

No.

IN THE

Supreme Court of the United States

TEXAS TOP COP SHOP, INCORPORATED, ET AL.,

Petitioners,

v.

TODD BLANCHE, ACTING U.S. ATTORNEY GENERAL,
ET AL.,

Respondents.

**On Petition for a Writ of Certiorari Before
Judgment to the United States Court of
Appeals for the Fifth Circuit**

**PETITION FOR WRIT OF CERTIORARI
BEFORE JUDGMENT**

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QUESTIONS PRESENTED

The Corporate Transparency Act imposes a first-of-its-kind federal reporting mandate on more than 30 million domestic corporations merely because they exist, without reference to any activity at all. 31 U.S.C. § 5336. The district court in this case held the Act’s mandate to exceed Congress’s power and enjoined it, and this Court stayed the injunction. *McHenry v. Texas Top Cop Shop, Inc.*, 145 S. Ct. 1 (2025). Subsequently, the Eleventh Circuit split with the district court’s decision, holding that corporate entities’ mere existence constitutes “economic activity” that substantially affects interstate commerce and therefore may be regulated under the Commerce Clause. *Nat’l Small Bus. United v. U.S. Dep’t of Treasury*, 161 F.4th 1323 (11th Cir. 2025). It also held that the Act’s requirement that corporations disclose sensitive information about their “beneficial owners” to federal authorities is reasonable under the Fourth Amendment.

The questions presented here are:

1. Whether the Act’s regulation of corporations merely because they exist under state law exceeds Congress’s Commerce Clause authority.
2. Whether the Act’s suspicionless and warrantless searches to further a generalized interest in expedient law enforcement violate the Fourth Amendment.

PARTIES TO THE PROCEEDING

Petitioners (plaintiffs-appellees below) are Texas Top Cop Shop, Inc., Russell Straayer, Mustardseed Livestock, LLC, Libertarian Party of Mississippi, National Federation of Independent Business, Inc., and Data Comm for Business, Inc.

Respondents (defendants-appellants below) are Todd Blanche, Acting U.S. Attorney General, U.S. Department of Treasury, Andrea Gacki, Director of the Financial Crimes Enforcement Network, and Scott Bessent, Secretary, U.S. Department of Treasury.

CORPORATE DISCLOSURE STATEMENT

Texas Top Cop Shop is a Texas corporation, Mustardseed Livestock is a Utah limited liability company, the Libertarian Party of Mississippi is a Mississippi nonprofit corporation, the National Federation of Independent Business is a nonprofit corporation organized under the laws of California, and Data Comm for Business is a Delaware corporation. None of these entities is publicly traded, and none are owned by any parent corporation or publicly traded company.

RELATED PROCEEDINGS

The related proceedings below are:

- 1) *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-cv-478 (E.D. Tex.)—Opinion and order of district court enjoining the Corporate Transparency Act issued on December 5, 2024.
- 2) *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792 (5th Cir.)—Fifth Circuit order of December 26, 2024 vacating stay of injunction.
- 3) *McHenry v. Texas Top Cop Shop, Inc.*, No. 24A653 (U.S.)—Order of this Court of January 23, 2025 granting stay application.

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**PETITION FOR WRIT OF CERTIORARI
BEFORE JUDGMENT**

The Corporate Transparency Act looms as a complex and invasive federal registry of entities created by state law and their many beneficial owners. The Act was enacted in 2021 but delayed for years by litigation and regulatory uncertainty. But now this Court has the opportunity to definitively rule that the CTA is unconstitutional twice over. If this Court grants review in *Nat'l Small Bus. United v. U.S. Dep't of Treasury*, 161 F.4th 1323 (11th Cir. 2025), it should likewise grant review here so that the tens of millions of affected parties can get back to business without the CTA's unconstitutional mandate hanging over them.

The CTA is a radical and audacious federal statute that requires more than 30 million entities created by state law to file sensitive reports about their ownership with federal law enforcement agents. The CTA's purpose is expressly to discover and punish money laundering or other criminal activity, and so the Act lays a dragnet of forced disclosure on all entities, regardless of individualized suspicion and without any precompliance review. It also premises federal jurisdiction on an entity's mere existence under state law, and regardless of whether the entity engages in *any* activity—commercial or otherwise.

The CTA tramples on one of the last remaining limits on federal power found in the Commerce Clause because it equates an entity's mere status as economic activity. Indeed, the CTA presumes jurisdiction whenever an entity is created under state law,

regardless of whether that entity ever does anything. This Court rejected that reasoning in *NFIB v. Sebelius*, 567 U.S. 519 (2012) because the constitutional power to “regulate Commerce” “presupposes the existence of commercial activity to be regulated.” *Id.* at 550 (opinion of Roberts, C.J.). The federal government doesn’t have the power to regulate state law entities just because they exist. The district court rightly enjoined the CTA for this reason. Now, however, with the Eleventh Circuit’s contrary ruling, the regulated public again faces its unconstitutional mandate.

Separately, the CTA violates the Fourth Amendment as it establishes a mandatory database of private information for the express purpose of ferreting out crime. Rather than require any level of particularized suspicion, much less allow any means for precompliance review, the CTA imposes substantial civil and criminal sanctions on entities who fail to report this private information to federal law enforcement agencies. The CTA gets the Fourth Amendment backward and marks a disturbing milestone of intrusive governmental surveillance.

This Court should therefore grant review in this case and *NSBU* and hold that the CTA is doubly unconstitutional.

OPINIONS BELOW

The district court’s opinion enjoining the Corporate Transparency Act is published at *Texas Top Cop Shop, Inc. v. Garland*, 758 F. Supp. 3d 607 (E.D. Tex. 2024).

The motions panel staying the injunction is available at *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792, 2024 WL 5203138 (5th Cir. Dec. 23, 2024).

The merits panel decision vacating the stay is available at *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792, 2024 WL 5224138 (5th Cir. Dec. 26, 2024).

This Court’s decision staying the district court injunction is published at *McHenry v. Texas Top Cop Shop, Inc.*, 604 U.S. ---, 145 S. Ct. 1, No. 24A653 (Jan. 23, 2025).

The Fifth Circuit’s order holding the appeal in abeyance is available at *Texas Top Cop Shop, Inc. v. Bondi*, No. 24-40792, 2025 WL 2609731 (5th Cir. Aug. 5, 2025).

JURISDICTION

This Court has jurisdiction to grant a writ of certiorari “before judgment” by the Court of Appeals under 28 U.S.C. § 1254(1). This case “is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.” *See* Sup. Ct. R. 11. The Court has often granted certiorari before judgment to ensure that cases presenting the same issue be consolidated for review. *E.g.*, *Learning Res., Inc. v. Trump*, 146 S. Ct. 73 (2025); *Moyle v. United*

States, 144 S. Ct. 540 (2024); *Idaho v. United States*, 144 S. Ct. 541 (2024); *Students for Fair Admissions, Inc. v. Univ. of N. Carolina*, 142 S. Ct. 896 (2022); *ZF Auto. US, Inc. v. Luxshare, Ltd.*, 142 S. Ct. 637 (2021); *McAleenan v. Vidal*, 588 U.S. 919 (2019); *Trump v. N.A.A.C.P.*, 588 U.S. 919 (2019); *United States v. Fanfan*, 542 U.S. 956 (2004); *Gratz v. Bollinger*, 539 U.S. 244 (2003).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant constitutional and statutory provisions are reproduced at App.107-43.

STATEMENT OF THE CASE

A. Legal Background

Corporate formation, whether employed by a profit-making corporation, a small partnership, or an advocacy association, is a critical aspect of modern American law. “The corporate form is now the foundation of the modern market economy. Its benefits are well appreciated: permanent capital grants an autonomous and indefinite life, and a capacity for long-term investment.” Giuseppe Dari-Mattiacci, Oscar Gelderblom, Joost Jonker, & Enrico C. Perotti, *The Emergence of the Corporate Form*, 33 *J.L. Econ. & Org.* 193, 225 (2017).

As important as corporate functions are to a free and flourishing society, a unique feature of our federalist system is that the national government has no constitutional authority over general corporate formation. Instead, the several States compete amongst themselves in the creation and supervision of corporate entities. “Throughout the history of American law, the definition and supervision of business entities has been the task of the states. At the Constitutional Convention, during the Progressive Era, and at the height of the New Deal, the federal government debated whether to enter the corporate area itself and every time declined.” Allen D. Boyer, *Federalism and Corporation Law: Drawing the Line in State Takeover Regulation*, 47 *Ohio St. L.J.* 1037, 1037-38 (1986).

At the founding, corporations were almost always “agencies of government . . . for the furtherance of

community purposes.” Pauline Maier, *The Revolutionary Origins of the American Corporation*, 50 *Wm. & Mary Q.* 51, 55 (1993). As corporate forms began to evolve and the use of private corporations grew, often through state-chartered enterprises engaged in transportation and finance, the States maintained exclusive control over governance and formation. Brian Phillips Murphy, *Building the Empire State: Political Economy in the Early Republic* 12 (2015).

The Framers both implicitly understood that the federal constitution lacked any control over state corporate law and even explicitly rejected a call for such authority. At the 1787 Constitutional Convention, James Madison proposed to grant Congress an enumerated power to charter federal corporations. Madison sought a general power “to grant charters of incorporation where the interest of the U.S. might require & the legislative provisions of individual States may be incompetent.” 2 *The Records of the Federal Convention of 1787* 615 (Max Farrand ed., 1911) (Madison’s notes). Rufus King of Massachusetts and George Mason of Virginia immediately protested that the States would not stand for it. *See id.* at 615-16. Madison’s enlargement of congressional authority was soundly rejected and did not even get a vote. *See id.* at 616. Thus, “[t]he delegates were aware that leaving business regulation primarily to the individual states might cause friction within the overall American economy. They were more reluctant, however, to allow concentrations of economic power, which they

visualized as a government-sponsored monopoly, and therefore chose this course.” Boyer, *supra* at 1041.

The national government was delegated certain enumerated powers that may be used to regulate specific activities of individuals and corporations that are created under state law—for instance, when such entities issue securities in interstate commerce or generate income subject to federal tax. But the national government lacks any general power over corporate governance or control over how corporations operate. Indeed, this understanding has continued well into the modern era, with federal law forming an “overlay” on corporate conduct that deals “with the transfer of interests in those business entities” in interstate commerce but not addressing corporate formation or governance itself. *See id.* at 1056. “The era of Populism, Theodore Roosevelt, and Woodrow Wilson, which produced the Sherman and Clayton Acts, the Pure Food and Drug Act, and the Federal Trade Commission, considered the matter, but ultimately chose to leave corporation law under state authority.” *Id.* at 1050. Or, as this Court put it: “No principle of corporation law and practice is more firmly established than a State’s authority to regulate domestic corporations.” *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89 (1987).

B. The Corporate Transparency Act

Buried within the nearly 1,500 pages of an end-of-the-year budget bill, the Corporate Transparency Act (CTA or Act) seeks to federalize the internal affairs of tens of millions of entities. Its reach extends to for-profit commercial enterprises, political advocacy

organizations, and even religious groups, all of which are subject to invasive disclosures to federal regulators for the purpose of criminal investigation. By so doing, the Act upsets the careful division of power between state and federal actors, and imposes chilling criminal consequences for millions of presumptively innocent people.

Enacted in January 2021, the CTA generally mandates that any “reporting company” report its “beneficial ownership information” to the Financial Crimes Enforcement Network (“FinCEN”). 31 U.S.C. § 5336(b)(1)(A). The statute does not impose this mandate directly but instead provides that it will come into force pursuant to “regulations prescribed by the Secretary of the Treasury” setting initial compliance dates. *Id.* at § 5336(b)(1). Such regulations were required to “be promulgated not later than 1 year after the date of enactment,” and be effective for preexisting entities not more than two years after the “effective date of the regulations.” *Id.* at §§ 5336(b)(1)(B), (b)(5).

A “reporting company” is 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.” *Id.* at § 5336(a)(11). The CTA exempts companies employing more than 20 people and generating more than \$5,000,000 per year in gross revenue, publicly traded companies, most financial

businesses, and many nonprofits. *Id.* at § 5336(a)(11)(B).

The “beneficial ownership information” (BOI) that companies must report to FinCEN consists of the identities of their “beneficial owners” and, for each beneficial owner, a full legal name, date of birth, current address, and “acceptable” photo identification. *Id.* at §§ 5336(b)(2), (a)(1). The term “beneficial owner” is defined broadly, to include every natural person who “directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—(i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity[.]” *Id.* at § 5336(a)(3). Companies that have filed reports must file updates when their BOI changes. *Id.* at §§ 5336(a)(2), (b)(1)(D).

Violations of the reporting mandate are subject to substantial civil and criminal penalties. *Id.* at § 5336(h)(3). Failure to report complete or updated BOI can be met by \$10,000 in criminal fines or two years of imprisonment (or both). *See id.* § 5336(h). The CTA also authorizes civil penalties of up to \$500 for each day of noncompliance. *See id.*

FinCEN must disclose BOI information when requested “from a Federal agency engaged in national security, intelligence, or law enforcement activity, for use in furtherance of such activity” or “from a State, local, or Tribal law enforcement agency,” if authorized by a court. *Id.* at § 5336(c)(2)(B). The CTA also authorizes the Treasury to permit disclosure “to

financial institutions and regulatory agencies.” *Id.* at § 5336(c)(2)(C).

As noted, the CTA directs FinCEN to bring its reporting mandate into force through regulations. It requires that regulations be promulgated within a year of its enactment and set an “effective date” that, in turn, affects the Act’s compliance deadlines. *Id.* at § 5336(b)(5). Companies in existence prior to the effective date “shall ... submit” reports to FinCEN “not later than 2 years after the effective date.” *Id.* at § 5336(b)(1)(B). And companies formed after the effective date must file BOI reports at the time of formation. *Id.* at § 5336(b)(1)(C). Notwithstanding those provisions, the CTA leaves it to “FinCEN to determine the effective date.” 86 Fed. Reg. 69920, 69945 (December 8, 2021).

FinCEN issued its initial implementing regulations, known as the “Reporting Rule,” on September 30, 2022. Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498. The Rule set an effective date more than a year in the future: January 1, 2024. *Id.* at 59498. And it provided that existing companies would have to comply with the reporting mandate an additional year after that, on January 1, 2025. *Id.* at 59592.

In response to litigation in this case, on March 26, 2025, FinCEN issued an interim final rule delaying the CTA’s effective date and informing the public that it would undertake additional rulemaking. Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension, 90 Fed. Reg. 13688, 13688-89. The interim rule proposed “to exempt

domestic reporting companies and U.S. persons who are beneficial owners of foreign reporting companies from the BOI reporting requirements pending the receipt of comments and issuance of a final rule.” *Id.* at 13690. The interim rule became effective on March 25, 2025, and the agency noted its intent “to issue a final rule th[at] year.” *Id.* at 13688-89. To date, FinCEN has not done so. *See id.*¹

C. The CTA’s Burden on the Public and Petitioners

As FinCEN has recognized, if fully implemented, the CTA “will have a significant economic impact on a substantial number of small entities.” 87 Fed. Reg. at 59550. “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. Requiring all of those entities to comply would take 126.3 million hours and impose costs of \$22.7 billion in the first year that the CTA is fully effective. *Id.* at 59585-86. The estimated burden hours include filing initial reports, reviewing

¹ While the rulemaking remains delayed, Congress has also considered steps to repeal the CTA. Indeed, legislation pending in the House of Representatives and the Senate would, if enacted, repeal the Act entirely. *See Repealing Big Brother Overreach Act*, H.R. 425, 119th Congress (2025) (ordered reported by the House Financial Services Committee on April 21, 2026); *Repealing Big Brother Overreach Act*, S. 100, 119th Congress (2025) (referred to the Committee on Banking, Housing and Urban Affairs on January 15, 2025). To date, none of those legislative measures have been adopted by either chamber.

information and complying with ongoing duties to update them when information changes. *Id.* at 59581.

Petitioners are among those who will be affected by CTA implementation. One Petitioner, the National Federation of Independent Business, Inc., is a membership organization with nearly 300,000 member businesses. App.13-17. While NFIB itself is exempt from the CTA, most of its members, including Petitioners Texas Top Cop Shop, Inc. and Data Comm For Business, Inc., must comply. *Id.*; App.16.

Plaintiffs' injuries go beyond the costs of compliance. For instance, the Libertarian Party of Mississippi is an existing political organization that must comply with the CTA. App.15. It receives donations from individuals and entities, which it uses to promote political candidates for state office and policies affecting Mississippi residents. *Id.* Under its bylaws, no individual owns the entity or its assets, but it is controlled by its members, officers, delegates, volunteers, and major donors. *Id.* Its bylaws authorize MSLP to make expenditures only with the authorization of its executive committee, or at the direction of 2/3 of its voting delegates, which are registered members of the state party. *Id.* Thus, its beneficial owners include these key party members and donors. *See id.*

To date, none of the Petitioners have filed BOI reports.

D. Proceedings Below

The Reporting Rule took effect at the start of 2024, and Petitioners brought suit in May, more than 7

months in advance of the Rule’s reporting deadline for existing companies. App.17. They alleged that the CTA and Reporting Rule exceed the scope of enumerated federal powers, burden associational rights in violation of the First Amendment, and violate the Fourth Amendment by compelling disclosure of private information. They quickly moved for a preliminary injunction of enforcement of the CTA and Reporting Rule.

In December 2024, the district court enjoined the CTA and Reporting Rule and stayed the Rule’s compliance deadline under APA § 705. It determined that 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.” *See Texas Top Cop Shop, Inc.*, 758 F.Supp.3d at 663. At the same time, the court held, the plaintiffs “have met their burden to show that the CTA and Reporting Rule threaten substantial, imminent, non-speculative, and irreparable harm” “[b]ecause Plaintiffs . . . will suffer unrecoverable compliance costs absent emergency relief,” and “because the CTA and Reporting Rule substantially threaten their constitutional rights.” *Id.* at 636.

After the district court and appeals court denied the government’s requests for stay of the injunction, this Court granted the government’s stay request. *See McHenry v. Texas Top Cop Shop, Incorporated, et al.*, No. 24A653, at 1 (2025).

Despite this Court’s ruling, the government did not immediately reinstate the CTA’s reporting deadline. Because of other litigation, FinCEN delayed the

deadline through March 21, 2025. Then, before the expiration of that deadline, the agency changed course and announced it would engage in a new round of rulemaking that proposed to exempt most domestic corporate entities from the CTA's reporting mandates.

In March 2025, FinCEN issued an interim final rule further delaying the CTA's effective date and promising additional rulemaking. 90 Fed. Reg. 13688, 13688-89. The interim rule exempted domestic companies from immediate compliance "pending ... issuance of a final rule." *Id.* at 13690. FinCEN also said it intended "to issue a final rule th[at] year." *Id.* at 13688-89.

Meanwhile, this case proceeded to the merits briefing before the Fifth Circuit. In response to the interim final rule, the Fifth Circuit then requested briefing on whether the rule mooted any aspect of the case. Both the government and Petitioners agreed that the case was not moot. The Fifth Circuit recognized that "the controversy remains live," but put the appeal in abeyance "until the final rule is issued." *Texas Top Cop Shop, Inc. v. Bondi*, No. 24-40792, 2025 WL 2609731, at *1 (5th Cir. Aug. 5, 2025).

To date FinCEN has not issued a final rule, and the appeal remains pending in the Fifth Circuit.

Meanwhile, the Eleventh Circuit considered the same issues of the Act's constitutionality in *Nat'l Small Bus. United v. U.S. Dep't of Treasury*, 161 F.4th 1323 (11th Cir. 2025). That court upheld the CTA's reporting mandate as a valid exercise of Congress's

Commerce Clause authority, *id.* at 1329, not barred by the Fourth Amendment, *id.* at 1333. The *NSBU* plaintiffs now seek this Court’s review, presenting the same questions as this petition. *See NSBU v. Bessent*, No. 25-1201, docketed April 21, 2026.

REASONS FOR GRANTING THE PETITION

I. The CTA Exceeds Congress’s Commerce Power

The lower courts are now divided on the urgent question of whether the CTA’s novel reporting requirements for more than 30 million state law entities and their tens of millions of beneficial owners exceeds the limits of Congress’s authority. As the district court correctly held, contrary to the Eleventh Circuit, the CTA is unconstitutional. The CTA’s reporting mandate exceeds the federal government’s limited, enumerated powers. Any contrary conclusion would result in an unlimited federal power.

A. The District Court Below Correctly Held, in Conflict with the Eleventh Circuit, that the CTA Exceeds Congress’s Powers

As the district court correctly recognized, the CTA’s unprecedented scope crosses a line long reserved for the states by regulating an entity’s status instead of its actions. *See Texas Top Cop Shop, Inc.*, 758 F. Supp. 3d at 644 (“Congress may not invoke the substantial effects doctrine to regulate future activities or no activity at all.”). In *NFIB v. Sebelius*, a majority of this Court rejected a Commerce Clause justification for the Affordable Care Act’s individual mandate, holding 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.” *See* 567 U.S. at 552 (opinion of Roberts, C.J.) (emphasis in original). The CTA suffers the same defect: it “compels” reporting companies to file beneficial ownership reports with the federal government “on the ground that their failure to do so affects interstate commerce.” *See id.* The district court correctly concluded that “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.’” *Texas Top Cop Shop, Inc.*, 758 F. Supp. 3d at 643 (quoting *NFIB*, 567 U.S. at 552).

“In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder.” *NFIB*, 567 U.S. at 533. The Tenth Amendment confirms that the federal Constitution reserves all “powers not delegated to the United States by the Constitution, nor prohibited by it to the States,” “to the States respectively, or to the people.” An individual plaintiff may challenge federal action as exceeding Congress’s limited, enumerated, powers. *See Bond v. United States*, 564 U.S. 211, 222 (2011).

The Commerce Clause affords Congress the power “to regulate Commerce ... among the several States.” The Court has articulated “three broad categories of activity that Congress may regulate under its commerce power. First, Congress may regulate the use of the channels of interstate commerce. Second,

Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995) (cleaned up).

The Commerce Clause "must be read carefully to avoid creating a general federal authority akin to the police power." *NFIB*, 567 U.S. at 536. After all, "The founding generation understood the term 'commerce' to mean only 'trade or exchange of goods.'" William J. Seidleck, *Originalism and the General Concurrence*, 3 U. Pa. J. L. & Pub. Affs. 263, 269 (2018).

As discussed, "[t]hroughout the history of American law, the definition and supervision of business entities has been the task of the states." Boyer, *supra* at 1037-38. Even as the Court recognized an increasing role for Congress to regulate interstate commerce, it has emphasized that "state law governs in the corporate area. Federal law forms an overlay, significant but secondary, upon state law. It does not provide for business organization, nor does it define or create trusts, partnerships, or corporations. It deals only with the transfer of interests in those business entities." *Id.* at 1056.

Against this backdrop of state regulation, the CTA marks a radical expansion of federal power over the corporate form. For the first time, mere corporate

status triggers a federal reporting obligation for all entities created by state law. *See* 31 U.S.C. § 5336(a)(11), (b)(1)(A). It thus premises federal power on an entity’s mere existence under state law, irrespective of any activity, let alone commercial activity. *See id.*

The CTA does not pass constitutional muster. With respect to the first two categories that Congress may regulate under the commerce power, it is common ground that neither applies to the CTA. Indeed, the government conceded as much below. *See Texas Top Cop Shop, Inc.*, 758 F. Supp. 3d at 645. The government has maintained that position in *NSBU*. *See* 161 F.4th at 1328 (“The district court held, and the parties do not dispute, that the CTA does not regulate the channels or instrumentalities of commerce.”).

As this Court’s decision in *NFIB* makes clear, the CTA cannot be justified under the third category through application of the substantial-effects test. *NFIB* rejected a Commerce Clause justification for a statute that required “individuals who are not exempt and do not receive health insurance through a third party ... to purchase insurance from a private company.” *See* 567 U.S. at 539, 550 (opinion of Roberts, C.J.), 649 (joint dissent). Congress is empowered only to “regulate Commerce”—a phrase that “presupposes the existence of commercial activity to be regulated.” *NFIB*, 567 U.S. at 550 (opinion of Roberts, C.J.); *see id.* at 649-50 (joint dissent). Put another way, “it must be activity affecting commerce that is regulated.” *Id.* at 658 (joint dissent). Hence, Congress may not target “inactivity”

for regulation or persons who are “doing nothing.” *Id.* at 555-56 (opinion of Roberts, C.J.). Or as the joint dissent put it, Congress does not have commerce power to regulate someone or something “simply because it exists.” *Id.* at 658 (joint dissent).

It also did not matter that “[e]veryone will eventually need health care at a time and to an extent they cannot predict, but if they do not have insurance, they often will not be able to pay for it.” *Id.* at 547 (opinion of Roberts, C.J.). “The Commerce Clause is not a general license to regulate an individual from cradle to grave, simply because he will *predictably engage* in particular transactions. Any police power to regulate individuals as such, as opposed to their activities, remains vested in the States.” *Id.* at 557 (opinion of Roberts, C.J.) (emphasis added). Congress’s power does not extend to the mere potential for commerce. *See id.* Indeed, this Court has “never permitted Congress to anticipate that activity itself in order to regulate individuals not currently engaged in commerce.” *Id.* “They are quite simply not participants in that market, and cannot be made so (and thereby subjected to regulation) by the simple device of defining participants to include all those who will, later in their lifetime, probably purchase the goods or services covered by the mandated insurance.” *Id.* at 656 (joint dissent).

That the CTA regulates no activity is apparent on its face. It defines a class of “reporting companies,” 31 U.S.C. § 5336(a)(11), and then requires them, based on their mere existence, to file reports, *id.* § 5336(b)(1)(A). Indeed, the statute does not regulate or prohibit any transaction and does not require that

anyone operate a business; it does not even refer to or describe any transaction. *See id.* The CTA applies merely because an entity exists. *See id.* But ownership of an entity is no more an activity than ownership of a wallet; such ownership might lead to financial transactions, but they are not themselves commercial activity. The statute regulates entities based on their existence, not any activity that they undertake.

In regulating inactivity based on mere existence, the CTA's reporting mandate is indistinguishable from the ACA's insurance mandate. The insurance mandate compelled the uninsured to purchase health insurance, which the government justified "on the ground that their failure to do so affects interstate commerce." *NFIB*, 567 U.S. at 551. Specifically, the ACA required "individuals who are not exempt and do not receive health insurance through a third party" to purchase "minimum essential' health insurance coverage." *Id.* at 539 (citing 26 U.S.C. § 5000A). Likewise, the CTA requires non-exempt entities to disclose beneficial-ownership information to the federal government, on the ground that their anonymous existence affects interstate commerce. But *NFIB* squarely rejects the proposition that Congress may "justify federal regulation by pointing to the effect of inaction on commerce." *Id.* at 552 (opinion of Roberts, C.J.); *see also id.* at 657 (joint dissent). That principle dooms the CTA.

B. The Eleventh Circuit’s Conflicting Reasoning Is Wrong

The Eleventh Circuit’s decision in *NSBU v. Yellen*, 161 F.4th 1323 (2025), split from the decision of the district court in this case, but its reasoning does not withstand scrutiny. Most egregiously, the Eleventh Circuit gave short shrift to the reality that the government’s defense of the CTA’s reporting mandate brooks no limiting principle. It must be rejected for the same reason that *NFIB* rejected the government’s Commerce Clause justification of the individual insurance mandate: That is so for the same reason that the individual insurance mandate in *NFIB* was not a valid exercise of the Commerce Power: “if every person comes within the Commerce Clause power of Congress to regulate by the simple reason that he will one day engage in commerce, the idea of a limited Government power is at an end.” *NFIB* at 657 (joint dissent).

Faced with a statute that facially regulates inactivity, the Eleventh Circuit resorted to a slight of hand. “[T]he tailored scope of the act,” the court asserted, means that it necessarily “regulates entities that are active in commerce. See 31 U.S.C. § 5336(a)(11)(B), (b)(1)(B).” *NSBU*, 161 F.4th at 1331. Thus, the “CTA does not regulate based on an entity’s anticipated future conduct. Instead, the CTA anticipates the effects on commerce of active businesses not reporting ownership information.” *Id.*

But the CTA’s scope is the opposite of “tailored,” nor does it require that any subject entity be “active in commerce.” The CTA applies to “reporting companies”

based on their existence, subject to certain exemptions. *Id.* at § 5336(a)(11). Those exemptions just happen to encompass mostly economic enterprises, such as exemptions for companies employing more than 20 people and generating more than \$5,000,000 per year in gross revenue, publicly traded companies, most financial businesses, and many nonprofits. *Id.* at § 5336(a)(11)(B). Nothing in the CTA requires any entity to be “active in commerce.”

The CTA thus regulates far more than just the tens of millions of small entities that operate as commercial businesses. It ensnares homeowners’ associations, neighborhood pool clubs, personal LLCs holding a single private home, private and family trusts, and a vast number of charitable organizations and nonprofits that have no need to secure federal tax-exempt recognition because they do not rely heavily on tax-preferred donations. *See, e.g.*, Amicus Curiae Brief of the Community Associations Institute, ECF No. 104, at 1. Many of these entities never engage in any business transactions or engage only in incidental, localized activity for the betterment of family members or the community.

Consider just one of the Petitioners, the Libertarian Party of Mississippi. MSLP is a political party that can only operate within the State of Mississippi, and it can only do so to support local candidates for political office and local issues. App.15-16. Moreover, it has very few assets, which it only uses to make local political expenditures. *Id.* Certainly, the federal government has no conceivable basis to use its commerce powers over the MSLP, as deeming its

activities to be sufficiently commercial for federal control would require this Court to imaginatively aggregate some non-economic factor to such a degree that it is impossible to conceive of any entity that would be out of federal reach.

The Eleventh Circuit's insistence that the CTA only "regulates entities that are active in commerce" is simply wrong. *See NSBU*, 161 F.4th at 1331. The Act's fundamental flaw is that it does not regulate activity, and thereby commerce, at all. It applies merely because these entities exist. That Congress refrained from extending the CTA's reach to even more entities than the tens of millions that it did does not alter that.

The Eleventh Circuit also erred in determining that the CTA could be upheld merely because "Congress reasonably determined that this cumulative activity" "bears a substantial relation to commerce," such that the aggregate effect of the CTA "would substantially affect commerce." *See id.* at 1333. To be sure, the Court's cases do recognize that Congress may, under the Commerce Clause together with the Necessary and Proper Clause, "regulate purely intrastate activity that is not itself 'commercial'" where failure to do so would "undercut the regulation of the interstate market in that commodity." *Gonzales v. Raich*, 545 U.S. 1, 18 (2005) (emphasis added). But, as *NFIB* holds, that logic does not extend to the regulation of inactivity, which would be anything but "incidental" to the exercise of the Commerce power and therefore not a "proper" means of executing it. *NFIB*, 567 U.S. at 560; *see also id.* at 657 (joint dissent).

The premise of the substantial effects argument is also wrong. Unlike prohibiting home non-commercial intrastate cultivation of marijuana, which facilitated the interstate-commerce ban in *Raich*, the CTA is in no way integral to any direct regulation of interstate commerce. Confirming as much is FinCEN's years-long delay in implementing the CTA's reporting requirement, which is at odds with the claim that inability to mandate that reporting would "frustrate" regulation of any "interstate market in that commodity." *See Raich*, 545 U.S. at 18-19. Indeed, the Eleventh Circuit never explained how the CTA's reporting mandate is integral to any provision of the principal statutory scheme it identifies, the Anti-Money Laundering Act. That's because the Act is not an integrated whole but an omnibus that pulled together disparate legislative proposals. *See generally* CRS Report R47255, at 1 ("AMLA spans 59 provisions, including a distinct title known as the Corporate Transparency Act.").

Moreover, the Eleventh Circuit's reliance on "congressional findings," cannot substitute for real activity. *See NSBU*, 161 F.4th at 1332. The Eleventh Circuit noted that Congress made "formal findings" regarding the CTA's "effects on interstate commerce," *id.* at 1332, but it made even more of them in support of the ACA's insurance mandate. *See* 42 U.S.C. § 18091. No matter: under *NFIB*, it is irrelevant that inactivity may affect interstate commerce because it is not, in itself, commerce regulable as such.

The weakness of the Eleventh Circuit's reasoning becomes apparent through its recognition of what the CTA lacks. First, the Court correctly found that "the

CTA is not regulating the act of incorporation,” but it took the wrong conclusion from that premise. *See NSBU*, 161 F.4th at 1331. The CTA “addresses only what entities must do after they are registered to do business—provide beneficial owner information to the Treasury Secretary.” *Id.* This means that a corporate entity’s mere existence triggers a federal reporting obligation. *See id.* But Congress does not have commerce power to regulate someone or something “simply because it exists.” *NFIB*, 567 U.S. at 658 (joint dissent).

The Eleventh Circuit was also correct in recognizing that the CTA “lacks a jurisdictional element,” but this simply means that it applies even before an entity engages in any activity, commercial or otherwise. *See NSBU*, 161 F.4th at 1331. The statute thus runs headfirst into *NFIB*’s rejection of the “proposition that Congress may dictate the conduct of an individual today because of prophesied future activity.” 567 U.S. at 557 (Roberts, C.J.). After all, it was taken as given that every individual would “engage in a health care transaction” at some point, but “that does not authorize Congress to direct them” into action. *Id.* “The Commerce Clause is not a general license to regulate an individual from cradle to grave, simply because he will predictably engage in particular transactions.” *Id.* That holds specifically in this context: “Every State in this country has enacted laws regulating corporate governance,” but federal power reaches only “transactions” that implicate constitutionally enumerated federal interests. *See CTS Corp.*, 481 U.S. at 89-90.

II. The CTA Violates the Fourth Amendment

The CTA also violates the Fourth Amendment. It demands invasive and concededly private personal information from tens of millions of entities. It does so for the explicit purpose of gathering evidence for law enforcement use. Without requiring a judicial warrant, the CTA mandates disclosure on pain of criminal punishment. This unprecedented and blatant intrusion on the Fourth Amendment rights of millions of Americans urgently requires the Court's review.

A. The CTA Unlawfully Demands Production of Books and Papers Without Any Required Suspicion or Precompliance Review

“[A]n order for the production of books and papers may constitute an unreasonable search and seizure within the 4th Amendment.” *Hale v. Henkel*, 201 U.S. 43, 76 (1906); *see also Patel v. City of Los Angeles*, 738 F.3d 1058, 1061 (9th Cir. 2013) (en banc) (“The ‘papers’ protected by the Fourth Amendment include business records like those at issue here.”) *aff’d* 576 U.S. 409 (2015). The “compulsory production of private papers” is both a search and seizure. *Hale*, 201 U.S. at 76. The “papers” protected by the Fourth Amendment include business records. *See id.* 76-77 (subpoena for “all understandings, contracts or correspondence” between corporation and others and “reports made, and accounts rendered by such companies from the date of the organization” was unreasonable under the Fourth Amendment). Thus, when a law mandates that a business compile private

information and disclose it upon demand by law enforcement, this constitutes a “search.” *See City of L.A. v. Patel*, 576 U.S. 409, 421 (2015).

The Fourth Amendment also has a strong preference for warrants. Thus, “searches conducted outside the judicial process, without prior approval by a judge or a magistrate judge, are *per se* unreasonable subject only to a few specifically established and well-delineated exceptions.” *Id.* at 419 (cleaned up). “This rule applies to commercial premises as well as to homes.” *Id.* at 419-20 (citation and quotation marks omitted).

In some circumstances, a warrantless “administrative search” may be permissible “where the primary purpose of the searches is distinguishable from the general interest in crime control.” *Id.* at 420 (cleaned up). Even still, “absent consent, exigent circumstances, or the like, in order for an administrative search to be constitutional, the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker.” *Id.* And when administrative searches create criminal consequences for noncompliance, “[a]bsent an opportunity for precompliance review,” there is an “intolerable risk” that such searches will be abused. *Id.* at 421.

In addition to the need for precompliance review, the government is obligated to demonstrate some level of individualized suspicion before it can demand a business entity’s private papers. *See Patel*, 738 F.3d at 1064 (“The government may ordinarily compel the inspection of business records only through an

inspection demand ‘sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.’”) (quoting *See v. City of Seattle*, 387 U.S. 541, 544 (1967)). Thus, while subpoenas for corporate records are usually permitted on a showing of need less than probable cause, judicial process is still required to determine that “the charge [against the target] is proper and the material requested is relevant,” and that the subpoena not be “too indefinite,” has not “been issued for an illegitimate purpose, [and is not] unduly burdensome.” *McLane Co. v. EEOC*, 581 U.S. 72, 77 (2017); *see also See*, 387 U.S. at 544 (“It is now settled that, when an administrative agency subpoenas corporate books or records, the Fourth Amendment requires that the subpoena be sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.”).

The blanket requirement that all reporting companies provide beneficial ownership information with no precompliance process and no individualized suspicion violates the Fourth Amendment. On one side of the equation, the CTA’s broad disclosure requirements certainly implicate privacy concerns. Indeed, the Act itself recognizes that beneficial ownership information “shall be confidential and may not be disclosed” by FinCEN except in carefully limited ways. *See* 31 U.S.C. § 5336(c)(2)(A). In a variety of ways, the CTA’s disclosure requirements are therefore significantly more intrusive than compelled production of a hotel’s guest lists, which was rejected by this Court in *Patel*, 576 U.S. at 419.

On the other hand, the CTA provides *no* limitations. The Act applies to at least 32.6 million existing entities, including those entities with no assets and no operations, and regardless of whether the entity is likely to have committed a crime. Its express purpose is crime control, and the mandated reports are to be used by law enforcement simply to look for potential criminality. There is also no opportunity for precompliance review by *anyone*, yet refusing to file mandated reports comes with criminal liability. The CTA is unsustainable under the Fourth Amendment.

B. The Eleventh Circuit’s Reasoning Is Not Compelling

The Eleventh Circuit’s reliance on *Cal. Bankers Ass’n v. Shultz*, 416 U.S. 21 (1974) to justify the CTA is unconvincing. *See NSBU*, 161 F.4th at 1333-34. *Shultz* dealt with disclosure requirements under the Bank Secrecy Act, and, in particular, requirements that banks and other financial institutions provide certain reports to the federal government about their customers’ transactions. *See* 416 U.S. at 25-26. The Court upheld the statute against challenges from both financial institutions and customers, but its differing treatment of the classes of plaintiffs has profound consequences. *See id.* at 66-67. The Court held that the statute’s “requirements for the reporting of domestic financial transactions abridge no Fourth Amendment right of the banks themselves[,]” largely because any “bank is itself a party to each of these transactions, earns portions of its income from conducting such transactions, and in the past may have kept records of similar transactions on a voluntary basis for its own purposes.” *Id.* at 66. The

Court then rejected the more significant challenge raised by the accountholders pursuant to the third-party doctrine—the individual account holders had voluntarily disclosed this information and given up their privacy interests in it, while the financial institutions could not vicariously assert the interests of the account holders. *Id.* at 69. The latter holding thus avoided the concerns presented here.

As more recent cases have explained, the outcome in almost all Fourth Amendment cases relies on the presence or absence of a reasonable expectation of privacy in the target of a government search. *See Carpenter v. United States*, 585 U.S. 296, 310 (2018). While *Shultz* showed that the “government may require businesses to maintain records and make them available for routine inspection when necessary to further a legitimate regulatory interest,” even that holding was tempered by the requirements that the demand be “sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.” *Patel*, 738 F.3d at 1064 (en banc) (citing *Shultz*, 416 U.S. at 45-46 and quoting *See*, 387 U.S. at 544). Indeed, the Court has since explained that *Shultz* was a case involving “requests for evidence implicating diminished privacy interests or for a corporation’s own books,” and flatly rejecting the view that “the Government may subpoena third parties for records in which the suspect has a reasonable expectation of privacy.” *Carpenter*, 585 U.S. at 317-18, 318 n.5.

Shultz does not validate the CTA because the type of information involved is very different. Petitioners have a reasonable expectation of privacy in the

information demanded by the CTA because they must compile it directly and disclose it to the government, even as it is concededly private and confidential, and even as it reveals information that touches on associational rights. Thus, while the Court in *Shultz* held only that *banks* could be forced to disclose routine information about certain financial transactions involving their customers, this says nothing about the larger intrusions involved here. See 416 U.S. at 66.

Shultz further demonstrates the flaw in the CTA's design. That case applied the *Oklahoma Press* standard for government demands for private records. See *Shultz*, 416 U.S. at 67 (citing *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 208 (1945)). That was the same standard at issue in *Patel*, which imposes two specific requirements: (1) individualized suspicion and (2) precompliance review. See *Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 415 (1984) ("Thus although our cases make it clear that the Secretary of Labor may issue an administrative subpoena without a warrant, they nonetheless provide protection for a subpoenaed employer by allowing him to question the reasonableness of the subpoena, before suffering any penalties for refusing to comply with it, by raising objections in an action in district court."); *Patel*, 738 F.3d at 1064 (discussing *Oklahoma Press*). Both safeguards are absent from the CTA, though, which only compounds the constitutional violation.

III. This Case Presents an Ideal Vehicle to Resolve the Vital Question of Whether the CTA Exceeds Congress's Power

If this Court grants review in *NSBU*, it should also review this case so that it can resolve the conflict in the lower courts concerning whether the CTA passes constitutional muster. It should do so now, even before final judgment, because the CTA's implementation is delayed by rulemaking. Affected entities have been given no more than a temporary reprieve until this Court can confront whether the statute, and its regulation of corporate entities merely because they exist, exceeds the commerce power. For the tens of millions of affected entities, the stakes remain exceedingly high. And rather than resolve such weighty questions on the emergency docket, this Court can grant merits review in both cases now.

The importance of this case is profound. The CTA's proposed impact on tens of millions of law-abiding citizens is staggering. As FinCEN recognized, once fully implemented, the CTA "will have a significant economic impact on a substantial number of small entities." 87 Fed. Reg. at 59550. "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. Any of those entities face the threat of serious civil and criminal consequences should they fail to file, or even if they err in filing, highly-sensitive ownership reports. *See* 31 U.S.C. § 5336(h). FinCEN recognized that the bulk of the filing obligations falls on small businesses, and full implementation of the CTA would cost "\$22.7 billion in the first year and \$5.6 billion in

the years after.” *Id.* at 59585-86. *See also The Corporate Transparency Act sounds harmless. It’s not.* Washington Post (April 19, 2026), *available at* <https://www.washingtonpost.com/opinions/2026/04/19/corporate-transparency-act-is-costly-unconstitutional/>.

Petitioners are just some of those affected entities. NFIB is a membership organization with nearly 300,000 member businesses, most of whom must comply with the CTA. App.16. The named Petitioners are all affected individuals or entities, which range from retail enterprises to a local political party. App.13-17. For all of these diverse litigants facing the CTA’s compliance and reporting burdens, the Act’s underlying validity is vitally important.

More importantly, allowing the Eleventh Circuit’s decision to stand would eviscerate any meaningful limit on the commerce power. The Eleventh Circuit expressly equated the mere creation of a corporate entity with “regulat[ing] entities that are active in commerce.” *See NSBU*, 161 F.4th at 1331. “But if every person comes within the Commerce Clause power of Congress to regulate by the simple reason that he will one day engage in commerce, the idea of a limited Government power is at an end.” *NFIB*, 567 at 657 (joint dissent).

Moreover, the lower courts have now split on the CTA’s legality, continuing the longstanding uncertainty that has plagued tens of millions of affected entities throughout this litigation. *See Trump v. Boyle*, 145 S. Ct. 2653, 2655 (2025) (Kavanaugh, J., concurring) (“if we grant a stay but

do not also grant certiorari before judgment, we may leave the lower courts and affected parties with extended uncertainty and confusion about the status of the precedent in question.”). The district court correctly recognized the CTA’s fatal defect and properly enjoined its initial implementation. The Eleventh Circuit, however, has now explicitly equated mere corporate status with “active [] commerce.” *See NSBU*, 161 F.4th at 1331. This Court should resolve the split and restore some limiting principle on the Commerce Clause.

This case also makes an ideal companion to *NSBU*. This Court has often granted certiorari before judgment in order to consolidate multiple cases presenting the same issue. *See supra* pp.3-4. It should follow that practice here.

As with *NSBU*, “this is both the right time and the right case in which to resolve whether this unprecedented statute is constitutional.” *NSBU* Pet. at 36. The Eleventh Circuit’s decision affects a significant number of small entities. So too does the district court’s contrary conclusion in this case. Indeed, given the approximately 300,000 small business members of NFIB, and the diverse interests of the named petitioners, the stakes in this case are even higher. Yet these interests are now threatened by the uncertainty in the courts while being delayed by regulatory action. As this case is currently in abeyance there is no reason to wait indefinitely to resolve the question. Instead, this Court should simply grant review before judgment in this case.

Now is the ideal time to review this issue—while the CTA’s implementation is delayed by rulemaking. Indeed, this Court should not wait until the rulemaking is complete. This Court has already been tasked to rule in this case on its emergency docket as the parties hotly contested the CTA’s initial compliance date. Now, because of changed regulatory positions, the parties have a brief reprieve pending release of a final rule. That reprieve is far from certain and will last only as long as the agency chooses. Future rulemaking will almost certainly be the subject of renewed litigation, and will undoubtedly yet again reach this Court’s emergency docket. Rather than consider the weighty constitutional issues in such circumstances, this Court now has an opportunity to grant review early and benefit from full briefing and argument in both cases.

NSBU is also correct in noting that the CTA’s validity presents a live controversy that can be decided while the statute’s implementation is delayed. Indeed, all parties and all courts agree that the case is not moot while the CTA’s final implementation by rule is delayed. The statute, which Petitioners challenged directly, is or is not constitutional. The Commerce Clause can only be stretched so far. Whether the CTA’s regulation of corporate existence is facially compatible with *NFIB* remains a critical issue that is ripe for adjudication. Rather than deferring the issue of the CTA’s validity for future litigation, perhaps even again on the emergency docket, this Court should simply grant review in both cases.

CONCLUSION

This Petition, and that in *NSBU v. Bessent*, No. 25-1201, should be granted.

Respectfully submitted,

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MAY 6, 2026

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APPENDIX A

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

No. 4:24-CV-00478-ALM

TEXAS TOP COP SHOP, INC., ET AL.,

Plaintiffs,

v.

MERRICK GARLAND, ATTORNEY GENERAL OF THE
UNITED STATES, ET AL.,

Defendants.

Filed: December 5, 2024

**AMENDED 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

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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, 80 S. Ct. 543, 4 L.Ed.2d 584 (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, 1 Cranch 137, 2 L.Ed. 60 (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, 128 S. Ct. 2326, 171 L.Ed.2d 203 (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

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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

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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)

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“discourag[ing] the use of shell corporations¹ as a tool to disguise and move illicit funds”; (3) “assist[ing] national security, 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 FinCEN² 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, 120 S. Ct. 2159, 147 L.Ed.2d 203 (2000). The CTA provides that “it is the sense of Congress” that:

- (1) more than 2,000,000 corporations

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 59501. 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.”

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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, 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

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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

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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.

NDAAs § 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

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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 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

³ Reporting companies can file BOI reports for free through FinCEN’s website.

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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

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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

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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

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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

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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 judgment 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: *Cnty. 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, 129 S. Ct. 365, 172 L.Ed.2d 249 (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. Camenisch*, 451 U.S. 390, 395, 101 S. Ct. 1830, 68 L.Ed.2d 175 (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, 102 S. Ct. 1798, 72 L.Ed.2d 91 (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, 129 S. Ct. 1142, 173 L.Ed.2d 1 (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*, 937 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, 114 S. Ct. 1673, 128 L.Ed.2d 391 (1994). 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, 112 S. Ct. 2130, 119 L.Ed.2d 351 (1992) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155, 110 S. Ct. 1717, 109 L.Ed.2d 135 (1990)). Thus, Article III standing is a “bedrock constitutional requirement.” *United States v. Texas*, 599 U.S. 670, 675, 143 S. Ct. 1964, 216 L.Ed.2d 624 (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, 138 S. Ct. 1916, 201 L.Ed.2d 313 (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, 138 S. Ct. 1916); *Summers*, 555 U.S. at 493, 129 S. Ct. 1142. 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, 144 S. Ct. 1540, 219 L.Ed.2d 121 (2024) (quoting *Lujan*, 504 U.S. at 560, 112 S. Ct. 2130). The party invoking federal jurisdiction carries the burden of establishing that they have standing. *Id.* at 561, 112 S. Ct. 2130. 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, 112 S. Ct. 2130. 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, 138 S. Ct. 1916. 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, 144 S. Ct. 1540 (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424, 141 S. Ct. 2190, 210 L.Ed.2d 568 (2021)). Second, the injury must be “particularized.” *Lujan*, 504 U.S. at 560, n.1, 112 S.

Ct. 2130. That is, “injury must affect ‘the plaintiff in a personal and individual way’ and not be a generalized grievance.” *FDA*, 602 U.S. at 381, 144 S. Ct. 1540 (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, 133 S. Ct. 1138, 185 L.Ed.2d 264 (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.” *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298, 99 S. Ct. 2301, 60 L.Ed.2d 895 (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, 94 S. Ct. 1209, 39 L.Ed.2d 505 (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, 134 S. Ct. 2334, 189 L.Ed.2d 246 (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, 134 S. Ct. 2334. 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, 134 S. Ct. 2334.⁴ 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

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).

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 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

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.

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, 144 S. Ct. 1540 (quoting *Sprint Commc’ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 288, 128 S. Ct. 2531, 171 L.Ed.2d 424 (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, 144 S. Ct. 1540 (citing *Lujan*, 504 U.S. at 561–62, 112 S. Ct. 2130; *Susan B. Anthony List*, 573 U.S. at 162–63, 134 S. Ct. 2334). 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, 97 S. Ct. 2434, 53 L.Ed.2d 383 (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, 97 S. Ct. 2434. 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, 97 S. Ct. 2434; *Ctr. for Biological Diversity*, 937 F.3d at 536; *FDA*, 602 U.S. at 382, 144 S. Ct. 1540.

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, 97 S. Ct. 2434. 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, 97 S. Ct. 2434; *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, 97 S. Ct. 2434. 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, 116 S. Ct. 1529, 134 L.Ed.2d 758 (1996)). This final element concerns

“matters of administrative convenience and efficiency.” *Brown Grp.*, 517 U.S. at 555, 116 S. Ct. 1529. 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, 116 S. Ct. 1529). 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, 129 S. Ct. 365. 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.

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.

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 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 702 F.Supp.3d 513, 540 (N.D. Tex. 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, 96 S. Ct. 2673, 49 L.Ed.2d 547 (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 threatened 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, 102 S. Ct. 1186, 71 L.Ed.2d 362 (1982) (quoting *Steffel*, 415 U.S. at 474, 94 S. Ct. 1209). 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, 107 S. Ct. 2095, 95 L.Ed.2d 697 (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, 123 S. Ct. 1972, 155 L.Ed.2d 953 (2003)) (Scalia, J., dissenting) (citing *United States v. Morrison*, 529 U.S. 598, 120 S. Ct. 1740, 146 L.Ed.2d 658 (2000); *City of Boerne v. Flores*, 521 U.S. 507, 117 S. Ct. 2157, 138 L.Ed.2d 624 (1997); *United States v. Lopez*, 514 U.S. 549, 115 S. Ct. 1624, 131 L.Ed.2d 626 (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, 123 S. Ct. 1972 (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.” *McCulloch v. Maryland*, 17 U.S. 316, 405, 4 Wheat. 316, 4 L.Ed. 579 (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, 132 S. Ct. 2566, 183 L.Ed.2d 450 (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, 132 S. Ct. 2566 (citing *United States v. Comstock*, 560 U.S. 126, 130 S. Ct. 1949, 176 L.Ed.2d 878 (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, 120 S. Ct. 1740, 146 L.Ed.2d 658 (2000). That power belongs to the states alone. See *Sebelius*, 567 U.S. at 535, 132 S. Ct. 2566. 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, 131 S. Ct. 2355, 180 L.Ed.2d 269 (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, 132 S. Ct. 2566. 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, 132 S. Ct. 2566. 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, 107 S. Ct. 2095. 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, 9 Wheat. 1, 6 L.Ed. 23 (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, 115 S. Ct. 1624. 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, 57 S. Ct. 615, 81 L.Ed. 893 (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, 115 S. Ct. 1624. 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, 125 S. Ct. 2195, 162 L.Ed.2d 1 (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, 67 S. Ct. 133, 91 L.Ed. 103 (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, 66 S. Ct. 785, 90 L.Ed. 945 (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, 67 S. Ct. 133). 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, 120 S. Ct. 1740. “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, 85 S. Ct.

348, 13 L.Ed.2d 258 (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 Distillers Ass’n v. TTB*, No. 4:23-CV-1221-P, 740 F.Supp.3d 509, 531, (N.D. Tex. July 10, 2024) (citing *United States v. Ballinger*, 395 F.3d 1218, 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, 115 S. Ct. 1624 (defining “instrumentalities of interstate commerce” as “persons or things in interstate commerce”); *Bailey*, 115 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, 112 S. Ct. 1146. 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, 140 S. Ct. 355, 205 L.Ed.2d 291 (2019) (quoting *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254, 112 S. Ct. 1146, 117 L.Ed.2d 391 (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, 115 S. Ct. 1624 (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, 115 S. Ct. 1624.

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. 139, 144, 93 S. Ct. 2674, 37 L.Ed.2d 513 (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, 67 S. Ct. 133. 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, 67 S. Ct. 133. The Supreme Court upheld the Act, largely because Congress aimed at "solely to public utility holding company systems that use[d] channels of interstate commerce." *Id.* at 100, 67 S. Ct. 133. 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, 125 S. Ct. 2195. 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, 132 S. Ct. 2566. “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, 132 S. Ct. 2566 (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, 132 S. Ct. 2566. 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, 132 S. Ct. 2566 (citing *Lopez*, 514 U.S. at 560, 115 S. Ct. 1624 (“where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained”); *Perez v. United States*, 402 U.S. 146, 154, 91 S. Ct. 1357, 28 L.Ed.2d 686 (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, 63 S. Ct. 82, 87 L.Ed. 122 (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, 57 S. Ct. 615 (“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, 132 S. Ct. 2566.

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, 132 S. Ct. 2566. 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, 132 S. Ct. 2566.

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 than 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, 132 S. Ct. 2566. 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, 132 S. Ct. 2566 (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, 132 S. Ct. 2566. 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, 132 S. Ct. 2566 (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, 132 S. Ct. 2566. 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, 115 S. Ct. 1624. 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, 132 S. Ct. 2566 (quoting *Free Enters. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 505, 130 S. Ct. 3138, 177 L.Ed.2d 706 (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, 132 S. Ct. 2566 (quoting *Lopez*, 514 U.S. at 564, 115 S. Ct. 1624). 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, 125 S. Ct. 2195. 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, 125 S. Ct. 2195). 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, 125 S. Ct. 2195). 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, 125 S. Ct. 2195). 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, 125 S. Ct. 2195; see *Lopez*, 514 U.S. at 553–562, 115 S. Ct. 1624. 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, 57 S. Ct. 615. 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, 115 S. Ct. 1624 (citing *Jones & Laughlin Steel Corp.*, 301 U.S. at 37, 57 S. Ct. 615). 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, 61 S. Ct. 451, 85 L.Ed. 609 (1941)) (citing *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 119, 62 S. Ct. 523, 86 L.Ed. 726 (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, 115 S. Ct. 1624 (citing *Wickard*, 317 U.S. at 128–29, 63 S. Ct. 82). 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, 63 S. Ct. 82). 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, 63 S. Ct. 82).

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, 115 S. Ct. 1624. 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, 115 S. Ct. 1624. 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, 115 S. Ct. 1624. 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, 115 S. Ct. 1624. 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, 115 S. Ct. 1624. 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, 120 S. Ct. 1740. 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, 120 S. Ct. 1740. 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, 120 S. Ct. 1740. 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, 120 S. Ct. 1740. 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, 125 S. Ct. 2195. 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, 125 S. Ct. 2195. 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, 125 S. Ct. 2195. 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, 125 S. Ct. 2195.

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, 125 S. Ct. 2195; *Lopez*, 514 U.S. at 557, 115 S. Ct. 1624. 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, 136 S. Ct. 2074, 195 L.Ed.2d 456 (2016) (quoting *Morrison*, 529 U.S. at 613, 120 S. Ct. 1740). 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, 115 S. Ct. 1624; *Morrison*, 529 U.S. at 610, 120 S. Ct. 1740; *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, 115 S. Ct. 1624; *Morrison*, 529 U.S. at 614, 120 S. Ct. 1740. 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, 115 S. Ct. 1624 (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, 115 S. Ct. 1624, or gender motivated violence, *Morrison*, 529 U.S. at 614, 120 S. Ct. 1740, 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, 63 S. Ct. 82; *Raich*, 545 U.S. at 19, 125 S. Ct. 2195. 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, 125 S. Ct. 2195; *Lopez*, 514 U.S. at 557, 115 S. Ct. 1624. 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, 107 S. Ct. 1637, 95 L.Ed.2d 67 (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, 115 S. Ct. 1624. 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, 63 S. Ct. 82. 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

⁷ The Court sees no need to conduct an additional, alternative analysis assuming that the CTA regulates a noneconomic 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

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, 117 S. Ct. 2365, 138 L.Ed.2d 914 (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, 130 S. Ct. 1949 (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 [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

engaged in interstate commerce. *See* 31 U.S.C. § 5336; *NSBU v. Yellen*, 721 F. Supp. 3d at 1286.

‘incidental to [an] enumerated power, and conducive to its beneficial exercise.’” *NFIB v. Sebelius*, 567 U.S. at 559, 132 S. Ct. 2566 (quoting *McCulloch*, 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 *McCulloch*, 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, 132 S. Ct. 2566 (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, 130 S. Ct. 1949 (citing *Sabri v. United States*, 541 U.S. 600, 605, 124 S. Ct. 1941, 158 L.Ed.2d 891 (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, 132 S. Ct. 2566 (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, 117 S. Ct. 2365).

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, 132 S. Ct. 2566 (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, 132 S. Ct. 2566. 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, 132 S. Ct. 2566; *Comstock*, 560 U.S. at 134, 130 S. Ct. 1949. 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, 132 S. Ct. 2566 (citing *Comstock*, 560 U.S. at 148, 130 S. Ct. 1949; *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 plain 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, 99 S. Ct. 1813, 60 L.Ed.2d 336 (1979)). See *NFIB v. Sebelius*, 567 U.S. at 561, 132 S. Ct. 2566 (citing *Comstock*, 560 U.S. at 148, 130 S. Ct. 1949; *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, 83 S. Ct. 554, 9 L.Ed.2d 644 (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

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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, 134 S. Ct. 2077, 189 L.Ed.2d 1 (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, 104 S. Ct. 3026, 82 L.Ed.2d 171 (1984) (quoting *Harisiades v. Shaughnessy*, 342 U.S. 580, 589, 72 S. Ct. 512, 96 L.Ed. 586 (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, 68 S. Ct. 431, 92 L.Ed. 568 (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, 132 S. Ct. 2566.

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, 78 S. Ct. 568, 2 L.Ed.2d 603 (1958), *overruled on other grounds by Afroyim v. Rusk*, 387 U.S. 253, 87 S. Ct. 1660, 18 L.Ed.2d 757 (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, 57 S. Ct. 216, 81 L.Ed. 255 (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, 57 S. Ct. 216). 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, 57 S. Ct. 216. 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, 57 S. Ct. 216. 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, 97 S. Ct. 1292, 51 L.Ed.2d 480 (1977); *Cort v. Ash*, 422 U.S. 66, 84, 95 S. Ct. 2080, 45 L.Ed.2d 26 (1975), *abrogated on other grounds by Touche Ross & Co. v. Redington*, 442 U.S. 560, 99 S. Ct. 2479, 61 L.Ed.2d 82 (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, 107 S. Ct. 1637). 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, 57 S. Ct. 216.

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, 83 S. Ct. 554, 9 L.Ed.2d 644 (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, 140 S. Ct. 735, 206 L.Ed.2d

29 (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, 91 S. Ct. 1999, 29 L.Ed.2d 619 (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, 140 S. Ct. 735. The Supreme Court defined a cross-border shooting as, “by definition an international incident.” *Id.* at 104, 140 S. Ct. 735. 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, 140 S. Ct. 735.

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, 68 S. Ct. 222, 92 L.Ed. 210 (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, 130 S. Ct. 2705, 177 L.Ed.2d 355 (2010), to say that a legislative act of Congress is presumed constitutional, and 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, 130 S. Ct. 2705. There is no dispute that the Court is not equipped to determine what constitutes a foreign terrorist organization. See *id.* at 33–34, 130 S. Ct. 2705. 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, 57 S. Ct. 216, 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 309, 57 S. Ct. 216. 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 *United States v. Bond*, 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, 134 S. Ct. 2077, 189 L.Ed.2d 1 (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, 134 S. Ct. 2077. 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, 134 S. Ct. 2077. 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, 134 S. Ct. 2077. 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, 134 S. Ct. 2077. 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, 134 S. Ct. 2077. 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, 134 S. Ct. 2077.

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, 130 S. Ct. 1949 (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. at 855, 134 S. Ct. 2077. 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, 130 S. Ct. 1949.

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, 130 S. Ct. 1949. 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. 1. 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

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.

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 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*, 721 F.Supp.3d at 1288–89). 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, 130 S. Ct. 1949. 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, 57 S. Ct. 554, 81 L.Ed. 772 (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, 57 S. Ct. 554. True enough, the Supreme Court stated in dicta that *those* “registration provisions ... [were] obviously in aid of a revenue purpose.” *Id.* at 513, 57 S. Ct. 554. 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, 58 S. Ct. 630, 82 L.Ed. 917 (1938)). *Helvering* involved the Revenue Act of 1928 as it related to deficiencies on income tax returns. 303 U.S. at 392, 58 S. Ct. 630. 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, 58 S. Ct. 630. The Supreme Court answered in the negative and held that the provision was a tax. *Id.* at 402, 58 S. Ct. 630. 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, 58 S. Ct. 630. Like *Sonzinsky*, *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 v. IRS*, 593 U.S. 209, 212, 141 S. Ct. 1582, 209 L.Ed.2d 615 (2021)) (citing *California Bankers Ass'n v. Shultz*, 416 U.S. 21, 26, 94 S. Ct. 1494, 39 L.Ed.2d 812 (1974)). Indeed, the Supreme Court in *CIC Servs., LLC* did say just that. 593 U.S. at 212, 141 S. Ct. 1582. 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, 141 S. Ct. 1582. The issue before the Court was whether the “Anti-Injunction Act bar[red] [the plaintiffs’] suit” under the APA. *Id.* at 216, 141 S. Ct. 1582. 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, 141 S. Ct. 1582 (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, 135 S. Ct. 1124, 191 L.Ed.2d 97 (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, 94 S. Ct. 1494. 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, 94 S. Ct. 1494. 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, 94 S. Ct. 1494. 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, 94 S. Ct. 1494. 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, 39 S. Ct. 214, 63 L.Ed. 493 (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. Kahrigier*, 345 U.S. 22, 73 S. Ct. 510, 97 L.Ed. 754 (1953), *overruled on other grounds by Marchetti v. United States*, 390 U.S. 39, 88 S. Ct. 697, 19 L.Ed.2d 889 (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 31, 73 S. Ct. 510 (quoting *Sonzinsky*, 300 U.S. at 506, 57 S. Ct. 554). 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, 73 S. Ct. 510 (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, 132 S. Ct. 2566 (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, 58 S. Ct. 630. 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, 130 S. Ct. 1949.

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

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).

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, 132 S. Ct. 2566). While the Government disputes Plaintiff’s assertion that the 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, 130 S. Ct. 1949.

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, 129 S. Ct. 1749, 173 L.Ed.2d 550 (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, uncompensable 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, 760 F.3d 448, 458 n.9 (5th Cir. 2014) (cleaned up). Because the CTA and Reporting Rule likely do not¹⁰ 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

¹⁰ The word “not” was added as an amendment to fix a typographical error. The Court’s analysis and holding are unchanged.

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 Institute 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, 129 S. Ct. 1142, 173 L.Ed.2d 1 (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.2d 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, 99 S. Ct. 2545, 61 L.Ed.2d 176 (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, 99 S. Ct. 2545. 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, 99 S. Ct. 2545; *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).¹¹ 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.

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)

¹¹ 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.

(“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, 129 S. Ct. 1749). 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**.

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IT IS SO ORDERED.

SIGNED this 5th day of December, 2024.

/s/ Amos L. Mazzant _____
AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

APPENDIX B

**RELEVANT CONSTITUTIONAL AND
STATUTORY PROVISIONS**

U.S. CONST., art. I, § 8, cl. 3

The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

U.S. CONST., art. I, § 8, cl. 18

The Congress shall have Power . . . To make all Laws which shall be necessary and proper for carrying into Execution the foregoing 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., amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

31 U.S.C. § 5336. Beneficial ownership information reporting requirements

(a) Definitions.—In this section:

(1) Acceptable identification document.—The term “acceptable identification document” means, with respect to an individual—

(A) a nonexpired passport issued by the United States;

(B) a nonexpired identification document issued by a State, local government, or Indian Tribe to the individual acting for the purpose of identification of that individual;

(C) a nonexpired driver’s license issued by a State; or

(D) if the individual does not have a document described in subparagraph (A), (B), or (C), a nonexpired passport issued by a foreign government.

(2) Applicant.—The term “applicant” means any individual who—

(A) files an application to form a corporation, limited liability company, or other similar entity under the laws of a State or Indian Tribe; or

(B) registers or files an application to register a corporation, limited liability company, or other similar entity formed under the laws of a foreign country to do business in the United States by filing a document with the secretary of state or similar office under the laws of a State or Indian Tribe.

(3) Beneficial owner.—The term “beneficial

owner”—

(A) means, with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—

(i) exercises substantial control over the entity; or

(ii) owns or controls not less than 25 percent of the ownership interests of the entity; and

(B) does not include—

(i) a minor child, as defined in the State in which the entity is formed, if the information of the parent or guardian of the minor child is reported in accordance with this section;

(ii) an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;

(iii) an individual acting solely as an employee of a corporation, limited liability company, or other similar entity and whose control over or economic benefits from such entity is derived solely from the employment status of the person;

(iv) an individual whose only interest in a corporation, limited liability company, or other similar entity is through a right of inheritance; or

(v) a creditor of a corporation, limited liability company, or other similar entity, unless the creditor meets the requirements of subparagraph (A).

(4) Director.—The term “Director” means the Director of FinCEN.

(5) FinCEN.—The term “FinCEN” means the Financial Crimes Enforcement Network of the Department of the Treasury.

(6) FinCEN identifier.—The term “FinCEN identifier” means the unique identifying number assigned by FinCEN to a person under this section.

(7) Foreign person.—The term “foreign person” means a person who is not a United States person, as defined in section 7701(a) of the Internal Revenue Code of 1986.

(8) Indian Tribe.—The term “Indian Tribe” has the meaning given the term “Indian tribe” in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130).

(9) Lawfully admitted for permanent residence.—The term “lawfully admitted for permanent residence” has the meaning given the term in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

(10) Pooled investment vehicle.—The term “pooled investment vehicle” means—

(A) any investment company, as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)); or

(B) any company that—

(i) would be an investment company under that section but for the exclusion provided from that definition by paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a-3(c)); and

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(ii) is identified by its legal name by the applicable investment adviser in its Form ADV (or successor form) filed with the Securities and Exchange Commission.

(11) Reporting company.—The term “reporting company”—

(A) means a corporation, limited liability company, or other similar entity that is—

(i) 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

(ii) 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; and

(B) does not include—

(i) an issuer—

(I) of a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*); or

(II) that is required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(d));

(ii) an entity—

(I) established under the laws of the United States, an Indian Tribe, a State, or a political subdivision of a State, or under an interstate compact between 2 or more States; and

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(II) that exercises governmental authority on behalf of the United States or any such Indian Tribe, State, or political subdivision;

(iii) a bank, as defined in—

(I) section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(II) section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)); or

(III) section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a));

(iv) a Federal credit union or a State credit union (as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752));

(v) a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)) or a savings and loan holding company (as defined in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)));

(vi) a money transmitting business registered with the Secretary of the Treasury under section 5330;

(vii) a broker or dealer (as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)) that is registered under section 15 of that Act (15 U.S.C. 78o);

(viii) an exchange or clearing agency (as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)) that is registered under section 6 or 17A of that Act (15 U.S.C. 78f, 78q-1);

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(ix) any other entity not described in clause (i), (vii), or (viii) that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(x) an entity that—

(I) is an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3)) or an investment adviser (as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2)); and

(II) is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.);

(xi) an investment adviser—

(I) described in section 203(l) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(l)); and

(II) that has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission;

(xii) an insurance company (as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2));

(xiii) an entity that—

(I) is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State; and

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(II) has an operating presence at a physical office within the United States;

(xiv)(I) a registered entity (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)); or

(II) an entity that is—

(aa)(AA) a futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor (as those terms are defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)); or

(BB) a retail foreign exchange dealer, as described in section 2(c)(2)(B) of that Act (7 U.S.C. 2(c)(2)(B)); and

(bb) registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(xv) a public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212);

(xvi) a public utility that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States;

(xvii) a financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5463);

(xviii) any pooled investment vehicle that is operated or advised by a person described in clause

(iii), (iv), (vii), (x), or (xi);

(xix) any—

(I) organization that is described in section 501(c) of the Internal Revenue Code of 1986 (determined without regard to section 508(a) of such Code) and exempt from tax under section 501(a) of such Code, except that in the case of any such organization that loses an exemption from tax, such organization shall be considered to be continued to be described in this subclause for the 180-day period beginning on the date of the loss of such tax-exempt status;

(II) political organization (as defined in section 527(e)(1) of such Code) that is exempt from tax under section 527(a) of such Code; or

(III) trust described in paragraph (1) or (2) of section 4947(a) of such Code;

(xx) any corporation, limited liability company, or other similar entity that—

(I) operates exclusively to provide financial assistance to, or hold governance rights over, any entity described in clause (xix);

(II) is a United States person;

(III) is beneficially owned or controlled exclusively by 1 or more United States persons that are United States citizens or lawfully admitted for permanent residence; and

(IV) derives at least a majority of its funding or revenue from 1 or more United States persons that are United States citizens or lawfully admitted for

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permanent residence;

(xxi) any entity that—

(I) employs more than 20 employees on a full-time basis in the United States;

(II) filed in the previous year Federal income tax returns in the United States demonstrating more than \$5,000,000 in gross receipts or sales in the aggregate, including the receipts or sales of—

(aa) other entities owned by the entity; and

(bb) other entities through which the entity operates; and

(III) has an operating presence at a physical office within the United States;

(xxii) any corporation, limited liability company, or other similar entity of which the ownership interests are owned or controlled, directly or indirectly, by 1 or more entities described in clause (i), (ii), (iii), (iv), (v), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii) (xix), or (xxi);

(xxiii) any corporation, limited liability company, or other similar entity—

(I) in existence for over 1 year;

(II) that is not engaged in active business;

(III) that is not owned, directly or indirectly, by a foreign person;

(IV) that has not, in the preceding 12-month period, experienced a change in ownership or sent or received funds in an amount greater than \$1,000 (including all

funds sent to or received from any source through a financial account or accounts in which the entity, or an affiliate of the entity, maintains an interest); and

(V) that does not otherwise hold any kind or type of assets, including an ownership interest in any corporation, limited liability company, or other similar entity;

(xxiv) any entity or class of entities that the Secretary of the Treasury, with the written concurrence of the Attorney General and the Secretary of Homeland Security, has, by regulation, determined should be exempt from the requirements of subsection (b) because requiring beneficial ownership information from the entity or class of entities—

(I) would not serve the public interest; and

(II) would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes.

(12) State.—The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other commonwealth, territory, or possession of the United States.

(13) Unique identifying number.—The term “unique identifying number” means, with respect to an individual or an entity with a sole member, the

unique identifying number from an acceptable identification document.

(14) United States person.—The term “United States person” has the meaning given the term in section 7701(a) of the Internal Revenue Code of 1986.

(b) Beneficial ownership information reporting.—

(1) Reporting.—

(A) In general.—In accordance with regulations prescribed by the Secretary of the Treasury, each reporting company shall submit to FinCEN a report that contains the information described in paragraph (2).

(B) Reporting of existing entities.—In accordance with regulations prescribed by the Secretary of the Treasury, any reporting company that has been formed or registered before the effective date of the regulations prescribed under this subsection shall, in a timely manner, and not later than 2 years after the effective date of the regulations prescribed under this subsection, submit to FinCEN a report that contains the information described in paragraph (2).

(C) Reporting at time of formation or registration.—In accordance with regulations prescribed by the Secretary of the Treasury, any reporting company that has been formed or registered after the effective date of the regulations promulgated under this subsection shall, at the time of formation or registration, submit to FinCEN a report that contains the information described in paragraph (2).

(D) Updated reporting for changes in beneficial ownership.—In accordance with regulations prescribed by the Secretary of the Treasury, a reporting company shall, in a timely manner, and not later than 1 year after the date on which there is a change with respect to any information described in paragraph (2), submit to FinCEN a report that updates the information relating to the change.

(E) Treasury review of updated reporting for changes in beneficial ownership.—The Secretary of the Treasury, in consultation with the Attorney General and the Secretary of Homeland Security, shall conduct a review to evaluate—

(i) the necessity of a requirement for corporations, limited liability companies, or other similar entities to update the report on beneficial ownership information in paragraph (2), related to a change in ownership, within a shorter period of time than required under subparagraph (D), taking into account the updating requirements under subparagraph (D) and the information contained in the reports;

(ii) the benefit to law enforcement and national security officials that might be derived from, and the burden that a requirement to update the list of beneficial owners within a shorter period of time after a change in the list of beneficial owners would impose on corporations, limited liability companies, or other similar entities; and

(iii) not later than 2 years after the date of enactment of this section, incorporate into the

regulations, as appropriate, any changes necessary to implement the findings and determinations based on the review required under this subparagraph.

(F) Regulation requirements.—In promulgating the regulations required under subparagraphs (A) through (D), the Secretary of the Treasury shall, to the greatest extent practicable—

(i) establish partnerships with State, local, and Tribal governmental agencies;

(ii) collect information described in paragraph (2) through existing Federal, State, and local processes and procedures;

(iii) minimize burdens on reporting companies associated with the collection of the information described in paragraph (2), in light of the private compliance costs placed on legitimate businesses, including by identifying any steps taken to mitigate the costs relating to compliance with the collection of information; and

(iv) collect information described in paragraph (2) in a form and manner that ensures the information is highly useful in—

(I) facilitating important national security, intelligence, and law enforcement activities; and

(II) confirming 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.

(G) Regulatory simplification.—To simplify compliance with this section for reporting companies and financial institutions, the Secretary of the Treasury shall ensure that the regulations prescribed by the Secretary under this subsection are added to part 1010 of title 31, Code of Federal Regulations, or any successor thereto.

(2) Required information.—

(A) In general.—In accordance with regulations prescribed by the Secretary of the Treasury, a report delivered under paragraph (1) shall, except as provided in subparagraph (B), identify each beneficial owner of the applicable reporting company and each applicant with respect to that reporting company by—

- (i) full legal name;
- (ii) date of birth;
- (iii) current, as of the date on which the report is delivered, residential or business street address; and
- (iv)(I) unique identifying number from an acceptable identification document; or
- (II) FinCEN identifier in accordance with requirements in paragraph (3).

(B) Reporting requirement for exempt entities having an ownership interest.—If an exempt entity described in subsection (a)(11)(B) has or will have a direct or indirect ownership interest in a reporting company, the reporting company or the applicant—

- (i) shall, with respect to the exempt entity, only list

the name of the exempt entity; and

(ii) shall not be required to report the information with respect to the exempt entity otherwise required under subparagraph (A).

(C) Reporting requirement for certain pooled investment vehicles.—Any corporation, limited liability company, or other similar entity that is an exempt entity described in subsection (a)(11)(B)(xviii) and is formed under the laws of a foreign country shall file with FinCEN a written certification that provides identification information of an individual that exercises substantial control over the pooled investment vehicle in the same manner as required under this subsection.

(D) Reporting requirement for exempt subsidiaries.—In accordance with the regulations promulgated by the Secretary, any corporation, limited liability company, or other similar entity that is an exempt entity described in subsection (a)(11)(B)(xxii), shall, at the time such entity no longer meets the criteria described in subsection (a)(11)(B)(xxii), submit to FinCEN a report containing the information required under subparagraph (A).

(E) Reporting requirement for exempt grandfathered entities.—In accordance with the regulations promulgated by the Secretary, any corporation, limited liability company, or other similar entity that is an exempt entity described in subsection (a)(11)(B)(xxiii), shall, at the time such entity no longer meets the criteria described in subsection (a)(11)(B)(xxiii), submit to FinCEN a

report containing the information required under subparagraph (A).

(3) FinCEN identifier.—

(A) Issuance of FinCEN identifier.—

(i) In general.—Upon request by an individual who has provided FinCEN with the information described in paragraph (2)(A) pertaining to the individual, or by an entity that has reported its beneficial ownership information to FinCEN in accordance with this section, FinCEN shall issue a FinCEN identifier to such individual or entity.

(ii) Updating of information.—An individual or entity with a FinCEN identifier shall submit filings with FinCEN pursuant to paragraph (1) updating any information described in paragraph (2) in a timely manner consistent with paragraph (1)(D).

(iii) Exclusive identifier.—FinCEN shall not issue more than 1 FinCEN identifier to the same individual or to the same entity (including any successor entity).

(B) Use of FinCEN identifier for individuals.—Any person required to report the information described in paragraph (2) with respect to an individual may instead report the FinCEN identifier of the individual.

(C) Use of FinCEN identifier for entities.—If an individual is or may be a beneficial owner of a reporting company by an interest held by the individual in an entity that, directly or indirectly, holds an interest in the reporting company, the

reporting company may report the FinCEN identifier of the entity in lieu of providing the information required by paragraph (2)(A) with respect to the individual.

(4) Regulations.—The Secretary of the Treasury shall—

(A) by regulation prescribe procedures and standards governing any report under paragraph (2) and any FinCEN identifier under paragraph (3); and

(B) in promulgating the regulations under subparagraph (A) to the extent practicable, consistent with the purposes of this section—

(i) minimize burdens on reporting companies associated with the collection of beneficial ownership information, including by eliminating duplicative requirements; and

(ii) ensure the beneficial ownership information reported to FinCEN is accurate, complete, and highly useful.

(5) Effective date.—The requirements of this subsection shall take effect on the effective date of the regulations prescribed by the Secretary of the Treasury under this subsection, which shall be promulgated not later than 1 year after the date of enactment of this section.

(6) Report.—Not later than 1 year after the effective date described in paragraph (5), and annually thereafter for 2 years, the Secretary of the Treasury shall submit to Congress a report describing the procedures and standards prescribed to carry out

paragraph (2), which shall include an assessment of—

(A) the effectiveness of those procedures and standards in minimizing reporting burdens (including through the elimination of duplicative requirements) and strengthening the accuracy of reports submitted under paragraph (2); and

(B) any alternative procedures and standards prescribed to carry out paragraph (2).

(c) Retention and disclosure of beneficial ownership information by FinCEN.—

(1) Retention of information.—Beneficial ownership information required under subsection (b) relating to each reporting company shall be maintained by FinCEN for not fewer than 5 years after the date on which the reporting company terminates.

(2) Disclosure.—

(A) Prohibition.—Except as authorized by this subsection and the protocols promulgated under this subsection, beneficial ownership information reported under this section shall be confidential and may not be disclosed by—

(i) an officer or employee of the United States;

(ii) an officer or employee of any State, local, or Tribal agency; or

(iii) an officer or employee of any financial institution or regulatory agency receiving information under this subsection.

(B) Scope of disclosure by FinCEN.—FinCEN

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may disclose beneficial ownership information reported pursuant to this section only upon receipt of—

(i) a request, through appropriate protocols—

(I) from a Federal agency engaged in national security, intelligence, or law enforcement activity, for use in furtherance of such activity; or

(II) from a State, local, or Tribal law enforcement agency, if a court of competent jurisdiction, including any officer of such a court, has authorized the law enforcement agency to seek the information in a criminal or civil investigation;

(ii) a request from a Federal agency on behalf of a law enforcement agency, prosecutor, or judge of another country, including a foreign central authority or competent authority (or like designation), under an international treaty, agreement, convention, or official request made by law enforcement, judicial, or prosecutorial authorities in trusted foreign countries when no treaty, agreement, or convention is available—

(I) issued in response to a request for assistance in an investigation or prosecution by such foreign country; and

(II) that—

(aa) requires compliance with the disclosure and use provisions of the treaty, agreement, or convention, publicly disclosing any beneficial ownership information received; or

(bb) limits the use of the information for any

purpose other than the authorized investigation or national security or intelligence activity;

(iii) a request made by a financial institution subject to customer due diligence requirements, with the consent of the reporting company, to facilitate the compliance of the financial institution with customer due diligence requirements under applicable law; or

(iv) a request made by a Federal functional regulator or other appropriate regulatory agency consistent with the requirements of subparagraph (C).

(C) Form and manner of disclosure to financial institutions and regulatory agencies.—The Secretary of the Treasury shall, by regulation, prescribe the form and manner in which information shall be provided to a financial institution under subparagraph (B)(iii), which regulation shall include that the information shall also be available to a Federal functional regulator or other appropriate regulatory agency, as determined by the Secretary, if the agency—

(i) is authorized by law to assess, supervise, enforce, or otherwise determine the compliance of the financial institution with the requirements described in that subparagraph;

(ii) uses the information solely for the purpose of conducting the assessment, supervision, or authorized investigation or activity described in clause (i); and

(iii) enters into an agreement with the Secretary providing for appropriate protocols governing the

safekeeping of the information.

(3) Appropriate protocols.—The Secretary of the Treasury shall establish by regulation protocols described in paragraph (2)(A) that—

(A) protect the security and confidentiality of any beneficial ownership information provided directly by the Secretary;

(B) require the head of any requesting agency, on a non-delegable basis, to approve the standards and procedures utilized by the requesting agency and certify to the Secretary semi-annually that such standards and procedures are in compliance with the requirements of this paragraph;

(C) require the requesting agency to establish and maintain, to the satisfaction of the Secretary, a secure system in which such beneficial ownership information provided directly by the Secretary shall be stored;

(D) require the requesting agency to furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, that describes the procedures established and utilized by such agency to ensure the confidentiality of the beneficial ownership information provided directly by the Secretary;

(E) require a written certification for each authorized investigation or other activity described in paragraph (2) from the head of an agency described in paragraph (2)(B)(i)(I), or their designees, that—

(i) states that applicable requirements have been

met, in such form and manner as the Secretary may prescribe; and

(ii) at a minimum, sets forth the specific reason or reasons why the beneficial ownership information is relevant to an authorized investigation or other activity described in paragraph (2);

(F) require the requesting agency to limit, to the greatest extent practicable, the scope of information sought, consistent with the purposes for seeking beneficial ownership information;

(G) restrict, to the satisfaction of the Secretary, access to beneficial ownership information to whom disclosure may be made under the provisions of this section to only users at the requesting agency—

(i) who are directly engaged in the authorized investigation or activity described in paragraph (2);

(ii) whose duties or responsibilities require such access;

(iii) who—

(I) have undergone appropriate training; or

(II) use staff to access the database who have undergone appropriate training;

(iv) who use appropriate identity verification mechanisms to obtain access to the information; and

(v) who are authorized by agreement with the Secretary to access the information;

(H) require the requesting agency to establish and maintain, to the satisfaction of the Secretary, a permanent system of standardized records with

respect to an auditable trail of each request for beneficial ownership information submitted to the Secretary by the agency, including the reason for the request, the name of the individual who made the request, the date of the request, any disclosure of beneficial ownership information made by or to the agency, and any other information the Secretary of the Treasury determines is appropriate;

(I) require that the requesting agency receiving beneficial ownership information from the Secretary conduct an annual audit to verify that the beneficial ownership information received from the Secretary has been accessed and used appropriately, and in a manner consistent with this paragraph and provide the results of that audit to the Secretary upon request;

(J) require the Secretary to conduct an annual audit of the adherence of the agencies to the protocols established under this paragraph to ensure that agencies are requesting and using beneficial ownership information appropriately; and

(K) provide such other safeguards which the Secretary determines (and which the Secretary prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the beneficial ownership information.

(4) Violation of protocols.—Any employee or officer of a requesting agency under paragraph (2)(B) that violates the protocols described in paragraph (3), including unauthorized disclosure or use, shall be subject to criminal and civil penalties under

subsection (h)(3)(B).

(5) Department of the Treasury access.—

(A) In general.—Beneficial ownership information shall be accessible for inspection or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure subject to procedures and safeguards prescribed by the Secretary of the Treasury.

(B) Tax administration purposes.—Officers and employees of the Department of the Treasury may obtain access to beneficial ownership information for tax administration purposes in accordance with this subsection.

(6) Rejection of request.—The Secretary of the Treasury—

(A) shall reject a request not submitted in the form and manner prescribed by the Secretary under paragraph (2)(C); and

(B) may decline to provide information requested under this subsection upon finding that—

(i) the requesting agency has failed to meet any other requirement of this subsection;

(ii) the information is being requested for an unlawful purpose; or

(iii) other good cause exists to deny the request.

(7) Suspension.—The Secretary of the Treasury may suspend or debar a requesting agency from access for any of the grounds set forth in paragraph (6), including for repeated or serious violations of any

requirement under paragraph (2).

(8) Security protections.—The Secretary of the Treasury shall maintain information security protections, including encryption, for information reported to FinCEN under subsection (b) and ensure that the protections—

(A) are consistent with standards and guidelines developed under subchapter II of chapter 35 of title 44; and

(B) incorporate Federal information system security controls for high-impact systems, excluding national security systems, consistent with applicable law to prevent the loss of confidentiality, integrity, or availability of information that may have a severe or catastrophic adverse effect.

(9) Report by the Secretary.—Not later than 1 year after the effective date of the regulations prescribed under this subsection, and annually thereafter for 5 years, the Secretary of the Treasury shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report, which—

(A) may include a classified annex; and

(B) shall, with respect to each request submitted under paragraph (2)(B)(i)(II) during the period covered by the report, and consistent with protocols established by the Secretary that are necessary to protect law enforcement sensitive, tax-related, or classified information, include—

- (i) the date on which the request was submitted;
- (ii) the source of the request;
- (iii) whether the request was accepted or rejected or is pending; and
- (iv) a general description of the basis for rejecting the such request, if applicable.

(10) Audit by the Comptroller General.—Not later than 1 year after the effective date of the regulations prescribed under this subsection, and annually thereafter for 6 years, the Comptroller General of the United States shall—

(A) audit the procedures and safeguards established by the Secretary of the Treasury under those regulations, including duties for verification of requesting agencies systems and adherence to the protocols established under this subsection, to determine whether such safeguards and procedures meet the requirements of this subsection and that the Department of the Treasury is using beneficial ownership information appropriately in a manner consistent with this subsection; and

(B) submit to the Secretary of the Treasury, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report that contains the findings and determinations with respect to any audit conducted under this paragraph.

(11) Department of the Treasury testimony.—

(A) **In general.**—Not later than March 31 of each year for 5 years beginning in 2022, the Director shall

be made available to testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, or an appropriate subcommittee thereof, regarding FinCEN issues, including, specifically, issues relating to—

(i) anticipated plans, goals, and resources necessary for operations of FinCEN in implementing the requirements of the Anti-Money Laundering Act of 2020 and the amendments made by that Act;

(ii) the adequacy of appropriations for FinCEN in the current and the previous fiscal year to—

(I) ensure that the requirements and obligations imposed upon FinCEN by the Anti-Money Laundering Act of 2020 and the amendments made by that Act are completed as efficiently, effectively, and expeditiously as possible; and

(II) provide for robust and effective implementation and enforcement of the provisions of the Anti-Money Laundering Act of 2020 and the amendments made by that Act;

(iii) strengthen FinCEN management efforts, as necessary and as identified by the Director, to meet the requirements of the Anti-Money Laundering Act of 2020 and the amendments made by that Act;

(iv) provide for the necessary public outreach to ensure the broad dissemination of information regarding any new program requirements provided for in the Anti-Money Laundering Act of 2020 and the amendments made by that Act, including—

(I) educating the business community on the goals and operations of the new beneficial ownership database; and

(II) disseminating to the governments of countries that are allies or partners of the United States information on best practices developed by FinCEN related to beneficial ownership information retention and use;

(v) any policy recommendations that could facilitate and improve communication and coordination between the private sector, FinCEN, and the Federal, State, and local agencies and entities involved in implementing innovative approaches to meet their obligations under the Anti-Money Laundering Act of 2020 and the amendments made by that Act, the Bank Secrecy Act (as defined in section 6003 of the Anti-Money Laundering Act of 2020), and other anti-money laundering compliance laws; and

(vi) any other matter that the Director determines is appropriate.

(B) Testimony classification.—The testimony required under subparagraph (A)—

(i) shall be submitted in unclassified form; and

(ii) may include a classified portion.

(d) Agency coordination.—

(1) **In general.**—The Secretary of the Treasury shall, to the greatest extent practicable, update the information described in subsection (b) by working collaboratively with other relevant Federal, State, and Tribal agencies.

(2) Information from relevant Federal, State, and Tribal agencies.—Relevant Federal, State, and Tribal agencies, as determined by the Secretary of the Treasury, shall, to the extent practicable, and consistent with applicable legal protections, cooperate with and provide information requested by FinCEN for purposes of maintaining an accurate, complete, and highly useful database for beneficial ownership information.

(3) Regulations.—The Secretary of the Treasury, in consultation with the heads of other relevant Federal agencies, may promulgate regulations as necessary to carry out this subsection.

(e) Notification of Federal obligations.—

(1) Federal.—The Secretary of the Treasury shall take reasonable steps to provide notice to persons of their obligations to report beneficial ownership information under this section, including by causing appropriate informational materials describing such obligations to be included in 1 or more forms or other informational materials regularly distributed by the Internal Revenue Service and FinCEN.

(2) States and Indian Tribes.—

(A) In general.—As a condition of the funds made available under this section, each State and Indian Tribe shall, not later than 2 years after the effective date of the regulations promulgated under subsection (b)(4), take the following actions:

(i) The secretary of a State or a similar office in each State or Indian Tribe responsible for the formation or registration of entities created by the filing of a public

document with the office under the law of the State or Indian Tribe shall periodically, including at the time of any initial formation or registration of an entity, assessment of an annual fee, or renewal of any license to do business in the United States and in connection with State or Indian Tribe corporate tax assessments or renewals—

(I) notify filers of their requirements as reporting companies under this section, including the requirements to file and update reports under paragraphs (1) and (2) of subsection (b); and

(II) provide the filers with a copy of the reporting company form created by the Secretary of the Treasury under this subsection or an internet link to that form.

(ii) The secretary of a State or a similar office in each State or Indian Tribe responsible for the formation or registration of entities created by the filing of a public document with the office under the law of the State or Indian Tribes shall update the websites, forms relating to incorporation, and physical premises of the office to notify filers of their requirements as reporting companies under this section, including providing an internet link to the reporting company form created by the Secretary of the Treasury under this section.

(B) Notification from the Department of the Treasury.—A notification under clause (i) or (ii) of subparagraph (A) shall explicitly state that the notification is on behalf of the Department of the Treasury for the purpose of preventing money

laundering, the financing of terrorism, proliferation financing, serious tax fraud, and other financial crime by requiring nonpublic registration of business entities formed or registered to do business in the United States.

(f) No bearer share corporations or limited liability companies.—A corporation, limited liability company, or other similar entity formed under the laws of a State or Indian Tribe may not issue a certificate in bearer form evidencing either a whole or fractional interest in the entity.

(g) Regulations.—In promulgating regulations carrying out this section, the Director shall reach out to members of the small business community and other appropriate parties to ensure efficiency and effectiveness of the process for the entities subject to the requirements of this section.

(h) Penalties.—

(1) Reporting violations.—It shall be unlawful for any person to—

(A) willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN in accordance with subsection (b); or

(B) willfully fail to report complete or updated beneficial ownership information to FinCEN in accordance with subsection (b).

(2) Unauthorized disclosure or use.—Except as authorized by this section, it shall be unlawful for any

person to knowingly disclose or knowingly use the beneficial ownership information obtained by the person through—

(A) a report submitted to FinCEN under subsection (b); or

(B) a disclosure made by FinCEN under subsection (c).

(3) Criminal and civil penalties.—

(A) Reporting violations.—Any person that violates subparagraph (A) or (B) of paragraph (1)—

(i) shall be liable to the United States for a civil penalty of not more than \$500 for each day that the violation continues or has not been remedied; and

(ii) may be fined not more than \$10,000, imprisoned for not more than 2 years, or both.

(B) Unauthorized disclosure or use violations.—Any person that violates paragraph (2)—

(i) shall be liable to the United States for a civil penalty of not more than \$500 for each day that the violation continues or has not been remedied; and

(ii)(I) shall be fined not more than \$250,000, or imprisoned for not more than 5 years, or both; or

(II) while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period, shall be fined not more than \$500,000, imprisoned for not more than 10 years, or both.

(C) Safe harbor.—

(i) Safe harbor.—

(I) In general.—Except as provided in subclause (II), a person shall not be subject to civil or criminal penalty under subparagraph (A) if the person—

(aa) has reason to believe that any report submitted by the person in accordance with subsection (b) contains inaccurate information; and

(bb) in accordance with regulations issued by the Secretary, voluntarily and promptly, and in no case later than 90 days after the date on which the person submitted the report, submits a report containing corrected information.

(II) Exceptions.—A person shall not be exempt from penalty under clause (i) if, at the time the person submits the report required by subsection (b), the person—

(aa) acts for the purpose of evading the reporting requirements under subsection (b); and

(bb) has actual knowledge that any information contained in the report is inaccurate.

(ii) Assistance.—FinCEN shall provide assistance to any person seeking to submit a corrected report in accordance with clause (i)(I).

(4) User complaint process.—

(A) In general.—The Inspector General of the Department of the Treasury, in coordination with the Secretary of the Treasury, shall provide public contact information to receive external comments or complaints regarding the beneficial ownership

information notification and collection process or regarding the accuracy, completeness, or timeliness of such information.

(B) Report.—The Inspector General of the Department of the Treasury shall submit to Congress a periodic report that—

(i) summarizes external comments or complaints and related investigations conducted by the Inspector General related to the collection of beneficial ownership information; and

(ii) includes recommendations, in coordination with FinCEN, to improve the form and manner of the notification, collection and updating processes of the beneficial ownership information reporting requirements to ensure the beneficial ownership information reported to FinCEN is accurate, complete, and highly useful.

(5) Treasury Office of Inspector General investigation in the event of a cybersecurity breach.—

(A) In general.—In the event of a cybersecurity breach that results in substantial unauthorized access and disclosure of sensitive beneficial ownership information, the Inspector General of the Department of the Treasury shall conduct an investigation into FinCEN cybersecurity practices that, to the extent possible, determines any vulnerabilities within FinCEN information security and confidentiality protocols and provides recommendations for fixing those deficiencies.

(B) Report.—The Inspector General of the

Department of the Treasury shall submit to the Secretary of the Treasury a report on each investigation conducted under subparagraph (A).

(C) Actions of the Secretary.—Upon receiving a report submitted under subparagraph (B), the Secretary of the Treasury shall—

(i) determine whether the Director had any responsibility for the cybersecurity breach or whether policies, practices, or procedures implemented at the direction of the Director led to the cybersecurity breach; and

(ii) submit to Congress a written report outlining the findings of the Secretary, including a determination by the Secretary on whether to retain or dismiss the individual serving as the Director.

(6) Definition.—In this subsection, the term “willfully” means the voluntary, intentional violation of a known legal duty.

(i) Continuous review of exempt entities.—

(1) In general.—On and after the effective date of the regulations promulgated under subsection (b)(4), if the Secretary of the Treasury makes a determination, which may be based on information contained in the report required under section 6502(c) of the Anti-Money Laundering Act of 2020 or on any other information available to the Secretary, that an entity or class of entities described in subsection (a)(11)(B) has been involved in significant abuse relating to money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or any other financial crime, not later than 90 days after

the date on which the Secretary makes the determination, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that explains the reasons for the determination and any administrative or legislative recommendations to prevent such abuse.

(2) Classified annex.—The report required by paragraph (1)—

(A) shall be submitted in unclassified form; and

(B) may include a classified annex.

(j) Authorization of appropriations.—There are authorized to be appropriated to FinCEN for each of the 3 fiscal years beginning on the effective date of the regulations promulgated under subsection (b)(4), such sums as may be necessary to carry out this section, including allocating funds to the States to pay reasonable costs relating to compliance with the requirements of such section.