IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

STEVEN F. HOTZE, M.D., DANIEL ROGERS, RUSSELL RAMSLAND, MICHAEL WALLIS, and the ASSOCIATION OF AMERICAN PHYSICIANS & SURGEONS, Plaintiffs, v. UNITED STATES DEPARTMENT OF THE TREASURY, JANET YELLEN, in her official capacity as the Secretary of the United States Department of the Treasury, and ANDREA GACKI, in her official capacity as Director of the Financial Crimes Enforcement Network, Defendants.	Civil Action No. 2:24-cv-210-Z

PLAINTIFFS' SUPPLEMENTAL BRIEF ON MOOTNESS IN RESPONSE TO THE COURT ORDER DATED DECEMBER 4, 2024

Andrew L. Schlafly (admitted p*ro hac vice*)
Attorney at Law (NJ #04066-2003)
939 Old Chester Rd.
Far Hills, NJ 07931
Tel: (908) 719-8608
Fax: (908) 934-9207
Email: aschlafly@aol.com

Karen B. Tripp
Attorney at Law (Texas #03420850)
P.O. Box 1301
Houston, TX 77251-1301
Tel: (713) 658-9323
Fax: (713) 968-9888
Email: ktripp@tripplaw.com

Counsel for Plaintiffs Steven F. Hotze, M.D., Daniel Rogers, Russell Ramsland, Michael Wallis, and the Association of American Physicians & Surgeons

Plaintiffs Steven F. Hotze, M.D. ("Hotze"), Daniel Rogers ("Rogers"), Russell Ramsland ("Ramsland"), Michael Wallis ("Wallis"), and the Association of American Physicians & Surgeons ("AAPS") respectfully submit their supplemental brief on mootness in response to this Court's Order dated December 4, 2024 (ECF No. 31), concerning the Corporate Transparency Act (CTA) and its "Beneficial Ownership Information Reporting Requirements," 87 Fed. Reg. 59498 (Sept. 30, 2022) (codified at 31 C.F.R. pt. 1010) (the "Rule").

The Court ordered the parties to address "(1) whether Plaintiffs' current request for the same nationwide relief is now moot and (2) if so, whether a stay of proceedings is appropriate," in light of *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-CV-478, 2024 U.S. Dist. LEXIS 218294 (E.D. Tex. Dec. 3, 2024) (as amended on Dec. 5, 2024) [hereinafter, "*Texas Top Cop Shop*"].[1]

The answer to question 1 is that Plaintiffs' pending motion is not moot due to the *Texas Top Cop Shop* decision, which itself disclaims mooting other pending cases. Exh. A, at 77 ("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."). Precedents from other circuits discussed below, albeit apparently none yet by the Fifth Circuit itself, confirm the lack of mootness. In addition, the government has already quickly appealed the *Texas Top Cop Shop* decision, illustrating the government's expectation to overturn or narrow it. On the appeal the Fifth Circuit is unlikely to address the infringement by the CTA on the Bill of Rights, as the *Texas Top Cop Shop* decision did not resolve these issues central to Plaintiffs' claims here. Notably, as of December 8, 2024, Defendant Financial Crimes Enforcement Network ("FinCEN") has failed to post on its website a notice of this nationwide injunction against it, further reflecting its intention

[1] The Court amended its initial ruling (E.D. Tex. ECF No. 30) two days later (E.D. Tex. ECF No. 33). The amendment was typographical. *See* Am. Decision, Exh. A, at 74 n.10.

to proceed as though the *Texas Top Cop Shop* decision will soon be reversed or sharply narrowed.[2]

> In addition, experts characterize the *Texas Top Cop Shop* decision as fleeting in impact:
>
> as the January 1, 2025 deadline for reporting companies formed prior to 2024 approaches, reporting companies ***should think twice before halting CTA compliance efforts***. … Importantly, if the injunction is lifted on or before the eve of the January 1, 2025 deadline, reporting companies that choose to halt all CTA compliance efforts may find it increasingly difficult to comply with the CTA's requirements on such short notice. Further, a continuation of compliance efforts might help to avoid a short time-crunch if the CTA reporting requirements are ultimately reinstated subject to a later filing deadline. While it is possible FinCEN may grant leniency in such circumstances, ***the CTA carries significant penalties for willful noncompliance***.

Wiley Alert, "Federal Court Halts Enforcement of Corporate Transparency Act" (Dec. 5, 2024) (emphasis added).[3] Likewise, another prominent law firm advises:

> **Continue to Prepare**: Businesses who are obligated to report under the CTA should continue to gather information needed to prepare the BOI Reports so they are ready to file. If the injunction is overturned on appeal, businesses may need to act quickly to meet reporting deadlines.

Kevin E. Gaunt, et al., "Court Issues a Nationwide Injunction Against the Corporate Transparency Act," Hunter, Andrews, Kurth (Dec. 5, 2024) (emphasis in original).[4] Such preparation work is burdensome, costly, and an infringement on First and Fourth Amendment rights, which constitute continuing irreparable harm to Plaintiffs even after the *Texas Top Cop Shop* decision.

As the Jan. 1 reporting deadline approaches with no concessions by the government, Plaintiffs continue to need the requested protection by this Court of their First, Fourth, and Fifth Amendment rights by maintaining the status quo of no reporting obligation during this litigation here. The injunction granted by the *Texas Top Cop Shop* decision is preliminary, and thus could

[2] https://www.fincen.gov/ (viewed December 8, 2024, at 3:00pm ET).
[3] https://www.wiley.law/alert-Federal-Court-Halts-Enforcement-of-Corporate-Transparency-Act (viewed Dec. 7, 2024).
[4] https://natlawreview.com/article/court-issues-nationwide-injunction-against-corporate-transparency-act (viewed Dec. 7, 2024).

be lifted or narrowed by that court or on appeal at any time, without any prior warning to Plaintiffs.

Except as to its finding that plaintiffs had imminent irreparable harm,[5] the *Texas Top Cop Shop* decision did not reach the First, Fourth, and Fifth Amendment arguments that are central to the claims here against the CTA and its Rule. While Plaintiffs here certainly welcome the well-reasoned injunction granted in *Texas Top Cop Shop* on the grounds that Congress acted beyond its enumerated powers, this rationale has been rejected by other judges and it lacks the robust strength and breadth of a ruling based on individual rights that Plaintiffs seek here. It is akin to winning a Second Amendment case on a collective rights rationale rather than on individual rights, when everyone knows how tenuous collective rights can be. Plaintiffs here assert an infringement of their freedom of association and other individual rights by the CTA and its Rule, and these are more secure grounds for enjoining federal overreach. Plaintiffs' declarations submitted in support of their motion for a preliminary injunction fully demonstrate these infringements.

The *Texas Top Cop Shop* decision is persuasive, and could reinforce one reason for this Court to grant the preliminary injunction sought by Plaintiffs here. But delineating the outer parameters of the enumerated powers for Congress is a dicey task. There is a broader consensus to protect individual rights against federal infringement, and freedom of association is a right enjoying nearly unanimous legal support. A ruling based on individual rights could relieve Americans of a tense end-of-year holiday season worrying about onerous CTA burdens.

Argument

Appellate courts that have addressed this issue of potential mootness agreed that a nationwide injunction by one court does not moot a request for similar relief in another court. As

[5] The *Texas Top Cop Shop* decision did find irreparable harm based in part on the CTA's infringement on plaintiffs' First and Fourth Amendment rights. *See* Exh. A, at 31-32.

the Tenth Circuit recently summarized:

> We recognize that in the context of nationwide injunctions, courts have determined that a nationwide injunction issued by a district court in another circuit does not moot an appeal regarding the grant or denial of a preliminary injunction, although prudential concerns of comity and allowing the law to develop across the circuits may be present.

We the Patriots, Inc. v. Grisham, 119 F.4th 1253 (10th Cir. 2024) (dismissing an appeal because an overlapping injunction was not nationwide in scope and not as tenuous as the one here is).

The most in-depth analysis of this issue was by the Ninth Circuit, in a decision that was subsequently vacated on other grounds by the U.S. Supreme Court. The Ninth Circuit held that:

> As an initial matter, to our knowledge, no court has adopted the view that an injunction imposed by one district court against a defendant deprives every other federal court of subject matter jurisdiction over a dispute in which a plaintiff seeks similar equitable relief against the same defendant. Instead, "in practice, nationwide injunctions do not always foreclose percolation." Spencer E. Amdur & David Hausman, *Nationwide Injunctions and Nationwide Harm*, 131 Harv. L. Rev. F. 49, 53 (2017). For example, both this court and the Fourth Circuit recently "reviewed the travel bans, despite nationwide injunctions in both." *Id.* at n.27.

California v. U.S. HHS, 941 F.3d 410, 421-22 (9th Cir. 2019), *cert. granted, judgment vacated on other grounds*, *Little Sisters of Poor Jeanne Jugan Residence v. California*, 141 S. Ct. 192 (2020).

In the analogous situation of one district court granting a stay of a federal regulation pending litigation there, it is widely acknowledged by the federal government and federal courts that such a stay does not preclude ongoing review of the same matter by another court. As explained by a district court in the Eastern District of Texas:

> A stay pending review is, by definition, temporary. It can evaporate at a moment's notice. Such an external stay has a different character than a defendant's own choice to modify its action (which choice would itself affect standing only within the limits of the voluntary-cessation doctrine).
>
> Thus, in the analogous context of one district court issuing a stay pending review of an action under review by another district court, the federal government itself has recognized that the stay in one case does "not moot" the other case. Suppl. Br. for the Fed. Appellants at 6, *California v. HHS*, 941 F.3d 410 (9th Cir. 2019) (No. 19-15072), 2019 WL 2271619; *accord* Suppl. Mem. in Opp. to Pls.' Mot. for a Preliminary Inj. at 2, *Cook Cnty.*

> *v. McAleenan*, 417 F. Supp. 3d 1008 (N.D. Ill. 2019) (No. 1:19-cv-06334) (expressing the federal government's position that stay orders in another case "do not moot" a lawsuit challenging the same agency action). Here, too, the court concludes that plaintiffs' injury continues to be concrete and imminent regardless of the extent of CMS's compliance with the Board's regulatory stay pending its review. And, of course, the mere possibility that a reviewing entity enters a final decision vacating an agency action does not undo its consequences in the meantime.

Texas v. Brooks-Lasure, No. 6:21-cv-00191, 2021 U.S. Dist. LEXIS 217174, at *12-13 (E.D. Tex. Aug. 20, 2021). The federal government itself has conceded in other cases that a stay of its regulation in one case does not moot concurrent litigation about the regulation in another case.

In *Texas v. Brooks-Lasure*, the district court granted the motion for a preliminary injunction by Texas against the federal government on an agency decision that had already been stayed pending review. The agency decision, which was a rescission, was potentially going to be vacated yet the district court properly enjoined it anyway. *Id.* at *11. One reason the court granted the request by Texas for a preliminary injunction was that "Texas has put forth evidence adequately showing at this stage that at least some CMS officials were dragging their feet and not acting as if the rescission had been paused." *Id.* Sound familiar? FinCEN here is likewise "dragging their feet and not acting as if the [CTA] had been" enjoined. *Id.* Texas, through its amicus brief, supports Plaintiffs' motion for a preliminary injunction, and for this additional reason it should be granted.

Conclusion

Defendant FinCEN evidently expects to overturn or narrow the *Texas Top Cop Shop* decision, quickly appealing while declining to post a notice of the injunction on the FinCEN website. FinCEN continues to collect personal data as though mandatory. Plaintiffs need a preliminary injunction to protect themselves, including the members of Plaintiff AAPS, and the precedents hold that a nationwide injunction by another court does not render moot the injunctive relief sought by Plaintiffs, who thus request their motion for a preliminary injunction be granted.

Dated: December 8, 2024

Respectfully submitted,

/s/ Andrew L. Schlafly
Andrew L. Schlafly (admitted *pro hac vice*)
Attorney at Law (NJ #04066-2003)
939 Old Chester Rd.
Far Hills, NJ 07931
Tel: (908) 719-8608
Fax: (908) 934-9207
Email: aschlafly@aol.com

/s/ Karen B. Tripp
Karen B. Tripp
Attorney at Law (Texas Bar #03420850)
P.O. Box 1301
Houston, TX 77251-1301
Tel: (713) 658-9323
Fax: (713) 968-9888
Email: ktripp@tripplaw.com

Counsel for Plaintiffs Steven F. Hotze, M.D., Daniel Rogers, Russell Ramsland, Michael Wallis, and the Association of American Physicians & Surgeons

CERTIFICATE OF SERVICE

On December 8, 2024, I electronically submitted the foregoing document and its accompanying exhibit with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court, which I understand to have caused service on counsel of record for all the parties in this case.

/s/ Andrew L. Schlafly
Andrew L. Schlafly