609. Second, the court found that "an allegation" of a constitutional violation, "taken alone," was not

sufficient to establish an irreparable injury. *Id.* In reaching this conclusion, the court recognized that in *Elrod v. Burns*, the Supreme Court held that "'the loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury.'" *Id.* (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The court noted that the Fifth Circuit had yet to apply *Elrod* to cases "outside of the First Amendment context." *Id.* (internal citation omitted).

But neither of these cases suggest that Plaintiff has not met their burden here. Whereas the court in *Castro* determined that the plaintiff had not shown irreparable harm because his allegations were "conclusory," that is not the case here. Rather, the record before the Court contains sufficient facts to indicate the CTA and the Reporting Rule may violate the Constitution. *Cf. Castro*, 2021 WL 1530303, at *2. The Court does not detect a deficiency in Plaintiffs' pleadings.

The Government's reliance on *Sheffield* is no more persuasive. First, the First Amendment is at issue in this case (*See* Dkt. #6 at pp. 19–25). Second, it appears that the Fifth Circuit *has* applied *Elrod*—or, at minimum, its undergirding principles—at least once outside of the context of the First Amendment. *See Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (1981) (applying *Elrod* in the context of the right to privacy). There is no reason it should not apply here. Any other conclusion would render the Fifth Circuit's well-established position that "[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary" a nullity. *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting 11A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2948.1 (2d ed. 1995)); *see also Book People, Inc.*, 91 F.4th at 340. Thus, "upon a showing that an 'alleged' fundamental right 'is either threated or in fact being impaired,' a movant is substantially threatened with irreparable injury that 'cannot be

undone by monetary relief.'" *Mock v. Garland*, 697 F. Supp. 3d 564, 577 (N.D. Tex. 2023), *appeal dismissed as moot sub nom. Watterson v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, No. 23-11157, 2024 WL 3935446 (5th Cir. Aug. 26, 2024) (quoting *Opulent Life Church*, 697 F.3d at 295–97; *Deerfield Med. Ctr.*, 661 F.2d at 338).

Here, Plaintiffs claim that the CTA violates three fundamental rights. First, the right to be free from laws that Congress does not have authority to enact (Dkt. #6 at pp. 9–19). Second, Plaintiffs allege the CTA and Reporting Rule violate their rights under the First Amendment (Dkt. #6 at pp. 19–25). And third, Plaintiffs contend that the CTA and Reporting Rule violate their rights under the Fourth Amendment (Dkt. #6 at pp. 25–27). The invocation of these rights is not a "'substitute for the presence of an imminent, non-speculative injury'" as the Government points out (Dkt. #18 at p. 19) (quoting *Google, Inc.*, 822 F.3d at 228). But Plaintiffs must comply with the CTA and Reporting Rule by January 1, 2025. *See* 31 C.F.R. § 1010.380(a)(1)(iii). The Government does not protest that impending deadline. And if Plaintiffs must comply with an unconstitutional law, the bell has been rung. Absent injunctive relief, come January 2, 2025, Plaintiffs would have disclosed the information they seek to keep private under the First and Fourth Amendments and surrendered to a law that they contend exceeds Congress's powers. That damage "cannot be undone by monetary relief." *See Deerfield Med. Ctr.*, 661 F.2d at 338. That harm is irreparable.

Because Plaintiffs have met their burden to show that they will suffer unrecoverable compliance costs absent emergency relief, they have met their burden to show that the CTA and Reporting Rule threaten substantial, imminent, non-speculative, and irreparable harm. *See Rest. Law Ctr.*, 66 F.4th at 598; *Texas v. EPA*, 829 F.3d at 433. Independent of the specter of compliance costs on the horizon, Plaintiffs have met their burden to show the threat of irreparable harm

because the CTA and Reporting Rule substantially threaten their constitutional rights. *See Deerfield Md. Ctr.*, 661 F.2d at 338; *Book People, Inc.*, 91 F.4th at 340.

B. Likelihood of Success on the Merits

The Court turns next to the merits of the case and asks whether Plaintiffs have carried their burden to show a substantial likelihood of success on the merits. In making this determination, the Court must carefully measure the CTA and the Reporting Rule against our written Constitution in an effort to resolve this matter of first impression in the Fifth Circuit. This inquiry requires extensive analysis and begins with a discussion of the type of challenges the Plaintiffs bring against the CTA and Reporting Rule.

Plaintiffs mount two types of attacks against the CTA. Plaintiffs contend that the CTA and Reporting Rule are unconstitutional both facially and as applied. "A 'facial' challenge . . . means a claim that the law is 'invalid *in toto*—and therefore incapable of any valid application.'" *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 494 n.5 (1982) (quoting *Steffel*, 415 U.S. at 474). Challenges of these sort against legislative acts are "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). As-applied challenges are narrower and less burdensome. An as-applied attack requires the Court to decide "whether a statute is administered unconstitutionally against a particular plaintiff." *Does #1-7 v. Abbott*, 345 F. Supp. 3d 763, 774 (N.D. Tex. 2018), *aff'd sub nom. Does 1-7 v. Abbott*, 945 F.3d 307 (5th Cir. 2019).

In cases such as this one, where "a litigant brings both as-applied and facial challenges, courts generally decide the as-applied challenge first because it is the narrower consideration." *Buchanan v. Alexander*, 919 F.3d 847, 852 (5th Cir. 2019). However, this general rule might change in the context of enumerated powers challenges. "By their very nature, almost all constitutional

challenges to specific exercises of enumerated powers, particularly the Commerce Clause, are facial." *Virginia ex rel. Cuccinelli v. Sebelius,* 728 F. Supp. 2d 768, 774 (E.D. Va. 2010), *vacated*, 656 F.3d 253 (4th Cir. 2011). "'When a federal statute is challenged as going beyond Congress's enumerated powers, under [Supreme Court] precedent, the Court first asks whether the statute is constitutional *on its face*.'" *Id.* (citing *Nevada Dept. of Human Res. v. Hibbs*, 538 U.S. 721, 743 (2003) (Scalia, J., dissenting) (citing *United States v. Morrison*, 529 U.S. 598 (2000); *City of Boerne v. Flores*, 521 U.S. 507 (1997); *United States v. Lopez*, 514 U.S. 549 (1995) (emphasis in original)). If the statute survives that challenge, "the [C]ourt may . . . proceed to analyze whether the statute (constitutional on its face) can be validly applied to the litigant[s]." *Nevada Dept. of Human Res.*, 538 U.S. at 743 (Scalia, J., dissenting). Here, the first issue before the Court is whether Congress has the power to enact the CTA. Only if Congress had the authority to pass the CTA does it make sense for the Court to take up Plaintiff's as-applied challenge and their attacks on the CTA under the First and Fourth Amendments. Thus, in keeping with that logic, the Court takes up the facial attacks first, starting with Plaintiffs' enumerated powers challenge under the Tenth Amendment.

1. Whether Congress Exceeded its Authority in Passing the CTA

This issue invites a return to first principles. Since our nascency, it has been "universally admitted" that our Government is "one of enumerated powers." *M'Culloch v. Maryland*, 17 U.S. 316, 405 (1819). Congress's powers are express and defined in our Constitution. U.S. CONST. art. I, § 8. Thus, Congress may only exercise those powers the Constitution expressly vests it with. *Id.* The States and the people retain the remainder. U.S. CONST. amend. X. "The enumeration of [these] powers is also a limitation of powers, because 'the enumeration presupposes something not enumerated.'" *NFIB v. Sebelius*, 567 U.S. 519, 534 (2012). "The Constitution's express conferral of some powers makes clear that it does not grant others." *Id.* Vast as Congress's powers may be,

"it still must show that a constitutional grant of power authorizes its actions." *Id.* at 535 (citing *United States v. Comstock*, 560 U.S. 126 (2010)). Thus, the Federal Government is not equipped with a federal police power to regulate all aspects of public life. *United States v. Morrison*, 529 U.S. 598, 618–19 (2000). That power belongs to the states alone. *See Sebelius*, 567 U.S. at 535. This principle of federalism, rudimentary in our system, "protects the liberty of the individual from arbitrary power." *Bond v. United States*, 564 U.S. 211, 222 (2011).

Obvious as these notions are, more than two centuries ago, Chief Justice Marshall observed that "the question respecting the extent of the powers actually granted, is perpetually arising, and will probably continue to arise, so long as our system shall exist." *M'Culloch*, 17 U.S. at 405. He was right. Some two-hundred and four years later, Plaintiffs' challenge to the CTA poses yet another iteration of this question. As our system has evolved, and the powers that the Government wields have ebbed and flowed, parties have turned to the judiciary to safeguard the promises of the Tenth Amendment. Plaintiffs call upon the Court to do so once more.

But a plea to the Court should not be misconstrued as an invitation for judicial activism. Assessing the constitutionality of a legislative act requires the Court to bear in mind its "limited role in policing th[e] boundaries" of the Government's power. *Sebelius*, 567 U.S. at 534. The Court does not wade into the treacherous waters of policy-making. Neither will the Court opine as to whether legislative action constitutes good governance or sound judgment. For these matters are "entrusted to the Nation's elected leaders." *Id.* at 532. Instead, the Court need only assess "whether Congress has the power under the Constitution to enact the challenged provisions." *Id.* Modest as this function is, judicial deference to a co-equal branch does not render the judicial function a nullity, nor does it gift Congress unbridled discretion to enact whatever legislation it

chooses. History is marked with occasions where Congress's good-faith exercise of its power has strayed too far, and where courts, acting in their unique and exclusive province, have restored the balance by striking down a law as beyond Congress's authority. Though our Constitution excludes the Court from governance and policy-making, the Court embarks alone on matters of legality and constitutionalism. "It is emphatically the province and duty of the judicial department to say what the law is," and sometimes, what the law cannot be. *Marbury*, 5 U.S. at 177. And if Congress lacks the power to enact a given law, that law is no law at all. *See id.* at 175–76.

Plaintiffs contend that the CTA simply cannot be a valid exercise of Congress's enumerated powers. The Government disagrees. It suggests that two provisions of the Constitution authorize the CTA: the Commerce Clause and the Necessary and Proper Clause. If the CTA is authorized by either, then the Court must reject Plaintiffs' facial attack under the Tenth Amendment as a failure to show that their challenge is likely to succeed on the merits. *See Salerno*, 481 U.S. at 745. The Court measures the CTA against each proffered Clause in turn.

The Commerce Clause

The Constitution vests Congress with the exclusive power "[t]o regulate Commerce with foreign Nations, and among the several states." U.S. CONST. art. I, § 8, cl. 3. Chief Justice Marshall, writing for the Supreme Court in 1824, first defined commerce, stating:

> [c]ommerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse.

Gibbons v. Ogden, 22 U.S. 1, 189 (1824). The Commerce Clause "is the power to regulate; that is, to prescribe the rule by which commerce is governed." *Id.* at 196. While the breadth of Congress's Commerce Power has waxed and waned over the years, ultimately resulting in Congress having

"broad" authority to regulate commerce, that power is not limitless. *See Lopez*, 514 U.S. at 557. The Supreme Court has cautioned that the Commerce Clause "must be considered in light of our dual system" and "may not be extended so as to . . . create a completely centralized government." *Id.* (quoting *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937)). Against this backdrop, the Supreme Court has identified "three broad categories of activity that Congress may regulate under its commerce power." *Id.* at 558. They are: (1) "the channels of interstate commerce," (2) "the instrumentalities of interstate commerce" and "persons or things in interstate commerce," and (3) "activities that substantially affect interstate commerce." *Gonzales v. Raich*, 545 U.S. 1, 16–17 (2005). The Government incorrectly contends that each category independently authorizes the CTA (*See* Dkt. #18 at pp. 15–19).

a. The CTA does not regulate channels of, or instrumentalities in, commerce.

The Court begins with the first two categories and handles them together. The Government argues that the Commerce Clause authorizes the CTA because "it regulates the channels of, and entities in interstate commerce" (Dkt. #18 at p. 29). In support of this theory, the Government cites *American Power & Light Co. v. SEC*, arguing that "Congress, of course, has undoubted power under the Commerce Clause to impose relevant conditions and requirements on those who use the channels of interstate commerce so that those channels will not be conduits for promoting or perpetuating economic evils" (Dkt. #18 at p. 29) (quoting 329 U.S. 90, 99 (1946)). The Government also relies upon *North American Co. v. SEC* for the same proposition (Dkt. #18 at p. 29) (citing 327 U.S. 686 (1946)). It notes that the Supreme Court has said, "'to the extent that corporate business is transacted through such channels, affecting commerce in more states than one, Congress may act directly with respect to that business to protect what it conceives to be the national welfare,' and 'it may prescribe appropriate regulations and determine the conditions

under which the business may be pursued'" (Dkt. #18 at p. 29) (quoting *Am. Power & Light Co.*, 329 U.S. at 99–100). Because some reporting companies use the "channels of interstate commerce, including telecommunications and electronic bank routing systems," the Government may regulate all reporting companies, so the argument goes (Dkt. #18 at p. 29). Further, the Government claims that Congress's commerce power permits it to regulate directly "those entities who seek to misuse those channels to commit economic crimes" (Dkt. #18 at p. 29).

These arguments misinterpret the scope of Congress's power to regulate channels of and instrumentalities in interstate commerce. The Supreme Court and Fifth Circuit alike define the "channels of interstate commerce" as "the interstate transportation routes through which persons and goods move." *United States v. Bailey*, 115 F.3d 1222, 1226 (5th Cir. 1997) (internal citations omitted); *Morrison*, 529 U.S. at 613 n.5. "This category extends beyond the regulation of highways, railroads, air routes, navigable rivers, fiber-optic cables and the like." *Groome Res. Ltd. v. Par. of Jefferson*, 234 F.3d 192, 203 (5th Cir. 2000) (internal citations omitted). The Supreme Court affirmed that Congress may regulate in this category to "prohibit discrimination in public accommodations" and noted that Congress has used the Commerce Clause "to prevent illicit goods from traveling through the channels of commerce." *Id.* (citing *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 256 (1964)).

In contrast, the term "instrumentalities in interstate commerce," is understood to refer to the "planes, trains, and automobiles" of commerce, "along with the persons associated with them." *Hobby Lobby Distillers Ass'n v. ATF*, No. 4:23-CV-1221-P, 2024 WIL 3347841, at *13 (N.D. Tex. July 10, 2024) (citing *United States v. Ballinger*, 395 F.3d 1219, 1226 (11th Cir. 2005) (the instrumentalities of commerce are generally held to be the people and things themselves moving

in commerce, and the people who make commerce possible)); *Lopez*, 514 U.S. at 558 (defining "instrumentalities of interstate commerce" as "persons or things in interstate commerce"); *Bailey*, 225 F.3d at 1227 (defining "instrumentalities" as "persons or things moving in commerce . . . includ[ing] regulation or protection pertaining to instrumentalities or things as they move in interstate commerce") (internal citations omitted).

While the Government begins its argument with an assumption—that the CTA regulates companies that use channels or instrumentalities in interstate commerce—the Court starts the inquiry, as always, with the statute's text. *See Germain*, 503 U.S. at 254. The CTA regulates "reporting companies," which the Act defines as an entity "created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe" or "formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe." 31 U.S.C. § 5336(a)(11). As a result of having so registered, the CTA requires those companies to divulge their beneficial ownership information to FinCEN on pain of civil and criminal punishment. *Id.* §§ 5336(b)(1)-(2)(A); 5336(h). The District Court for the Northern District of Alabama, faced with this definition, held that the CTA does not regulate, by its text, a channel or instrumentality of commerce. *NSBU v. Yellen*, 721 F. Supp. 3d at 1278.

The Court agrees with its sister court. "The word 'commerce' or references to any channel or instrumentality of commerce, are nowhere to be found in the CTA." *Id.* And when examining the CTA's language, the Court "must presume that Congress 'says in a statute what it means and means in a statute what it says.'" *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (quoting *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992)). Companies, generally, do not fit into either

category; they are not a "channel" or "instrumentality" of commerce. *See Lopez*, 514 U.S. at 558–59 (collecting cases indicating that channels and instrumentalities of commerce are the pathways of commerce and the items moving in commerce); *Ballinger*, 395 F.3d at 1226 (same). If they were, then Congress could regulate any company, in any way, all the time. There is no limiting principle in that, and precedent does not support acceptance of such a capacious construction of the words "channel" and "instrumentality." *See Lopez*, 514 U.S. at 558–59.

Though the CTA does not directly regulate channels or instrumentalities of commerce, the Government contends that Supreme Court precedent extends Congress's ability to regulate in this realm to companies *that use* channels and instrumentalities of commerce (*See* Dkt. #18 at p. 29). Indeed, it is "well-settled" that Congress can invoke its commerce power to regulate "those who use the channels of interstate commerce in order that those channels will not become the means of promoting or spreading evil, whether of a physical, moral, or economic nature." *United States v. Orito*, 413, U.S. 129, 144 (1973). But this grant of power, too, does not write Congress a blank regulatory check. In *American Power & Light Co. v. SEC*, two public utility holding companies challenged the Public Utility Holding Act as outside of Congress's commerce power. 329 U.S. at 96–97. The Public Utility Holding Act authorized the SEC to require registered holding companies to "ensure" that the company's corporate structure "did not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders." *Id.* at 97. The Supreme Court upheld the Act, largely because Congressed aimed at "solely to public utility holding company systems that use[d] channels of interstate commerce." *Id.* at 100. But Congress did not include such an express aim in the CTA; it does not only regulate those companies that use channels or instrumentalities. *See* 31 U.S.C. § 5336. Instead, it assumes that every company *does*

use channels and instrumentalities of interstate commerce without a jurisdictional hook of any kind that would limit the CTA's reach to only those companies who do use those channels or instrumentalities. *See id.* As the district court in *NSBU v. Yellen* observed, that theory exceeds the boundaries of the Commerce Clause. *See* 721 F. Supp. 3d at 1280. Accordingly, the Government must seek to justify the CTA through a different avenue.

b. The CTA does not regulate an activity—it creates one.

Because the CTA does not regulate the channels or instrumentalities of commerce, it may only be sustained under the third category of Congress's commerce power. That is, it must regulate an activity, which, in the aggregate, substantially impacts interstate commerce. *See Raich*, 545 U.S. at 16–17. This is the Government's last hope to justify the CTA as a bare exercise of Congress's power under the Commerce Clause. But before launching into this inquiry under Congress's third category of commerce power, there is a threshold issue which has, at times, foreclosed Congress's ability to legislate under the umbrella of this third category. In *NFIB v. Sebelius*, the Supreme Court drew attention to this initial hurdle. Simply put, legislation under the Commerce Clause must *regulate* an *existing* activity—not compel activity. *See Sebelius*, 567 U.S. at 551–53. "The power to *regulate* commerce presupposes the existence of commercial activity to be regulated. If the power to regulate something included the power to create it, many provisions in the Constitution would be superfluous." *Id.* at 551 (emphasis in original).

Concomitant with this rule is nuance. At issue in *Sebelius* was the Affordable Care Act's individual mandate provision, which forced individuals to purchase health insurance to provide a minimum baseline of coverage. *Id.* at 530–31. In assessing whether Congress, under the Commerce Clause, had the power to enforce the individual mandate, the Supreme Court noted that all of its precedent "ha[d] one thing in common: They uniformly describe the power as reaching

'activity.'" *Id.* at 551 (citing *Lopez*, 514 U.S. at 560 ("where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained"); *Perez v. United States*, 402 U.S. 146, 154 (1971) ("where the *class of activities* is regulated and that *class* is within the reach of federal power, the courts have no power to excise, as trivial, individual instances of the class") (emphasis in original); *Wickard v. Filburn*, 317 U.S. 111, 125 (1942) ("[E]ven if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce."); *Jones & Laughlin Steel*, 301 U.S. at 37 ("Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens or obstructions, Congress cannot be denied the power to exercise that control")). Thus, for Congress to properly exercise its power to "regulate commerce," it cannot force one to engage in an activity for the sole purpose of having something to regulate. *See id.* at 554.

The Supreme Court rejected the Government's theory that the Commerce Clause empowered Congress to enact the individual mandate precisely because it did not regulate a pre-existing activity—it created one of its own. *Id.* at 552. Rather than regulating a commercial activity, the Supreme Court reasoned, the individual mandate "compels individuals to *become* active in commerce by purchasing a product, on the ground that their failure to do so affects interstate commerce." *Id.* (emphasis in original). But this, the Constitution does not permit. Any other holding "would effectively override" the Commerce Clause's limitations "by establishing that individuals may be regulated under the Commerce Clause whenever enough of them are not doing something the Government would have them do." *Id.* at 553.

Like the individual mandate, this is where the Government's proffered Commerce Clause justification of the CTA begins to unravel. Initially, Plaintiffs, consistent with separate litigation against the CTA occurring across the Nation, argued that the CTA "regulates the act of registration under state law" (Dkt. #15 at p. 15). *See, e.g.*, *Cmty. Assn's Inst. v. Yellen*, No. 1:23-CV-1597 (MSN/LRV), 2024 WL 4571412, at * 7 (E.D. Va. Oct. 24, 2024). But at the Court's October 9 hearing, Plaintiffs abandoned that characterization. Instead, Plaintiffs suggested that the CTA does not regulate an activity at all, but rather that the CTA regulates, on an ongoing basis, reporting companies and beneficial owners. In its Response, the Government did not articulate what, precisely, the activity is that Congress strives to regulate through the CTA (*See* Dkt. #18). The Government's Response does, however, tacitly dispute Plaintiffs' initial position, arguing that "the CTA does not purport to override or preempt any state-law incorporation provisions" (Dkt. #18 at p. 27). Still, this does not answer the narrow question, what is the "activity" the CTA regulates? Once more, the Court's hearing provided clarity. There, the Government stated that "the conduct that the CTA regulates is the anonymous existence and operation of corporations." The Government takes a substantially similar position in litigation involving enumerated powers challenges to the CTA in courts across the country. *See, e.g.*, *id.* ("The [G]overnment argues that the 'CTA does not, and does not purport to regulate corporate entity-formation . . . . Rather, the CTA governs the conduct of a covered entity *as an ongoing concern*.'") (emphasis in original).

The Court agrees with the Government's framing of the issue. That the CTA changes, in any way, the process of registration under any state law is a non sequitur. It adds nothing to, nor detracts in any way from, the registration process under State law. *See generally* 31 U.S.C. § 5336. Instead, it uses the act of registration as a triggering event for the CTA's applicability. *Id.*

§ 5336(a)(11). Thus, the Court agrees that the CTA does not regulate the act of registration, consistent with the District Court for the Eastern District of Virginia. *See Cmty. Ass'ns Inst.*, 2024 WL 4571412, at * 7. But that framing is fatal to the Government's position.

At first blush, "The anonymous existence and operation of corporations" might appear as an "activity." After all, "operation" is an action. *See Operation*, BLACK'S LAW DICTIONARY (12th ed. 2024) (defining "operation" as "the state or condition of functioning or being in action."). But the CTA, by its text, does not appear to regulate operation at all. It does not forbid a company from doing anything except insofar as it forbids a reporting company's failure to file an updated BOI report. *See* 31 U.S.C. § 5336. Instead, by its text, it seems to only regulate an entity's *existence*, simply because reporting companies are, by their nature, anonymous. *See id.* And "anonymous existence" is not an activity at all. It is a state of being. *See, e.g.*, WEBSTER'S THIRD NEW INTERNATIONAL NEW DICTIONARY (3d ed. 1986) (defining "existence" as "the state or fact of having being" and "the manner of being that is common to every mode of being."). It is the natural, idle state that any entity formed by registering with a secretary of state necessarily takes on by virtue of its registration. It is akin to a person simply being alive in their natural state, indistinguishable from an individual choosing to refrain from purchasing health insurance. That is not an activity. And the regulation of this natural state of being seems to be exactly what the Supreme Court rejected in *NFIB v. Sebelius*. *See* 567 U.S. at 552. So, the question arises: why would Congress seek to regulate the anonymous state of being that reporting companies assume as a consequence of their registration? The AMLA answers this question plainly:

> money launderers and others involved in commercial activity intentionally conduct transactions through corporate structures in order to evade detection, and may layer such structures, much like Russian nesting "Matryoshka" dolls, across various secretive jurisdictions such that each time an investigator obtains

> ownership records for a domestic or foreign entity, the newly identified entity is yet another corporate entity, necessitating a repeat of the same process.

NDAA § 6402. And absent something akin to the CTA, the Government claims that it faces great difficulty in enforcing its financial crimes laws. *See id.* In other words, the CTA is a law enforcement tool—not an instrument calibrated to protect commerce; an exercise of police power, rather than a regulation of an activity which might impair commerce among the several states.

This the Commerce Clause will not tolerate. In rejecting a Commerce Clause justification for the individual mandate in *NFIB v. Sebelius*, the Supreme Court held that it "compel[led] individuals to *become* active in commerce by purchasing a product, on the ground that their failure to do so affects interstate commerce." 567 U.S. at 552 (emphasis in original). Here, analogous language explains the CTA. The CTA "compels" reporting companies to file a beneficial ownership report with the Federal Government—an act that no state's registration laws require—"on the ground that their failure to do so affects interstate commerce." *Id.* The Government argues just this, though in fewer words, in its Response (*See* Dkt. #15 at p. 25). But the Court need not reach the traditional aggregate effects inquiry because the CTA does not regulate an activity within the meaning of the Commerce Clause. *See NFIB v. Sebelius*, 567 U.S. at 552. Indeed, "[c]onstruing the Commerce Clause to permit Congress to regulate individuals precisely *because* they are doing nothing would open a new and potentially vast domain to congressional authority." 567 U.S. at 552 (emphasis in original). In the same vein, construing the Commerce Clause to permit Congress to regulate companies precisely because the Government does not know who substantially benefits from their ownership would similarly "open a new and potentially vast domain to congressional authority." *See id.* "Allowing Congress to justify federal regulation by pointing to the effect of" the Government's lack of information about beneficial

owners on commerce would bring countless decisions a [company] could *potentially* make within the scope of federal regulation—and under the Government's theory—empower Congress to make those decisions for [it]." *See id* (emphasis in original). That cannot be so.

To be sure, as the Government points out, "[v]arious economic crimes are made easier to commit, and harder to discover[], through the formation of corporate entities that may conduct economic transactions in their own names without disclosure of beneficial ownership information" (Dkt. #18 at p. 22). The notion that one may use a company to veil their illicit financial crimes is unassailable. But the Commerce Clause does not justify regulating all companies based on nothing more than the fear that a reporting company *might* shelter a financial criminal. "The proposition that Congress may dictate the conduct of an individual today because of prophesied future activity finds little support in [Supreme Court] precedent." *Id.* at 557. The Commerce Clause does not furnish Congress with police power or a "general license to regulate an individual from cradle to grave, simply because he will predictably engage in particular transactions." *See id.* It stands to reason then, that the Commerce Clause does not bless Congress with carte blanche to regulate all companies in perpetuity simply because they *might* engage in commerce, or one *might* use them to conceal criminal activity. *See id.* Any decision affirming the propriety of the Government's tenuous use of the Commerce Clause here would require the Court to "pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the state." *See Lopez*, 514 U.S. at 567. The Court will not interpret the Commerce Clause in such a lax manner. *See id.*

Perhaps this is why Congress has never before sought to regulate financial crimes in this way. But that alone raises judicial eyebrows at the constitutionality of the CTA. "[S]ometimes 'the

most telling indication of a severe constitutional problem . . . is the lack of historical precedent' for Congress's action." *NFIB v. Sebelius*, 567 U.S. at 549 (quoting *Free Enters. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 505 (2010) (cleaned up)). When faced with legislative acts that deviate from the historical status quo, courts, at the very least, must "'pause to consider the implications of the Government's arguments.'" *Id.* at 549–50 (quoting *Lopez*, 514 U.S. at 564). In taking that pause, it appears that sanctioning the CTA under the Commerce Clause would be to rubber-stamp a "new form of federal power." *See id.* But that power threatens the very fabric our system of federalism. *See id.* Because the CTA does not regulate a pre-existing activity, but instead compels a new one, the CTA exceeds Congress's commerce power. That should be the end of the matter. But, for the avoidance of doubt, assuming *arguendo* that the "the anonymous existence and operation of corporations" constitutes an "activity" for purposes of the Commerce Clause, the CTA still lays beyond Congress's commerce power.

c. Even if anonymous corporate existence and operation is an activity regulable under the Commerce Clause, the CTA fails to pass muster.

Congress may not invoke the substantial effects doctrine to regulate future activities or no activity at all. Thus, the Court need not perform further analysis under the third category of commerce power—activities that, in the aggregate, substantially impact interstate commerce—to hold that, at this stage, Plaintiffs have satisfied their burden to show that the CTA falls outside the scope of the Commerce Clause. *See Raich*, 545 U.S. at 16–17. But to give the Government every benefit of the doubt, as the Court must, the Court no less will analyze whether Congress may regulate "anonymous corporate existence and operation" under this third category.

In its attempt to justify the CTA, the Government principally relies on *Gonzalez v. Raich*, arguing that "Congress may 'regulate activities that substantially affect interstate commerce'"

(Dkt. #18 at p. 20) (quoting 545 U.S. at 16–17). The Government continues to contend that when Congress legislates pursuant to its commerce power under this third category, it may "'regulate purely local activities that have a substantial effect on interstate commerce'" (Dkt. #18 at p. 20) (quoting *Raich*, 545 U.S. at 17). The Government suggests that the Court, in analyzing a legislative act's propriety in this category, need only determine "whether a 'rational basis' exists" for concluding that the regulated activity, taken in the aggregate, substantially impacts interstate commerce (Dkt. #18 at pp. 20–21) (quoting *Raich*, 545 U.S. at 22). But a close reading of *Raich* and its predecessors reveal that while the Government articulates the right standard, the CTA still fails constitutional scrutiny.

In *United States v. Lopez*, the Supreme Court aptly summarized the sum of Commerce Clause jurisprudence, which bears repeating as none of the Court's Commerce Clause cases "can be viewed in isolation." *Raich*, 545 U.S. at 15; *see Lopez*, 514 U.S. at 553–562. In *Jones & Laughlin Steel Corp.*, the Supreme Court addressed a challenge to the National Labor Relations Act, which regulated intrastate employment practices. 301 U.S. at 31–34. The Court held that Congress has the power to regulate those intrastate activities that "have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions." *Lopez*, 514 U.S. at 555 (citing *Jones & Laughlin Steel Corp.*, 301 U.S. at 37). Thereafter, the Court upheld the Fair Labor Standards act in the face of a challenge under the Commerce Clause and stated:

> The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce.

Id. (quoting *United States v. Darby*, 312 U.S. 100, 118 (1941) (citing *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 119 (1942) (Congress's power under the Commerce Clause "extends to those intrastate activities which in a substantial way interfere with or obstruct the exercise of the granted power.")).

Subsequently, in the landmark case of *Wickard v. Filburn*, the Supreme Court interpreted the Commerce Clause to permit Congress to regulate the production and consumption of homegrown wheat—an intrastate, non-economic endeavor. *Id.* at 556 (citing *Wickard*, 317 U.S. at 128–29. The Court observed, consistent with its holdings in *Darby*, *Jones*, and *Wrightwood*:

> Even if [the wheat farmer's] activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as "direct" or "indirect."

Id. (quoting *Wickard*, 317 U.S. at 125). The Supreme Court stressed that even though a single wheat farmer, growing wheat for himself, may have a "trivial" impact on the market for wheat, that reality alone was not "'enough to remove him from the scope of federal regulation where . . . his contribution, taken together with that of many others similarly situated, is far from trivial.'" *Id.* (quoting *Wickard*, 317 U.S. at 127–28).

These cases, the Supreme Court declared, "ushered in an era of Commerce Clause jurisprudence that greatly expanded the previously defined authority of Congress under that Clause." At that time, the limits the Court relied on in interpreting the contours of the Commerce Clause were the "dual system of government" and a well-founded, constitutionally rooted fear of creating a "completely centralized government." *Id.*

Enter *Lopez*. At issue in *Lopez* was the Gun-Free School Zones Act of 1990, through which Congress criminalized as a matter of federal law the knowing possession of a firearm in a school zone." *Id.* at 551. The Supreme Court struck down the Act as outside of Congress's power under the Commerce Clause. *Id.* In so holding, the Court first observed that the statute did not "contain[] a jurisdictional element which would ensure, through a case-by-case inquiry, that the firearm possession in question affect[ed] interstate commerce." *Id.* at 561. The Court also noted that because the statute was not part of a "larger regulation of economic activity[] in which the regulatory scheme would be undercut unless the intrastate activity were regulated," it could not stand under *Jones & Laughlin Steel Corp.*'s progeny. *Id.* at 561. But the Court in *Lopez* did not explicitly appear to require such a regulatory regime in all inquiries under the aggregate effects theory of Congress's commerce power. *See id.*

Further, the Supreme Court determined that there existed no rational basis for Congress to conclude that possession of a firearm in a school zone substantially impacted interstate commerce. *Id.* at 564–65. The Government argued that such a rational basis existed for two principal reasons. First, the Government submitted that "possession of a firearm in a school zone may result in violent crime" and "the costs of violent crime" are spread through the population through insurance. *Id.* at 564. Second, it argued that "the presence of guns in schools poses a substantial threat to the educational process by threatening the learning environment." *Id.* Consequently, the Government argued, the possession of firearms in school zones would result in a "less productive citizenry" that would impact the national economy. *Id.* The Supreme Court rejected these arguments as devoid of any limiting principle that would bulwark congressional

attempts to legislate in the realm of criminal law and education—arenas where States maintain sovereign status and historically legislate on such matters. *See id.*

The Supreme Court crystalized this framework further in *United States v. Morrison*, in which the Court considered the constitutionality of a provision of the Violence Against Women Act, which provided a civil remedy for victims of gender-motivated violence. 529 U.S. at 601–02. The Court struck down the provision as outside of Congress's commerce power, determining that the statute regulated a noneconomic activity (gender-motivated violence) without a jurisdictional hook that would tie gender-motivated violence to interstate commerce. *Id.* at 613. Additionally, the potential impact that gender-motivated violence might have on interstate commerce was far too attenuated to pass constitutional muster under an aggregate effects analysis. *Id.* at 615. Once more, upholding the statute would have invited Congress to invade the province of the States to exercise their police power as they see fit. *Id.* at 617–18. The Court did not analyze whether the statute's absence would undercut a regulatory regime.

In *Gonzales v. Raich*, the Supreme Court returned to the framework it espoused in *Lopez* and *Morrison*, further clarifying it. *Raich* concerned a challenge to the Controlled Substances Act ("CSA") "to the extent it prevent[ed] [plaintiffs] from possessing, obtaining, or manufacturing cannabis for their personal medicinal use" as was legal under California law. 545 U.S. at 7. Specifically, the plaintiffs argued that the "CSA's categorical prohibition of the manufacture and possession of marijuana as applied to the intrastate manufacture and possession of marijuana for medical purposes pursuant to California law exceeds Congress's authority under the Commerce Clause." *Id.* at 15. The Court upheld the CSA, determining that the Commerce Clause permitted Congress to reach local, intrastate production and consumption of marijuana because it is a

"fungible commodity for which there is an established, albeit illegal, interstate market." *Id.* at 17. Thus, "Congress had a rational basis for concluding that leaving home-consumed marijuana outside federal control would . . . affect price and market conditions." *Id.* Further, it concluded that Congress's attempt to regulate the national (illicit) market for marijuana would have been hampered, if not fully undercut, if the Commerce Clause did not reach intrastate possession and consumption of marijuana. *Id.* at 19.

Given this precedent, two principal rules emerge, one relating to when Congress can regulate economic activity, the other relating to when Congress may regulate non-economic activity. First, Congress may regulate intrastate activity if the statute facially regulates an economic activity and the Court determines that a "rational basis" exists for Congress to conclude that that activity, aggregated with all its iterations "substantially affects interstate commerce." *Id.* at 22; *Lopez*, 514 U.S. at 557. Second, "while thus far in our Nation's history [the Supreme Court has] upheld . . . regulation of intrastate activity only where that activity is economic in nature," Congress may still regulate non-economic activity. *Taylor v. United States*, 579 U.S. 301, 306 (quoting *Morrison*, 529 U.S. at 613). Congress may do so if: (1) the Court concludes there is a rational basis for Congress to determine that the regulation of the activity substantially impacts interstate commerce; (2) the regulation serves a comprehensive regulatory regime; and (3) regulation of that non-economic activity is necessary to preserve that broader regulatory regime. *See Lopez*, 514 U.S. at 561; *Morrison*, 529 U.S. at 610; *see also NSBU v. Yellen*, 721 F. Supp. 3d at 1280–81. In this non-economic category of regulation, the Court also looks to whether the statute contains a jurisdictional hook, and whether Congress provided any findings regarding the impact the activity might have on commerce. *See Lopez*, 514 U.S. at 561–63; *Morrison*, 529 U.S.

614. In both inquiries, courts must consider the Commerce Clause through the lens of our dual system of government and cannot extend its reach to embrace activities that "would effectually obliterate the distinction between what is national and what is local and create a completely centralized government." *Lopez*, 514 U.S. at 557 (internal quotations omitted).

Against this backdrop, the first question is whether the activity of "anonymous corporate existence and operation" constitutes an *economic* activity. Unlike possession of a firearm in a school-zone, *Lopez*, 514 U.S. at 561, or gender motivated violence, *Morrison*, 529 U.S. at 614, the anonymous existence and operation of corporations appears to have at least something to do with commerce. But not to the same extent as *Wickard* and *Raich*, both of which involved fungible commodities and actual markets for that good. *See Wickard*, 317 U.S. at 129; *Raich*, 545 U.S. at 19. Nonetheless, it is rational for Congress to believe that registered entities, in their natural state of anonymous existence, and whatever operations they may carry out, would substantially impact interstate commerce. *See Raich*, 545 U.S. at 22; *Lopez*, 514 U.S. at 557. But, when considered in light of our dual system of government, Congress's commerce power cannot reach this far. If the Court were to sanction such an extension of legislative power today, then there is no telling how Congress would control companies tomorrow. The fact that a company is a company does not knight Congress with some supreme power to regulate them in all aspects—especially through the CTA, which does not facially regulate commerce. *See NSBU v. Yellen*, 721 F. Supp. 3d at 1285. This is especially true when such regulations are generally entrusted to the States. *See CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89 (1987) ("No principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations."). Even when measured against *Wickard*, "the most far-reaching example of Commerce Clause authority over

interstate activity," the CTA fails. *See Lopez*, 514 U.S. at 560. There is no fungible good at issue in the CTA. *See* 31 U.S.C. § 5336. And unlike *Wickard*, the CTA does not aim to regulate some issue of supply and demand. *Compare id. with Wickard*, 317 U.S. at 127–28. The CTA regulates reporting companies, simply because they are registered entities, and compels the disclosure of information for a law enforcement purpose. *See* 31 U.S.C. § 5336. No such regulation has been sustained under the Commerce Clause. The Court sees no reason to expand centuries of precedent such that this case should yield a different result.[7] Upholding the CTA would require the Court to rubber-stamp what appears to be a substantial expansion of commerce power. This, the Court will not do.

The Necessary and Proper Clause

Having established that the Commerce Clause does not justify the CTA, the Court turns to the final arrow in the Government's quiver: the Necessary and Proper Clause—its "last, best hope." *See Printz v. United States*, 521 U.S. 898, 923 (1997). If the Necessary and Proper Clause does not authorize the CTA, then Plaintiffs have shown a substantial likelihood of success on the merits on their enumerated powers challenge, warranting issuance of injunctive relief.

Though our Constitution is written, and though our Government is of enumerated powers, "a government entrusted with such powers must also be entrusted with ample means for their execution." *Comstock*, 560 U.S. at 133 (internal quotations omitted). The Framers knew this. As a result, the Necessary and Proper Clause appears written in our Constitution, vesting Congress with the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution

[7] The Court sees no need to conduct an additional, alternative analysis assuming that the CTA regulates a non-economic activity, which would require the Court to analyze whether the CTA has a jurisdictional hook, Congress's findings in the CTA related to commerce, and whether the CTA is part of a comprehensive regulatory regime that might be undermined absent the CTA. *See Lopez*, 514 U.S. at 561; *Morrison*, 529 U.S. at 610; *see also NSBU v. Yellen*, 721 F. Supp. 3d at 1280–81. Still, it is worth noting that the CTA is devoid of any jurisdictional hook that would ensure its sweep would only apply to companies engaged in interstate commerce. *See* 31 U.S.C. § 5336; *NSBU v. Yellen*, 721 F. Supp. 3d at 1286.

[Congress's enumerated] Powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. CONST. art. I, § 8, cl. 18. This power gives the Legislative Branch "the authority to enact provisions 'incidental to [an] enumerated power, and conducive to its beneficial exercise.'" *NFIB v. Sebelius*, 567 U.S. at 559 (quoting *M'Culloch*, 17 U.S. at 418). While the Supreme Court has defined the contours of the Necessary and Proper Clause such that Congress may "legislate on that vast mass of incidental powers which must be involved in the [C]onstitution, it does not license the exercise of any 'great substantive and independent powers' beyond those specifically enumerated." *Id.* (quoting *M'Culloch*, 17 U.S. at 418). Indeed, courts are "responsibl[e] to declare unconstitutional those laws that undermine the structure of government established by the Constitution" as any such law does not constitute "proper means for carrying into execution Congress's enumerated powers." *Sebelius*, 567 U.S. at 559 (internal quotations omitted) (cleaned up).

To be effective, Congress must invoke the Necessary and Proper Clause in tandem with an enumerated power. Thus, "in determining whether the Necessary and Proper Clause grants Congress the legislative authority to enact a particular federal statute, [the Court] look[s] to see whether the statute constitutes a means that is rationally related to the implementation of a constitutionally enumerated power." *Comstock*, 560 U.S. at 134 (citing *Sbari v. United States*, 541 U.S. 600, 605 (2004)). This "means-end rationality" is not a high bar. As Chief Justice Marshall declared in an oft-quoted passage: "[l]et the end be legitimate, let it be within the scope of the [C]onstitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the [C]onstitution, are constitutional." *McCulloch*, 17 U.S. at 421. Thus, the Court has upheld statutes that are "convenient," "useful,"

or "conducive" to an enumerated power's "beneficial exercise." *Sebelius*, 567 U.S. at 559 (internal citations omitted). But this standard is a bar, no less. Deference given to Congress, once more, cannot become an abandonment of the judicial responsibility to strike down *ultra vires* congressional actions as "'mere[] acts of usurpation' which 'deserve to be treated as such." *Id.* (quoting *Printz*, 521 U.S. at 924).

Within this framework, the Government urges the Court to take one of three avenues to arrive at the conclusion that the CTA is within the reach of Congress's powers. Behind door number one: the Necessary and Proper Clause in service of Congress's power to regulate commerce (Dkt. #18 at p. 29). Behind door number two: The Necessary and Proper Clause in conjunction with Congress's power to regulate foreign affairs and further its national security interests (Dkt. #18 at p. 30–31). And behind the third door: the Necessary and Proper Clause in tandem with Congress's authority to lay and collect taxes (Dkt. #18 at p. 32). The Court opens each door in turn but shuts them all. The CTA finds no constitutional solace behind any door.

a. The Commerce Clause and the Necessary and Proper Clause

The Court begins with Congress's power under the Commerce Clause and can dispose of it easily. As discussed, "the Constitution grants Congress to '*regulate* [c]ommerce.'" *NFIB v. Sebelius*, 567 U.S. at 549 (quoting U.S. CONST. Art. I., § 8, cl. 3) (emphasis in original). That regulatory power presumes the existence of a prerequisite activity. *Id.* Just as the Government's justification of the CTA as a raw exercise of commerce power would result in a severe expansion of Congress's power, the Government's logic under the Necessary and Proper Clause would justify a mandatory disclosure requirement "to solve almost any problem." *See id.* at 543. Requiring companies to disclose otherwise private information to the Government simply because those companies exist in their natural state does not derive from Congress's raw commerce power.

See id. at 560; *Comstock*, 560 U.S. at 134. It is "in no way an authority that is 'narrow in scope' or 'incidental' to the exercise of the commerce power. *See NFIB v. Sebelius*, 567 U.S. at 561 (citing *Comstock*, 560 U.S. at 148; *M'Culloch*, 17 U.S. at 418). The Court declines to authorize it as a necessary and proper use of Congress's commerce power precisely because to do so would be to ignore the crux of the Necessary and Proper Clause, which is not an exercise of any "great substantive and independent power." *See* 17 U.S. at 411.

The Government suggests that Congress's power under the Necessary and Proper Clause is even greater because the CTA covers *foreign* commerce (*See* Dkt. #18 at p. 29). That argument is not persuasive. While the Constitution grants Congress the power to "regulate [c]ommerce with foreign Nations," U.S. CONST. Art. I., § 8, cl. 3., that power is still regulatory in nature as a matter of the Constitution's plaint text. Thus, though "the 'founders intended the scope of the foreign commerce power to be . . . greater' than the interstate commerce power," that the CTA impacts foreign reporting companies as well as domestic ones does nothing to mollify the grave constitutional concern that the CTA does not regulate an activity at all (Dkt. #18 at p. 29) (quoting *Japan Line, Ltd. v. Cnty. of Los Angeles*, 441 U.S. 434, 448 (1979)). *See NFIB v. Sebelius*, 567 U.S. at 561 (citing *Comstock*, 560 U.S. at 148; *McCulloch*, 17 U.S. at 418). Thus, the CTA cannot be upheld as a necessary and proper component of Congress's commerce power.

b. Foreign Affairs Power and the Necessary and Proper Clause

Next, the Court assesses whether the CTA falls within the scope of Congress's power to regulate foreign affairs as modified by the Necessary and Proper Clause. The Government proclaims that Congress has the authority to pass the CTA because it has "'broad power under the Necessary and Proper Clause to enact legislation for the regulation of foreign affairs'" and pertaining to national security (Dkt. #18 at p. 30) (quoting *Kennedy v. Martinez*, 372 U.S. 144, 160

(1963)). Directing the Court to a slew of immigration-related cases, the Government asserts that the CTA is valid under the Necessary and Proper Clause because Congress may legislate to protect the Nation's national security interests and in furtherance of the President's power to execute the law (Dkt. #18 at pp. 30–31).

In further support, the Government leans on Congress's findings enumerated in the NDAA, which discuss the CTA's impact on foreign actors. As the Government notes, two of Congress's findings are salient to this inquiry (Dkt. #18 at p. 30). First:

> Malign actors seek to conceal their ownership of corporations, limited liability companies, or other similar entities in the United States to facilitate illicit activity, . . . harming the national security interests of the United States and the allies of the United States[.]

NDAA § 6402(3). Second, the Government calls attention to Congress's determination that:

> Federal legislation providing for the collection of beneficial ownership information for corporations, limited liability companies, or other similar entities formed under the laws of the States is needed to . . . protect vital United States national security interests; better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity; and bring the United States into compliance with international anti-money laundering and countering the financing of terrorism standards.

NDAA § 6402(5) (cleaned up). According to the Government, the sum of these findings, Congress's foreign affairs powers, and the Necessary and Proper Clause bring the CTA within Congress's regulatory wingspan.

Plaintiffs, for their part, argue that the CTA is a "purely domestic statute, affecting only entities that are registered to do business domestically, and only requires that these entities file a report with the [F]ederal [G]overnment" (Dkt. #6 at p. 12). Plaintiffs also note that the CTA does not purport to serve a treaty or international agreement (Dkt. #6 at p. 12). Further, Plaintiffs argue

that, should the Court accept the "incidental" connection to international affairs the Government relies upon to make its argument, then the Court would run headlong into the warning the Supreme Court issued in *United States v. Bond*, through which the Court cautioned against allowing an alleged exercise of foreign affairs power to trammel upon states' police power. (Dkt. #6 at p. 12) (citing 572 U.S. 844 (2014)). As set forth below, Plaintiffs are correct.

The Court begins its analysis by determining whether the inquiry before it is truly one of foreign affairs. Only then can the Court turn to the authority the Government relies upon in its Response. Once more, first principles appear an appropriate place to begin. "Matters relating 'to the conduct of foreign relations . . . are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.'" *Regan v. Wald*, 468 U.S. 222, 242 (1984) (quoting *Harisiades v. Shaughnessy*, 342 U.S. 580, 589 (1952)). That principle makes sense as these matters involve "decisions of a kind for which the Judiciary has neither the aptitude, facilities, nor responsibility and which have been long held to belong in the domain of political power." *Chicago & S. Air Lines v. Waterman S. S. Corp.*, 333 U.S. 103, 111 (1948). But as with each inquiry performed in this case, the Court's "deference in matters of policy cannot, however, become abdications in matters of law." *NFIB v. Sebelius*, 567 U.S. at 538.

Congress's foreign affairs powers are not express in Article I of the Constitution, other than the clauses stating that Congress may "regulate commerce with foreign nations," "Establish an uniform Rule of Naturalization," "declare war," "raise and support armies," "provide and maintain a navy," and "make rules for the [G]overnment and regulation of the land and naval forces." U.S. CONST. art. I., § 8, cls. 3, 4, 11, 12, 13, 14. No less, "[a]lthough there is in the Constitution no specific grant to Congress of power to enact legislation for the effective regulation

of foreign affairs, there can be no doubt of the existence of this power in the law-making organ of our Nation. *Perez v. Brownell*, 356 U.S. 44, 57 (1958), *overruled on other grounds by Afroyim v. Rusk*, 387 U.S. 253 (1967). But that power is far from plenary and does not extend to purely domestic matters. *See United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 315–16 (1936). Further, as the District Court for the Northern District of Alabama observed in analyzing Congress's foreign affairs power as applied to the CTA, the precise contours of Congress's foreign affairs power need not be defined to determine that the CTA is in no way connected to whatever authority over foreign affairs Congress might have. *See NSBU v. Yellen*, 721 F. Supp. 3d at 1273. This is because the CTA regulates internal matters—not foreign ones, negating an inquiry into a potential political question involving the CTA.

In matters involving foreign affairs, the Government is not limited by the Constitution's enumerated powers. *See id.* (citing *Curtiss-Wright Exp. Corp.*, 299 U.S. at 315–16). Indeed, the Supreme Court has made clear that "[t]he broad statement that the federal government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect to our internal affairs." *Curtiss-Wright Exp. Corp.*, 299 U.S. at 315–16. This principle drove the Supreme Court to uphold a statute which gave the president the power to declare an embargo on foreign arms. *See id.* at 329. Here, that principle demands the Court answer the threshold question of whether the subject of the CTA's regulation—the anonymous existence and operation of reporting companies—is an internal (domestic) or external (foreign) matter. *See id.*

The CTA's text provides an answer. The CTA, by its very language, does not regulate any issue of foreign affairs. It regulates a domestic issue: anonymous existence of companies registered

to do business in a U.S. state and their potential conduct. *See* 31 U.S.C. § 5336. It bears repeating, a reporting company subject to the CTA is an entity that is either: (1) "created by the filing of a document with a secretary of state or similar office *under the law of a State or Indian Tribe*"; or (2) "formed under the law of a foreign country *and registered to do business in the United States* by the filing of a document with a secretary of state or a similar office *under the laws of a State or Indian Tribe*." *Id.* § 5336(a)(11) (emphasis added). These entities, though special under the CTA as reporting companies, remain "creatures of state law." *Santa Fe Indus. v. Green*, 430 U.S. 462, 479 (1977); *Cort v. Ash*, 422 U.S. 66, 84 (1975), *abrogated on other grounds by Touche Ross & Co. v. Redington*, 442 U.S. 560 (1979); *see Standard Oil Co. of Tex. v. United States*, 307 F.2d 120, 127 (5th Cir. 1962); *NSBU v. Yellen*, 721 F. Supp. 3d at 1273. As the Court has already noted, "[n]o principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations." *NSBU v. Yellen*, 721 F. Supp. 3d at 1273 (quoting *CTS Corp.*, 481 U.S. at 89). History confirms that our Founding Fathers believed just the same. *Id.* ("Although the Founders 'were aware that leaving business regulation primarily to the individual states might cause friction within the overall American economy, they were more reluctant . . . to allow concentrations of economic power, which they visualized as a government-sponsored monopoly, and therefore chose' to leave incorporation to the States.") (quoting Allen D. Boyer, *Federalism and Corporation Law: Drawing the Line in State Takeover Regulation*, 47 OHIO ST. L. J. 1037, 1041 (1986)) (cleaned up). Thus, here, Congress is bound by our written Constitution and the enumerated powers with which it provides Congress. *See Curtiss-Wright Exp. Corp.*, 299 U.S. at 315–16.

There is scant, if any, history or precedent to suggest that whatever foreign affairs powers Congress might possess under the Necessary and Proper Clause can reach the domestic issue of entities registered to do business under state law. The authority the Government does provide does nothing to bolster its argument. *Kennedy v. Mendoza-Martinez* involved the constitutionality of a statute that functioned to divest an American of his citizenship as a consequence for draft-dodging, which the Supreme Court struck down as failing to provide sufficient safeguards to comport with due process requirements. *See* 372 U.S. 144, 146 (1963). The Court did not grapple with Congress's power to enact those statutes, which facially appear to derive from Congress's enumerated power over citizenship. *See* U.S. CONST. art. I, § 8, cl. 4.

Hernandez v. Mesa, another case that the Government relies upon, involved a cross-border shooting. 589 U.S. 93, 96 (2020). There, the Court declined to create a damages remedy for a cross-border shooting by extending its prior precedent, *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), which permitted a victim of unlawful arrest and search to assert a claim under the Fourth Amendment for damages in the absence of a statute authorizing this type of claim. *Id.* at 96. The Supreme Court defined a cross-border shooting as, "by definition an international incident." *Id.* at 104. That is very different than the monitoring of domestic entities, which is what the CTA does. *See* 31 U.S.C. § 5336. At any rate, *Hernandez* did not contemplate Congress's power to legislate, though it reaffirmed the notion that courts should not intrude upon matters of foreign relations. *See Hernandez*, 589 U.S. at 104.

Next, the Government cites *United States v. Di Re*, a case involving the constitutionality of a search of an individual convicted of possessing counterfeit gasoline coupons in violation of the Second War Powers Act of 1942—a matter inapplicable to this case. 332 U.S. 581, 582–83 (1948).

The Government relies on it, however, not as analogous, but in conjunction with *Holder v. Humanitarian Law Project*, 561 U.S. 1, 33–34 (2010), to say that a legislative act of Congress is presumed constitutional, and that that presumption is "heightened" where it involves matters of national security and foreign affairs (Dkt. #18 at p. 30). The Court does not dispute that premise. Instead, the Court notes that a heightened presumption does not apply simply because the Government says so. Neither does *Holder* suggest that it applies to the CTA, which the Court has already determined regulates a domestic matter. *Holder* involved constitutional challenges for vagueness and under the First Amendment to a statute criminalizing the provision of material support to terrorist organizations and delegating to the Secretary of State the authority to designate an entity a "foreign terrorist organization." *See* 561 U.S. at 7–9. There is no dispute that that the Court is not equipped to determine what constitutes a foreign terrorist organization. *See id.* at 33–34. But this case does not contemplate that question any more than it considers a foreign issue. The Court need not apply a heightened presumption to the CTA and Reporting Rule.

The final case the Government relies upon is *Curtiss Wright Exp. Corp.*, 299 U.S. at 318, to support its position that Congress may pass legislation that furthers its foreign affairs powers, as well as the President's (Dkt. #18 at p. 31). That case, as already established, removes the CTA from an inquiry under Congress's necessary and proper foreign affairs power as the CTA does not regulate a foreign issue. *See Curtiss Wright Exp. Corp.*, 299 U.S. at 299. Thus, the Court turns to the ultimate question of whether the CTA can be justified by Congress's power to regulate foreign affairs when the CTA only regulates a local matter. It cannot.

On this point, Plaintiffs direct the Court to *Bond v. United States*, a Supreme Court case that is not directly on point, but is helpful in analyzing the limiting principle of Congress's implied

power over foreign affairs (Dkt. #6 at p. 11–12) (citing 572 U.S. 844 (2014)). *See also NSBU v. Yellen*, 721 F. Supp. 3d at 1275 (applying *Bond* in the same context). Plaintiff suggests that *Bond* limits the scope of international legislation to exclude domestic issues (*See* Dkt. #6 at p. 11). The facts of *Bond* are these: First, in 1997, the United States ratified the International Convention on Chemical Weapons pursuant to the Federal Government's power to make treaties—an enumerated power. 572 U.S. at 848. Subsequently, in accordance with the United States's obligations under the treaty, Congress enacted the Chemical Weapons Convention Implementation Act of 1998, which "ma[d]e it a federal crime for a person to use or possess any chemical weapon, and . . . punishe[d] violators with severe penalties." *Id.* Thereafter, a microbiologist from Pennsylvania discovered that her husband had an extramarital affair with her close friend, resulting in the friend's pregnancy. *Id.* at 852. Seeking revenge, the microbiologist took several chemicals from her employer, a chemical manufacturer, and dispersed them on her friend's car door, mailbox, and doorknobs. *Id.* The friend suffered a "minor chemical burn on her thumb." *Id.* For this, the Government charged the microbiologist with violating the Chemical Weapons Convention Implementation Act. *Id.* at 852–53. After pleading guilty, the microbiologist appealed, arguing that the Implementation Act exceeded Congress's enumerated powers. *Id.*

The Supreme Court overturned her conviction and held that the Chemical Weapons Act did not "reach purely local crimes." *Id.* at 860, 866. In arriving at its holding, the Court relied on fundamental federalist principles, remarking that "[b]ecause our constitutional structure leaves local criminal activity primarily to the States, [the Court has] generally declined to read federal law as intruding on that responsibility" absent a clear indication from Congress. *Id.* at 848. The Court

also rejected an argument that the prosecution was a necessary and proper means of executing the National Government's enumerated power to make treaties. *Id.* at 855.

As the district court in *NSBU v. Yellen* correctly observed, *Bond* involved a matter of statutory interpretation, not constitutional interpretation. *See NSBU v. Yellen*, 721 F. Supp. 3d at 1275. The Government attempts to distinguish *Bond* on this basis (Dkt. #18 at p. 31). But no less, *Bond*'s principle that foreign affairs powers generally may not reach local issues remains true and applicable to this case. The Government seeks to justify the CTA as reaching the local issue of companies who register to do business with a particular state. *See* 31 U.S.C. § 5336. Affirming the constitutionality of the CTA on the basis of foreign affairs would permit Congress to reach into the states and regulate whatever it wants simply by pointing to some vague nexus between the statute at issue and a potential foreign actor. That theory stretches the fabric of our dual system of government too thin to pass constitutional muster. *See NSBU v. Yellen*, 721 F. Supp. 3d at 1275.

If the CTA is not a raw exercise of Congress's foreign affairs power, then the Government's only hope is the Necessary and Proper Clause. Once more, "in determining whether the Necessary and Proper Clause grants Congress the legislative authority to enact a particular federal statute," the inquiry centers on "whether the statute constitutes a means that is rationally related to the implementation of a constitutionally *enumerated* power." *Comstock*, 560 U.S. at 134 (emphasis added). The Government has yet to identify a single enumerated foreign affairs power that shares a nexus with the CTA. It notes that Congress believes the CTA is necessary to "'bring the United States into compliance with international anti-money laundering and countering financing of terrorism standards'" (Dkt. #18 at p. 30) (quoting NDAA § 6402(5)). But at the Court's hearing on October 9, the Court asked the Government whether the CTA was

linked to a treaty. The Government responded in the negative. And the Court pressed the parties on which "international standards" the CTA would help the United States to comply with. Once more, no party could offer an answer. In *Bond*, the Court declined to apply a law passed pursuant to a treaty to a purely domestic issue. *See Bond*, 572 U.S. 855. Here, there is no treaty. *See* 31 U.S.C. § 5336. And while there is a passing reference to an "international standard" Congress may strive to comply with, Congressional findings alone are insufficient to bring the CTA within Congress's necessary and proper power. The Government has not provided any authority to the contrary. There is simply no enumerated power the Government can identify that would justify the CTA, barring the Court from affirming the CTA as justified by the Necessary and Proper Clause. *See Comstock*, 560 U.S. at 134.

The Government has not provided any support—and there appears to be no support—for the proposition that Congress may legislate in arenas traditionally controlled by the states simply because it has made findings that make passing mention to an international impact. *See NSBU v. Yellen*, 721 F. Supp. 3d at 1275. And while Congress's findings in the NDAA include reference to "national security," "foreign affairs," and "international standards," Congress cannot invoke its foreign affairs powers to regulate a domestic issue simply because it waves the magic wand of *ipse dixit*. "Compliance with international standards may be good policy, but it is not enough to make the CTA 'necessary' or 'proper.'" *Id.* at 1276. There does not appear to be a single enumerated, foreign affairs power to which the CTA can legitimately be linked. That is fatal to the Government's argument on this point. *See Comstock*, 560 U.S. at 134. Thus, the Court must turn to the Government's final argument that the CTA is within Congress's enumerated powers.

c. Taxing Power and the Necessary and Proper Clause

Backed into the corner with one remaining card up its sleeve, the Government's final argument is that the CTA is a valid exercise of Congress's power to lay and collect taxes, as expanded by the Necessary and Proper Clause (*See* Dkt. #18 at p. 33). The Constitution confers upon Congress the power to "lay and collect taxes." U.S. CONST. art. I, § 8, cl. 8. The Government wisely concedes that the CTA—in no way, shape, or form—is a tax (Dkt. #18 at p. 33).[8] Instead, it argues that because the CTA is "in aid of a revenue purpose," that is, it helps to "facilitate tax collection," the CTA is constitutional as an exercise of Congress's power to enact laws necessary and proper to enforce its taxing scheme (Dkt. #18 at p. 32) (internal citations omitted). The Court disagrees. As the Sections below demonstrate, this final card does not arm the Government's hand with a royal flush to conquer Plaintiffs' arguments.

The Government notes that "Congress determined that the lack of beneficial ownership information allows criminals to obscure their income and assets and thus 'facilitates . . . serious tax fraud'" (Dkt. #18 at p. 32) (quoting NDAA § 6402(3)). Because Congress determined that the CTA's mandated beneficial ownership reports "would be 'highly useful' in detecting tax fraud and improving 'tax administration' generally," the CTA is a valid exercise of Congress's power to legislate in furtherance of and adjacent to its tax scheme under the Necessary and Proper Clause, so the argument goes (Dkt. #18 at p. 32) (quoting 31 U.S.C. §§ 5336(a)(11)(xxiv)(ii), (c)(5)(B)). Plaintiffs, in contrast, contend that the Government's hypothesis would result in a "'substantial

[8] The "essential feature" of a tax is that it "produces at least some revenue for the Government." *Sebelius*, 567 U.S. at 564 (citing *United States v. Kahriger*, 345 U.S. 22, 28 n.4 (1953)). On its face, the CTA does not create any revenue for the Government whatsoever. *See generally* 31 U.S.C. § 5336. Thus, the Government cannot reasonably seek to justify passage of the CTA through a contrary argument. Neither does the Government contend that the CTA's penalty provisions render the CTA a valid exercise of Congress's taxing power (*See* Dkt. #18 at p. 32). *See also NSBU v. Yellen*, 2024 WL 899372, at *20.

expansion of federal authority'" that breaks the boundaries of Congress's taxing and necessary and proper powers (Dkt. #6 at p. 17) (quoting *NSBU v. Yellen*, 2024 WL 899372, at *21)). The Court agrees with Plaintiffs.

The Court first turns to the four cases the Government cites in furtherance of its arguments on this point. But the authority the Government relies upon does little to justify the CTA as an act "derivative" of its power to lay and collect taxes such that the Necessary and Proper Clause can bridge the gap to constitutionality (*See* Dkt. #18 at p. 32). *Comstock*, 560 U.S. at 147. First comes *Sonzinsky v. United States*, which the Government cites for the proposition that Congress may legislate "in aid of a revenue purpose" (*See* Dkt. #18 at p. 32) (citing 300 U.S. 506, 513 (1937)). There, the Supreme Court upheld a law that imposed a special tax and registration requirement on dealers of firearms as authorized by Congress's taxing power. *Sonzinsky*, 300 U.S. at 511. True enough, the Supreme Court stated in dicta that *those* "registration provisions . . . [were] obviously in aid of a revenue purpose." *Id.* at 513. But it did not determine for the ages, as the Government suggests, that Congress can pass any regulation it wishes, so long as Congress can point to a "revenue purpose" it might serve. *See id.* Instead, *that* special excise tax—*which the statute created*—"on its face" was a taxing measure, with a consequential deterrent effect on the keeping of the particular type of firearm at issue in that case. *Id.* The Supreme Court held that a taxing measure is not outside of Congress's taxing power simply because it carries a consequential, deterrent effect. *Id.* And in coming to that determination, the Supreme Court did not consider the Necessary and Proper Clause. *See id.*

Second, the Government cites *Helvering v. Mitchell* for the same proposition, though that case too says nothing about the Necessary and Proper Clause (Dkt. #18 at p. 32) (citing 303 U.S.

391, 399 (1938)). *Helvering* involved the Revenue Act of 1928 as it related to deficiencies on income tax returns. 303 U.S. at 392. The Act provided that if an individual's tax returns were deficient due to fraud, then that individual must pay half of the amount of the deficiency (in addition to the deficiency). *Id.* The question before the Supreme Court was whether this provision imposed a criminal penalty such that payment on the deficiency would be barred by double jeopardy. *Id.* at 398–400. The Supreme Court answered in the negative and held that the provision was a tax. *Id.* at 402. Thus, as in *Sonzinsky*, a tax that generates revenue is not unconstitutional simply because it carries with it some regulatory measure. *Id.* at 399–400. Like *Sonzinksy*, *Helvering* does not purport to suggest that Congress may legislate however it wants because such legislation might deter tax fraud. *See id.*

Next, the Government relies upon *CIC Servs., LLC v. IRS* and *California Bankers Ass'n v. Shultz* for the proposition that "Congress has given the 'IRS broad power to require the submission of tax-related information that it believes helpful in assessing and collecting taxes'" (Dkt. #18 at p. 32) (quoting *CIC Servs., LLC*, 593 U.S. 209, 212 (2021)) (citing *California Bankers Ass'n*, 416 U.S. 21, 26 (1974)). Indeed, the Supreme Court in *CIC Servs., LLC* did say just that. 593 U.S. at 212. But once more, the context of that case does not render it dispositive on the CTA's constitutionality. There, plaintiffs challenged under the APA the enforcement of an IRS notice that would require taxpayers and material advisors to report information about a particular type of transaction. *Id.* at 213–15. The issue before the Court was whether the "Anti-Injunction Act bar[red] [the plaintiffs'] suit" under the APA. *Id.* at 216. The answer to that question does little to answer the one that now captivates the Court, other than to say that "information gathering . . . is a phase of tax administration that occurs before assessment or collection." *See CIC Servs., LLC*,

593 U.S. at 216 (internal quotations omitted). Therefore, information gathering is separate and apart from a tax itself. *See id.*; *Direct Mktg. Ass'n v. Brohl*, 575 U.S. 1, 8 (2015).

California Bankers Ass'n v. Shultz, which also does not concern the Necessary and Proper Clause, also does little to advance the Government's argument. At issue in *Shultz* was the constitutionality of the Bank Secrecy Act of 1970. 416 U.S. at 25. Part of that Act required "financial institutions to maintain records of the identities of their customers, to make microfilm copies of certain checks drawn on them, and to keep records of certain other items." *Id.* at 29. The Supreme Court noted that the purpose of these provisions was to compel the maintenance of reports that "have a high degree of usefulness in criminal, tax, or regulatory investigations proceedings." *Id.* at 26. The Court did not address the Bank Secrecy Act's propriety under Congress's taxing power, but instead entertained challenges under the First, Fourth, and Fifth Amendments to the Constitution. *See id.* at 49–78. Again, this does not assist the Court in assessing the CTA as an ancillary exercise of Congress's taxing power.

The Government finally turns to *United States v. Matthews* for the proposition that a regulation need not be paired with a concurrent tax to be a valid exercise of Congress's power to lay taxes (Dkt. #18 at p. 32) (citing 438 F.2d 715, 717 (5th Cir. 1971)). But *Matthews* says just the opposite. The line to which the Government refers fully states that "[i]f the registration requirement was not offensive when coupled with a concurrent tax, it is not offensive when designed to aid the collection of tax on any future transfer of the registered item." *Matthews*, 438 F.2d at 717. To clarify the context in which this line appears, in *Matthews*, an individual had been convicted of unlawful possession of a firearm not registered to him in a national registry, as required under the Gun Control Act of 1968. *Matthews*, 438 F.2d at 715. He argued that the statute under

which he was convicted was not constitutional because it was not an "appropriate and necessary aid to the reasonable enforcement of a valid revenue measure." *Id.* at 716. To him, such a challenge made sense because the statute under which he was convicted did not carry with it a tax. *Id.* The Court disagreed, noting that there was, in fact, a tax levied against individuals who kept such firearms. *See id.* at 717. Once more, just as in *Helvering* and *Sonzinsky*, that case suggests that a tax that generates revenue is not unconstitutional simply because it carries with it some regulatory measure. *See id.* at 716.

Even going beyond the authority the Government cites in its Response, precedent is consistent with these modest holdings. *See, e.g.*, *United States v. Doremus*, 249 U.S. 86, 92 (1919) (upholding Harrison Narcotic Drug Act that taxed sale of drugs to authorized individuals and stating that "[t]he Act may not be declared unconstitutional because its effect may be to accomplish another purpose *as well as* the raising of revenue") (emphasis added); *United States v. Kahriger*, 345 U.S. 22 (1953), *overruled on other grounds by Marchetti v. United States*, 390 U.S. 39 (1968) (upholding Gambler's Occupational Tax provision of the Revenue Act of 1951 "which lev[ies] a tax on persons engaged in the business of accepting wagers and require[s] such persons to register with the Collector of Internal Revenue"); *United States v. Bolatete*, 977 F.3d 1022, 1034 (11th Cir. 2020) (National Firearms Act and the criminal penalty for violating it are justified by Congress's taxing power because a regulatory penalty, coupled with an underlying tax, has long been accepted as within the province of Congress's power to lay and collect taxes).

In toto, these cases stand for far humbler a proposition than the Government suggests: a tax, which necessarily generates revenue, is not unconstitutional simply because it may carry a regulatory, deterrent effect on conduct—even where the tax requires some form of registration.

The Government has not provided the Court with a single case that suggests Congress's taxing power, even when coupled with the Necessary and Proper Clause, can be used to regulate when the statute at issue does not, in some way, generate some revenue. Had the Government cited *United States v. Kahriger*, it may have parroted what the Supreme Court said in dicta:

> Nor do we find the registration requirements of the wagering tax offensive. All that is required is the filing of names, addresses, and places of business. This is quite general in tax returns. Such data is intimately related to the collection of the tax and are "obviously supportable as in aid of a revenue purpose."

345 U.S. at 515 (quoting *Sonzinksy*, 300 U.S. at 506). But even that would not persuade the Court that the CTA falls within the purview of its power to tax or do what is necessary and proper to give effect to its enumerated powers. The judiciary operates on the basis of *stare decisis*, not *stare dicta*. *Kahriger*, like *Sonzinsky*, does not purport to suggest that Congress may legislate in an unbridled manner simply because it might make some tax, someday, easier to collect. In each of the cases discussed above, the challenged statute imposed a tax and had some regulatory provision or consequence. The CTA does not impose any tax, whatsoever. *See* 31 U.S.C. § 5336.

While a tax that generates revenue is not unconstitutional simply because it carries with it some regulatory measure, the inverse is not true. *Cf. Matthews*, 438 F.2d at 717. In other words, a regulation is not constitutional simply because it carries with it an incidental tax benefit. This is the category that the CTA falls under. The cases above all have one thing in common: the regulation being attacked is attached to an underlying tax. The same is not true of the CTA. *See* 31 U.S.C. § 5336. And what little connection the Government suggests the CTA has with the at-large taxing system imposed upon Americans is tenuous at best.

> As Justice Frankfurter said:
>
> > When oblique use is made of the taxing power as to matters which substantively are not within the powers delegated to Congress, the Court cannot shut its eyes to what is obviously, because designedly, an attempt to control conduct which the Constitution left to the States, merely because Congress wrapped the legislation in the verbal cellophane of a revenue measure.

Kahriger, 345 U.S. at 37 (Frankfurter, J. dissenting). And so, in the context of the Government's argument here, that Congress "sense[d]" that the CTA would be "highly useful" in detecting tax fraud and would "improve" tax administration in general do not render the CTA constitutionally valid. Thus, the cellophane that wraps the CTA is thin. Precedent indicates that "prior cases upholding laws under [the Necessary and Proper Clause] involved exercises of authority *derivative of, and in service to*, a granted power." *NFIB v. Sebelius*, 567 U.S. at 560 (emphasis added). The CTA is not "derivative of" the taxing power simply because the Government points to some potential tax purpose the CTA might serve someday. *See id.*; *cf. Helvering*, 303 U.S. at 392. Though it may be "in service to" taxation as a general matter, because the CTA does not derive from the taxing power, it is neither tightly linked,[9] nor rationally related to Congress's power to lay and collect taxes. *See Comstock*, 560 U.S. at 134.

To hold otherwise would be to unleash a slippery slope that could wreak havoc on the structure of our government. "It would be a 'substantial expansion of federal authority' to permit Congress to bring its taxing power to bear just by collecting 'useful' data and allowing tax-enforcement officials to access that data." *NSBU v. Yellen*, 721 F. Supp. 3d at 1289 (quoting *NFIB v. Sebelius*, 567 U.S. at 560)). While the Government disputes Plaintiff's assertion that the

[9] "When the inquiry is whether a federal law has sufficient links to an enumerated power to be within the scope of federal authority, the analysis depends not on the number of links in the congressional-power chain but on the strength of the chain." *Comstock*, 560 U.S. at 150 (Kennedy, J. concurring).

Necessary and Proper Clause "does not provide an independent source of power," its position stands in stark contrast to the Supreme Court's interpretation that it must be "narrow in scope," or "incidental" to an enumerated power (Dkt. #18 at p. 32). *Comstock*, 560 U.S. at 148.

Having determined that the CTA is not justified by the Commerce Clause nor the Necessary and Proper Clause in conjunction with some enumerated power, the Court concludes that Plaintiffs have met their burden to show a substantial likelihood of success on the merits of their Tenth Amendment Challenge. Thus, the Court need not assess Plaintiffs' as-applied challenges or their challenges under the First and Fourth Amendments. Thus, the Court must now determine whether the equities favor issuance of an injunction. They do.

C. Balance of Equities

The final step in the inquiry calls upon the Court to determine whether the balance of equities favors issuance of an injunction (the third and fourth factors). *Nichols*, 532 F.3d at 372. The third element is whether the harm posed by the CTA and Reporting Rule outweighs any damage injunctive relief might inflict on the Government. *See Nichols*, 532 F.3d at 372. The fourth is that injunctive relief will not harm public interest. *See id.* Where, as here, the Government is the defendant, these elements merge. *Nken v. Holder*, 556 U.S. 418, 420 (2009). On these facts, the Court determines that the threatened injury to Plaintiffs outweighs any potential harm to Defendants. Without an injunction, Plaintiffs will almost certainly incur substantial, incompensable monetary costs and constitutional harm.

"When a statute is enjoined, the [Government] necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws." *Book People, Inc.*, 91 F.4th at 341. Certainly, the Court acknowledges that the Government seeks to serve admirable ends through the CTA and the Reporting Rule. Obviously, the Government has an interest in ferreting out financial

crime, protecting foreign commerce and national security, and bringing the United States's money laundering laws into compliance with international standards (whatever those standards may be). *See* 134 Stat. at 6402. The Government argues that, balancing these interests against the "speculative" nature of the harm that Plaintiffs face, the Government's interests should win the day (Dkt. #18 at p. 39). Not so. Plaintiffs' injuries are concrete. And "neither [the Government] nor the public has any interest in enforcing a regulation that violates federal law." *Id.* (internal quotations omitted). No matter how laudable its goals, Congress's actions must abide by our Constitution. This is in the public's best interest. *See id.* Indeed, "it is always in the public interest to prevent a violation of a party's constitutional rights." *Jackson Women's Health Org. v. Currier*, 60 F.3d 448, 458 n.9 (5th Cir. 2014) (cleaned up). Because the CTA and Reporting Rule likely do pass muster under the Constitution, it is in the public's best interest to prevent the Government from enforcing the CTA and Reporting Rule. Due to the fast-approaching deadline for reporting companies to file BOI reports, the Court cannot render a meaningful decision on the merits before Plaintiffs suffer the very harm they seek to avoid. A preliminary injunction will preserve the constitutional status quo. Thus, the balance of equities favors issuance of an injunction.

Accordingly, the Court determines that the Plaintiffs have satisfied all elements required for the issuance of a preliminary injunction against the CTA and the Reporting Rule.

D. Scope of Injunction

Finally, given that an injunction is appropriate, the Court must determine its scope. Plaintiffs seek injunctive relief on behalf of the individual Plaintiffs, as well as all of NFIB's members (*See* Dkt. #6). The Government characterizes Plaintiffs' request as one for a "nationwide injunction" (Dkt. #18 at p. 17). At the Court's hearing, Plaintiffs suggested that they sought an injunction on behalf of only the Plaintiffs before the Court, including the approximately 300,000

members of NFIB. The Government responded that if the Court were to enjoin the CTA and Reporting Rule, the scope of which included NFIB's members, then the Court would, in practical effect, enter a nationwide injunction. The Court agrees with the Government's point. A nationwide injunction is appropriate in this case.

A preliminary injunction is an "extraordinary equitable remedy." *Currier*, 760 F.3d at 452. The Constitution vests district courts with "the judicial power of the United States." U.S. CONST. art. III, § 1. "That power is not limited to the district wherein the [C]ourt sits but extends across the country. It is not beyond the power of a court, in the appropriate circumstances, to issue a nationwide injunction." *Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015) (upholding nationwide injunction in immigration context) (citing *Earth Island v. Ruthenbeck*, 490 F.3d 687, 699 (9th Cir. 2006) (upholding nationwide injunction after concluding it was "compelled" by the text of Section 706 of the APA), *aff'd in part and rev'd on other grounds by Summers v. Earth Island Inst.*, 555 U.S. 488 (2009); *Chevron Chem. Co. v. Voluntary Purchasing Grps.*, 659 F.2d 695, 705–06 (5th Cir. 1981) (instructing district court to enter nationwide injunction); *Hodgson v. First Fed. Sav. & Loan Ass'n*, 455 F.2d 818, 826 (5th Cir. 1972) ("[C]ourts should not be loathed to issue injunctions of general applicability . . . 'the injunctive processes are a means of effective general compliance with national policy as expressed by Congress, a public policy judges must too carry out—actuated by the spirit of the law and not begrudgingly as if it were a newly imposed fiat of a presidium'" (quoting *Mitchell v. Pidcock*, 299 F.3d 281, 287 (5th Cir. 1962))).

But simply because the Court may issue a nationwide injunction does not mean it should in all cases. As the Supreme Court has held, "the scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the Plaintiffs in the class." *Califano*

v. Yamasaki, 442 U.S. 682, 705 (1979). The relief the Court fashions "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Id.* at 702. The Fifth Circuit has approved nationwide injunctions in cases involving immigration and the APA. *See, e.g.*, *Texas v. United States*, 809 F.3d at 187–88; *Braidwood Mgmt., Inc. v. Becerra*, 104 F.4th 930, 955 n.122 (5th Cir. 2024). It has also held that it is appropriate for a district court to enter a nationwide injunction when a plaintiff challenges a federal regulation under the APA. *See, e.g.*, *Career Colls. & Schs. of Tex.*, 98 F.4th at 255 (quoting *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989) ("When a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed.")); *Data Mktg. P'ship LP v. U.S. Dep't of Labor*, 45 F.4th 846, 851 (5th Cir. 2022); *Nat'l Min. Ass'n v. U.S. Army Corps of Eng'rs*, 145 F.3d 1399, 1407–08 (D.C. Cir. 1998).

Nonetheless, the Government highlights the controversy regarding nationwide injunctions (*See* Dkt. #18 at p. 40). Nationwide relief is a subject of ongoing debate. *See, e.g.*, *Texas v. United States*, 515 F. Supp. 3d 627, 637–38 (S.D. Tex. 2021) (collecting authority on both sides). One concern is that nationwide injunctions curtail the percolation of legal debate among lower courts. *See Louisiana v. Becerra*, 20 F.4th 260, 264 (5th Cir. 2021); *CASA de Md., Inc. v. Trump*, 971 F.3d 220, 260 (4th Cir. 2020). Thus, the Government urges the Court to tailor relief only to the parties before it because at this very moment, the Eleventh Circuit is considering the constitutionality of the CTA and Reporting Rule. *See NSBU v. Yellen*, No. 24-10736 (11th Cir.). But this Court's decision will not trench upon the Eleventh Circuit's authority to render a decision, nor will it stop further consideration of the constitutionality of the CTA.

The Court determines that the injunction should apply nationwide. Both the CTA and the Reporting Rule apply nationwide, to "approximately 32.6 million existing reporting companies." *See* 87 Fed. Reg. at 59585. NFIB's membership extends across the country. And, as the Government states, the Court cannot provide Plaintiffs with meaningful relief without, in effect, enjoining the CTA and Reporting Rule nationwide. The extent of the constitutional violation Plaintiffs have shown is best served through a nationwide injunction. *See Califano*, 442 U.S. at 705; *Career Colls. & Schs. of Tex.*, 98 F.4th at 256. Given the extent of the violation, the injunction should apply nationwide.

Plaintiffs also urge the Court to enjoin the Reporting Rule under § 706 of the APA (Dkt. #6 at p. 28), which instructs courts to "hold unlawful and set aside agency action . . . found to be . . . contrary to constitutional right[s]." 5 U.S.C. § 706(2)(B). Such vacatur is the "default rule in this Circuit." *Cargill v. Garland*, 57 F.4th 447, 472 (5th Cir. 2023).[10] But § 706 is not the proper vehicle to protect Plaintiffs from irreparable harm at this juncture. The Court has determined that the CTA and Reporting Rule are *likely* unconstitutional for purposes of a preliminary injunction. It has not made an affirmative finding that the CTA and Reporting Rule are contrary to law or that they amount to a violation of the Constitution. Thus, the Court determines that the Government should be enjoined from enforcing the Reporting Rule and the January 1, 2025, compliance deadline under the Reporting Rule should be stayed under § 705 of the APA.

[10] The Government recognizes that the Fifth Circuit has held that § 706(2) of the APA requires vacatur in certain instances (Dkt. #18 at p. 40). Nonetheless, the Government contends that § 706(2) is "merely a rule of decision directing the reviewing court to disregard unlawful action in resolving the case before it" rather than a rule that "dictate[s] a[] particular remedy" (Dkt. #18 at p. 40). For this proposition, the Government relies on secondary authority. But this Court is bound by Fifth Circuit precedent to the contrary. *See, e.g.*, *Career Colls. & Schs. of Tex.*, 98 F.4th at 255. Nonetheless, the Court does not set aside the Reporting Rule under § 706 as, at this preliminary stage, the Court has not determined that the Reporting Rule is *actually* unconstitutional.

Under § 705 of the APA, "the reviewing court" may "issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve the status or rights pending conclusion of the review proceedings" to "the extent necessary to prevent irreparable injury." 5 U.S.C. 705. *See also, e.g.*, *Texas v. EPA*, 829 F.3d 405, 435 (5th Cir. 2016) ("We have the power to stay the agency's action 'to the extent necessary to prevent irreparable injury.'" (quoting § 705)). The Fifth Circuit has interpreted this provision of the APA as akin to a preliminary injunction. *See Wages & White Lion Invs., L.L.C.*, 16 F.4th at 1135 (citing *Nken*, 556 U.S. at 426). Thus, the Court may grant relief under § 705 using the same four-pronged test as the Court uses for a traditional preliminary injunction. *Id.* at 1136. Having determined that Plaintiffs have satisfied each of the four elements for a preliminary injunction, a stay of the Reporting Rule's compliance deadline pending further order of the Court is appropriate. Just as the injunction against enforcement of the CTA should apply nationwide, a stay of the Reporting Rule should apply nationwide. "Nothing in the text of Section 705, nor of Section 706, suggests that either preliminary or ultimate relief under the APA needs to be limited" to the parties before the Court. *Career Colls. & Schs. of Tex.*, 98 F.4th at 255. "Instead . . . the scope of preliminary relief under Section 705 aligns with the scope of ultimate relief under Section 706, which is not party-restricted and allows a court to 'set aside' unlawful agency action." A stay, coupled with an injunction against enforcement of the CTA and Reporting Rule, will maintain the status quo and protect the parties from irreparable harm.

CONCLUSION

Plaintiffs have satisfied all prerequisites for a preliminary injunction. The Court has authority to issue the injunction Plaintiffs seek under Federal Rule of Civil Procedure 65(d). The

CTA is likely unconstitutional as outside of Congress's power. Because the Reporting Rule implements the CTA, it is likely unconstitutional for the same reasons. The Court has not addressed the issue of the CTA's constitutionality as applied to these Plaintiffs or Plaintiffs' challenges under the First and Fourth Amendments. Having determined that Plaintiffs have carried their burden, the Court **GRANTS** Plaintiff's Motion for a Preliminary Injunction. Therefore, the CTA, 31 U.S.C. § 5336 is hereby enjoined. Enforcement of the Reporting Rule, 31 C.F.R. 1010.380 is also hereby enjoined, and the compliance deadline is stayed under § 705 of the APA. Neither may be enforced, and reporting companies need not comply with the CTA's January 1, 2025, BOI reporting deadline pending further order of the Court.

Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." FED. R. CIV. P. 65(c). The Fifth Circuit has held that district courts have discretion to "require no security at all." *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996). After considering the facts and circumstances of this case, the Court finds that security is unnecessary and exercises its discretion to not require Plaintiffs to post security.

It is therefore **ORDERED** that Plaintiffs' Motion for Preliminary Injunction (Dkt. #6) is hereby **GRANTED.**

IT IS SO ORDERED.

SIGNED this 3rd day of December, 2024.

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

TEXAS TOP COP SHOP, INC., *et al.*, *Plaintiffs*, v. MERRICK GARLAND, ATTORNEY GENERAL OF THE UNITED STATES, *et al.*, *Defendants.*	No. 4:24-cv-478-ALM

DECLARATION OF ANDREA GACKI

I, Andrea Gacki, declare the following to be a true and correct statement of facts:

1. I am the Director of the Financial Crimes Enforcement Network ("FinCEN"), a bureau of the U.S. Department of the Treasury ("Treasury"). I have held that position since September 2023. I previously served in several other leadership roles within Treasury. Prior to joining FinCEN, I served as the Director of the Office of Foreign Assets Control, another component of Treasury (within Treasury's Office of Terrorism and Financial Intelligence), for approximately five years and, from January 2021 to December 2021, I performed the duties of the Under Secretary for Terrorism and Financial Intelligence. In my official capacity as the Director of FinCEN, I supervise all aspects of FinCEN's operations, including FinCEN's implementation of the Corporate Transparency Act ("CTA").

2. Due to the nature of my official duties, I am familiar with FinCEN's implementation of the CTA's requirements, including FinCEN's development of implementing regulations as well as

FinCEN's promulgation of guidance regarding the CTA and its implementing regulations. I am also familiar with FinCEN's expansive campaign to spread public awareness of the CTA's requirements.

3. I make this declaration in support of a motion to stay the district court's order pending appeal. The statements I make in this declaration are based on my personal knowledge, on information made available to me in my official capacity, and on conclusions reached and determinations made in accordance therewith.

4. FinCEN was created in 1990 and became a bureau of Treasury by virtue of the USA PATRIOT Act of 2001, Pub. L. 107-56. The Director of FinCEN is appointed by the Secretary of the Treasury and reports to Treasury's Under Secretary for Terrorism and Financial Intelligence.

5. FinCEN's mission is to safeguard the financial system from illicit activity, counter money laundering and the financing of terrorism, and promote national security through strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence. FinCEN primarily exercises regulatory functions under the legislative framework commonly referred to as the "Bank Secrecy Act" ("BSA"),[1] which includes the Currency and Foreign Transactions Reporting Act of 1970, as amended by Title III of the USA PATRIOT Act of 2001, the Anti-Money Laundering Act of 2020 (including the CTA) and other legislation. The BSA is the nation's first and most comprehensive federal anti-money laundering and countering the financing of terrorism ("AML/CFT") statute. The Secretary of the Treasury has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations. *See* Treasury, Treasury Directive 180-01 (Jan. 14, 2020).

[1] The BSA is codified at 12 U.S.C. §§ 1829b, 1951-1960 and 31 U.S.C. §§ 5311-5314, 5316-5336, including notes thereto. Regulations implementing the BSA appear at 31 C.F.R. Chapter X.

6. The CTA, enacted as part of the Anti-Money Laundering Act of 2020 in the National Defense Authorization Act for Fiscal Year 2021 and codified, in relevant part, at 31 U.S.C. § 5336, amended the BSA to, among other things, require certain entities to report information to FinCEN about their beneficial owners and the individuals who created or registered them. The CTA—enacted on an overwhelming and bipartisan basis in 2021—is vital to protecting the U.S. and international financial systems from illicit finance threats, such as terrorist financing, corruption, human smuggling, drug and arms trafficking, and money laundering. Congress designed the CTA to advance important national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, tax evasion, and other illicit activity through information-sharing. Specifically, access to beneficial ownership information ("BOI") reported under the CTA would significantly aid efforts to impede illicit actors' ability to use legal entities to conceal proceeds from criminal acts that undermine U.S. national security and foreign policy interests and to protect the U.S. financial system from illicit use by, for example, adding critical data to financial analyses in law enforcement and tax investigations and providing essential information to the intelligence and national security professionals who work to prevent terrorists and other illicit actors from raising, hiding, or moving money in the United States through anonymous shell or front companies. Broadly, and critically, BOI is crucial to identifying linkages between potential illicit actors and opaque business entities, including shell companies. Implementing the law has been a central pillar of the United States' anti-corruption strategy, as well as ongoing efforts to raise the United States up to international standards for corporate transparency.

7. The CTA directed FinCEN to implement its reporting requirements and certain other aspects of statute by regulation. In September 2022, FinCEN issued a final rule implementing

the reporting requirements of the CTA. *See* 87 Fed. Reg. 59,498 (codified at 31 C.F.R. § 1010.380, as amended by 88 Fed. Reg. 83,499). That rule describes who must file a BOI report, what information must be reported, and when a report is due. Specifically, the rule requires reporting companies to file reports with FinCEN that identify two categories of individuals: (1) the beneficial owners of the entity; and (2) the applicants of the entity. The rule, as later amended, also establishes the deadlines by which reporting companies must comply with the CTA's reporting requirements. For businesses created or registered before 2024, compliance is required by January 1, 2025. *See* 31 C.F.R. § 1010.380(a)(1)(iii). For businesses created or registered during 2024, compliance is required within 90 days of their formation. *See id.* § 1010.380(a)(1)(i)(A). However, for businesses created or registered after 2024, compliance will be required within 30 days of their formation. *See id.* § 1010.380(a)(1)(i)(B).[2]

8. FinCEN began accepting such BOI reports on January 1, 2024. As of December 2, 2024, FinCEN had received nearly 10 million BOI reports. In parallel, FinCEN began providing authorized government agencies with access to BOI reported under the CTA for law enforcement purposes.

9. On December 3, 2024, the district court in this matter issued an order preliminarily enjoining—nationwide—the CTA, including, expressly, enforcement of the CTA and its reporting requirements, as well as staying all associated reporting deadlines. By curtailing FinCEN's CTA implementation efforts at this juncture, the district court's order fundamentally undermines U.S.

[2] In December 2023, FinCEN issued a final rule implementing the CTA's access procedures and safeguards, 88 Fed. Reg. 88732, with an effective date of February 20, 2024. That rule describes the circumstances under which BOI may be disclosed to authorized recipients (*e.g.*, Federal agencies engaged in national security, intelligence or law enforcement activity and state, local and tribal law enforcement agencies with court authorization) and how it must be protected.

anti-corruption efforts. The CTA and its implementing regulations require most covered entities—an estimated 32.6 million businesses nationwide—to file their BOI reports under the CTA by January 1, 2025. Treasury has devoted significant resources in advance of this deadline to raise awareness about that obligation and promote compliance. Treasury's efforts have been bearing fruit, with exponential growth in reporting rates in the weeks leading up to the injunction. The order voids this deadline for all entities, nullifies the filing obligations mandated under the CTA and its implementing regulations, and broadly enjoins any enforcement of the law. It thereby cripples Treasury's efforts to implement the law and sows confusion among entities regarding their reporting obligations. If the order is not stayed, the resulting harms to U.S. anti-corruption efforts—and, ultimately, the U.S. financial system as a whole—would likely be severe.

FinCEN's CTA Implementation and Outreach Efforts

10. On December 8, 2021, building on an earlier advance notice of proposed rulemaking, FinCEN published a Notice of Proposed Rulemaking ("NPRM"), 86 Fed. Reg. 69920, to give the public an opportunity to review and comment on a proposed rule implementing the CTA's provisions requiring entities to report to FinCEN information about their beneficial owners and the individuals who created or registered the entities. FinCEN's final rule implementing these requirements, 87 Fed. Reg. 59498, was published September 30, 2022, and became effective January 1, 2024.

11. On December 22, 2023, FinCEN published a final rule implementing the CTA's access procedures and safeguards, 88 Fed. Reg. 88732, with an effective date of February 20, 2024. The CTA also requires FinCEN to amend certain existing customer due diligence regulations,

codified at 31 C.F.R. § 1010.230, to bring them into conformance with the CTA. FinCEN anticipated publishing an associated NPRM in 2025.

12. FinCEN has also published a range of guidance materials to assist the public with complying with the CTA's reporting requirements. These materials may be accessed through FinCEN's website at https://www.fincen.gov/boi, a webpage that has been viewed over 14 million times. Among other resources, these materials include a small entity compliance guide (available in more than 10 languages), an education and outreach toolkit, instructional videos, and over one hundred answers to frequently asked questions ("FAQs"). These FAQs are found at https://www.fincen.gov/boi-faqs. In addition, FinCEN has a dedicated Beneficial Ownership Contact Center that has resolved over 200,000 inquiries relating to the CTA's reporting requirements.

13. FinCEN has also engaged in over 200 outreach events regarding the CTA's obligations, including meetings, conferences, and webinars with members of the public, as well as through industry associations, secretaries of state's offices, and partner agencies. I have participated in many of these events. Through these outreach events, FinCEN has responded to questions from a variety of stakeholders, including industry and trade groups, congressional offices, professional communities of interest, business owners, and the general public.

14. Additionally, FinCEN has engaged in an expansive public service announcement ("PSA") campaign to increase public awareness about the CTA's reporting obligations, including highlighting the January 1, 2025, deadline. Since September 2023, FinCEN has invested over 4.3 million dollars in that campaign. Tens of millions of Americans have seen, heard, or read these PSAs across television, radio, newspaper, direct mail, and digital media. FinCEN has also prepared

roughly 1.5 million postcards to mail directly to businesses across five states with lagging reporting rates to remind them of their CTA obligations.

15. FinCEN has estimated that roughly 32.6 million companies are required to file BOI reports by January 1, 2025, under its regulations. As of the date of the district court's order, nearly ten million reports had been filed with FinCEN. The pace of filing, however, had recently increased. In the last two months, FinCEN has more than doubled the number of BOI reports it had received over the prior eight months, with nearly one-third of all reports submitted in the three weeks preceding the injunction, with continued growth in the filing rate expected through the January 1, 2025, deadline for companies created or registered before 2024, *i.e.*, most companies required to report under the CTA.

16. FinCEN had also begun providing access to BOI reported under the CTA to federal law enforcement agencies, with FinCEN itself and five federal law enforcement agencies receiving access as of the date of the injunction, and numerous other agencies engaged in law enforcement, intelligence, and national security activities had expected to receive access in the near future.

Harm to Treasury's Anti-corruption Efforts and the U.S. AML/CFT Regime from the Court's Order

17. The district court's order significantly disrupts FinCEN's implementation of the CTA in advance of its January 1, 2025, reporting deadline, and FinCEN would not be able to fully remediate that disruption even if the injunction were lifted at the conclusion of the appeal.

18. FinCEN has expended significant resources over the past year—and particularly last few months—to educate previously established companies of the new reporting requirement. As described above, FinCEN has been engaged in a multimedia, nationwide PSA campaign, including obligating more than $4.3 million in PSAs—money that cannot now be recouped—that has

informed tens of millions of people about their CTA obligations. FinCEN officials have dedicated thousands of hours at over more than 200 outreach events and through a dedicated contact center to addressing questions from potential filers. These efforts have been successful, with an exponential increase in reporting since the multimedia campaign began, increasing the filing rate to nearly one million reports filed per week in recent weeks. The district court's injunction negates those outreach efforts three weeks before the January 1, 2025, reporting deadline.

19. Even if the injunction were ultimately overturned on appeal, the harm it would cause while in effect could not be fully remediated. The injunction has already created—and will continue to engender—widespread confusion among the public, including regulated parties. Such confusion harms the public and FinCEN. Reporting companies must clearly understand and have certainty about their compliance obligations for a reporting regime to be effective. On-again, off-again reporting requirements would significantly sink compliance rates; halting efforts just as there has been a significant increase in compliance would undermine the long-term success of the CTA and the BOI reporting program. If CTA implementation is suspended for a significant length of time, FinCEN would have substantial practical difficulty resuming implementation, re-educating the public about the reporting requirements, and effectively enforcing compliance.

20. The injunction also prevents the United States from fulfilling international AML/CFT standards. The United States is currently preparing for its upcoming Financial Action Task Force ("FATF") mutual evaluation, with its written technical submission currently due mid-2025. The United States is a founding member of FATF, which is the leading international, inter-governmental task force whose purpose is the development and promotion of international standards and the effective implementation of legal, regulatory, and operational measures to combat

money laundering, terrorist financing, the financing of proliferation, and other related threats to the integrity of the international financial system. Among other things, FATF has established standards on transparency and BOI of legal persons, intended to deter and prevent the misuse of corporate vehicles.

21. FATF last issued a mutual evaluation report on the United States in December 2016 and identified the lack of beneficial ownership information reporting requirements at that time as one of the fundamental gaps—due to the scale of misuse of legal entities by criminals in the United States and acting from overseas—in the U.S. AML/CFT regime, with the United States rated as non-compliant with these requirements. Earlier this year, FATF upgraded the United States' rating on the FATF standard related to transparency and beneficial ownership of legal persons, frequently referencing the CTA in its follow-up report. By enjoining enforcement of the CTA, the injunction risks causing the United States to receive negative ratings on related portions of its upcoming FATF evaluation. Such ratings, reflecting a failure by the United States to address what FATF has identified as the United States' most fundamental gap in its AML/CFT regime for nearly a decade after the last mutual evaluation of the United States, could damage U.S. national and security interests in two ways. First, the ratings would increase the chances that the United States could be added to the FATF grey list, a public list of countries with significant failings in their AML/CFT regimes. Second, they would undermine the United States' ability to push other countries to make fundamental reforms to their AML/CFT regimes (in order to protect the global financial system) when the United States has failed to rectify significant deficiencies in its own regime, thereby damaging U.S. credibility and its ability to impact positive reforms in other nations.

22. In sum, the CTA is a critical component of FinCEN's efforts to combat corruption, terrorist financing, money laundering, and other criminal activities. It is a linchpin of the U.S. AML/CFT regime and needed to enable the United States to comply with international AML/CFT standards. FinCEN, and Treasury more broadly, have devoted major resources over several years to ensure the CTA is implemented effectively, in particular by educating the public about its requirements through guidance materials, outreach events, PSAs, and other methods in recent months in preparation for the January 1, 2025, filing deadline. If the injunction remains in place for any significant length of time, these resources will have been largely squandered, and the U.S. AML/CFT regime may never fully recover from the resulting public confusion about the CTA's beneficial ownership reporting requirements. In FinCEN's judgment, the Court's order thus risks causing significant and irreparable harm to U.S. anti-corruption efforts and broader AML/CFT regime and thereby to the U.S. financial system as a whole.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 11, 2024.

Andrea Gacki
Director
Financial Crimes Enforcement Network