



## **Baby It's Cold Outside - But Don't Tell the Markets ...**

**January 30, 2025**

### **Table of Contents:**

- **Contracts Clause Rears Its Powerful Head for a Landlord**
- **Corporate Transparency Act Remains on Hold Despite SCOTUS Stay of Injunction**
- **FinCEN Slightly Adjusts Beneficial Ownership Reporting Deadlines After Fifth Circuit Court of Appeals Stays Texas Court's Nationwide Injunction of the Corporate Transparency Act**
- **Corporate Transparency Act Again Unenforceable After Fifth Circuit Merits Panel Vacates Stay of Injunction**
- **Bonnie Neuman Named to 2025 Lawdragon 500 Leading Lawyers in America**
- **Cadwalader Guides Centro City Financing**

## Contracts Clause Rears Its Powerful Head for a Landlord



By **Steven M. Herman**  
Senior Counsel | Real Estate



By **Xavier Caso**  
Associate | Real Estate

In a recent case, *513 West 26th Realty LLC v. George Billis Galleries Inc.*, a New York Supreme Court addressed whether the COVID-era personal guaranty relief statute (the Guaranty Law) violated the Contracts Clause of the U.S. Constitution.

The Guaranty Law was originally passed in May 2020 by the New York City Council in response to the COVID-19 pandemic. Its aim was to prevent commercial landlords from holding personal guarantors liable for a business tenant's default in rent payments during the State-mandated closure period.

In this case, the tenant, a gallery, defaulted on its lease, and the landlord sought to enforce the personal guarantee of the tenant's principal. The tenant argued that the Guaranty Law should invalidate the guarantee. The landlord, in turn, argued that this law unconstitutionally interfered with their contract rights, claiming it violated the Contracts Clause of the U.S. Constitution by impairing the enforceability of the lease agreement retroactively.

In deciding whether a law violates the Contracts Clause, the Court applies a two-step analysis. First, whether the state law has "operated as a substantial impairment of a contractual relationship," which is determined by considering the extent to which the law undermines the contractual bargain, interferes with the parties' expectations, and prevents the parties from safeguarding their rights; and if the law operates as a substantial impairment. Second, whether the state law is drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose. (*Sveen v. Melin*, 584 US 811, 819 [2018])

In considering whether the law operates as a substantial impairment of a contractual relationship, the City, on behalf of Defendant, argued that the law simply makes commercial leases less profitable, but the court rejected this argument, citing prior decisions, particularly *Melendez I*<sup>[1]</sup> and *Melendez II*<sup>[2]</sup>. These cases held that the law permanently undermined landlords' contractual rights by preventing them from collecting unpaid rent during the statutory period, and that landlords would not have entered into leases without the benefit of the guaranty. Consequently, the Guaranty Law is deemed a substantial impairment of the contractual relationship.

Next, in considering whether the law is drawn in a reasonable way to serve a legitimate public purpose, the City argued that the law was enacted to protect small business owners from personal bankruptcy, a legitimate goal given the financial impacts of the pandemic. However, the court found that while the public purpose is valid, the means used are not reasonable. The law permanently eliminates landlords' ability to collect unpaid rent, unlike temporary measures seen in past cases like *Blaisdell*<sup>[3]</sup>, which allowed homeowners facing foreclosure to delay mortgage payments for up to two years to prevent the loss of their homes during the Great Depression. The City failed to justify why landlords, rather than tenants or guarantors, should bear the full economic burden. Additionally, the law lacks a need requirement and does not provide compensation to landlords for their losses, which contrasts with other relief measures that balance interests more equitably.

While the City's objective was legitimate, the Court found that the Guaranty Law was not reasonably tailored to achieve the intended objective. The Guaranty Law imposed a significant and permanent impairment on landlords' contractual rights without adequate compensation or justification for its broad application, thus violating the Contracts Clause of the U.S. Constitution.

[1] Melendez v. City of New York, 503 F. Supp. 3d 13 [SDNY 2020]

[2] Melendez v. City of New York, 16 F.4th 992 [2nd Cir 2021]

[3] Home Bldg. & Loan Ass'n v. Blaisdell, 290 US 398 [1934]

## Corporate Transparency Act Remains on Hold Despite SCOTUS Stay of Injunction



By **Dean Berry**  
Partner | Private Wealth



By **Christian Larson**  
Special Counsel | White Collar Defense and Investigations



By **Keyes Gilmer**  
Associate | Global Litigation

On January 23, 2024, the Supreme Court overturned a nationwide injunction enjoining enforcement of the Corporate Transparency Act (CTA). However, the implementing regulations of the CTA remain unenforceable due to a district court order still in effect in a separate case.

On December 3, 2024, a judge of the U.S. District Court for the Eastern District of Texas issued a nationwide preliminary injunction in *Texas Top Cop Shop, Inc., et al. v. Garland*, enjoining the federal government from enforcing the CTA, its implementing regulations, and its reporting deadlines after finding that Congress likely exceeded its authority in enacting the law.<sup>1</sup>

On December 23, 2024, a three-judge motions panel of the Fifth Circuit stayed the injunction.<sup>2</sup> On December 26, 2024, a Fifth Circuit merits panel vacated the portion of the motions panel's order that stayed the injunction, causing the injunction to go back into effect.<sup>3</sup> On December 31, 2024, the government applied to Justice Samuel Alito for a stay of the injunction.<sup>4</sup> Justice Alito referred the application to the full Supreme Court, which granted the stay on January 23, 2025.<sup>5</sup>

However, a federal district court order blocking enforcement of the CTA's implementing regulations in a different case is still in effect. On January 7, 2025, in *Smith v. U.S. Department of the Treasury*, a different judge of the U.S. District Court for the Eastern District of Texas found the CTA is likely unconstitutional and stayed the effective date of the CTA's implementing regulations, including the requirement to file beneficial ownership reports.<sup>6</sup> That stay remains in place, and the government has not yet appealed.

A FinCEN alert published after the Supreme Court's January 23, 2025 order states that "[a]s a separate nationwide order issued by a different federal judge in Texas (*Smith v. U.S. Department of the Treasury*) still remains in place, reporting companies are not currently required to file beneficial ownership information."<sup>7</sup> FinCEN also stated that reporting companies may continue to voluntarily submit their reports.<sup>8</sup>

The constitutionality of the CTA has been challenged in several other courts. The issue is on appeal in the Eleventh Circuit, where a U.S. district court in Alabama found the CTA unconstitutional.<sup>9</sup> However, in Michigan, Oregon, and Virginia, U.S. district courts have denied preliminary injunctions with respect to the CTA.<sup>10</sup>

The government's appeal in the Fifth Circuit remains on an expedited track, with oral argument scheduled for March 25, 2025.<sup>11</sup>

We will continue to monitor developments related to the enforceability of the CTA.

<sup>1</sup> *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-CV-478, 2024 WL 4953814 (E.D. Tex. Dec. 3, 2024).

<sup>2</sup> Unpublished Order, *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792 (5th Cir. Dec. 23, 2024), ECF No. 140-2.

**3** Order, *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792 (5th Cir. Dec. 26, 2024), ECF No. 160-2.

**4** Application for a Stay of the Injunction Issued by the United States District Court for the Eastern District of Texas, *Garland v. Texas Top Cop Shop, Inc.*, No. 24A653 (Dec. 31, 2024).

**5** On Application for Stay, *Garland v. Texas Top Cop Shop, Inc.*, No. 24A653 (Jan. 23, 2025).

**6** Memorandum Opinion and Order Granting Motion for Preliminary Relief, *Smith v. U.S. Dep't of the Treasury*, No. 6:24-cv-336-JDK (E.D. Tex. Jan. 7, 2025), ECF No. 30.

**7** *Beneficial Ownership Information*, FinCEN, available at <https://fincen.gov/boi> (last accessed Jan. 24, 2025).

**8** *Id.*

**9** Notice of Appeal, *Nat'l Small Bus. United v. Yellen*, No. 5:22-CV-1448-LCB (N.D. Ala. Mar. 11, 2024), ECF No. 54.

**10** Case Management Order, *Small Bus. Ass'n. of Mich. v. Yellen*, No. 1:24-cv-314 (W.D. Mich. Apr. 26, 2024), ECF No. 24; Notice of Appeal, *Firestone v. Yellen*, No. 3:24-CV-1034-SI (D. Or. Nov. 18, 2024), ECF No. 19; Notice of Appeal, *Cmty. Associations Inst. v. Yellen*, No. 1:24-CV-1597 (MSN/LRV) (E.D. Va. Nov. 4, 2024), ECF No. 41.

**11** Clerk's Memorandum, *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792 (5th Cir. Dec. 26, 2024), ECF No. 165-2.

## FinCEN Slightly Adjusts Beneficial Ownership Reporting Deadlines After Fifth Circuit Court of Appeals Stays Texas Court's Nationwide Injunction of the Corporate Transparency Act



By **Jodi Avergun**  
Senior Counsel | White Collar Defense and Investigations



By **Christian Larson**  
Special Counsel | White Collar Defense and Investigations



By **Keyes Gilmer**  
Associate | Global Litigation

The U.S. Court of Appeals for the Fifth Circuit (the Fifth Circuit) granted the federal government's motion and stayed enforcement of a lower court's nationwide injunction against enforcement of the Corporate Transparency Act (CTA). As a result, filing of beneficial ownership information (BOI) reports with the Financial Crimes Enforcement Network (FinCEN) is once again mandatory for all non-exempt reporting companies. FinCEN, the government agency responsible for enforcement of the CTA, immediately announced that it will resume enforcement of the CTA and its BOI reporting deadlines, albeit with slight timeline adjustments.

On December 23, 2024, in *Texas Top Cop Shop, Inc., et al. v. Garland*, a three-judge panel of the Fifth Circuit stayed a Texas court's recent nationwide preliminary injunction prohibiting the implementation of the CTA's beneficial ownership filing requirements.<sup>1</sup> In doing so, the Fifth Circuit found that the government had "made a strong showing that it is likely to succeed on the merits in defending CTA's constitutionality."<sup>2</sup> The stay permits FinCEN to carry out enforcement of the law while the lawsuit filed in Texas proceeds on a regular schedule. Within hours of the decision, FinCEN published an alert announcing that corporate filers were required to comply with the CTA's beneficial ownership reporting rules, but with the following adjustments to the CTA's reporting deadlines:<sup>3</sup>

- Reporting companies that were created or registered prior to January 1, 2024 have until January 13, 2025 to file their initial BOI reports with FinCEN.
- Reporting companies that are created or registered in the United States on or after September 4, 2024 that had a filing deadline between December 3, 2024 and December 23, 2024 have until January 13, 2025 to file their initial BOI reports with FinCEN.
- Reporting companies created or registered in the United States on or after December 3, 2024 and on or before December 23, 2024 have an additional 21 days from their original filing deadline to file their initial BOI reports with FinCEN.
- Reporting companies that are created or registered in the United States on or after January 1, 2025 have 30 days to file their initial BOI reports with FinCEN after receiving actual or public notice that their creation or registration is effective.

Cadwalader [previously commented on](#) *Texas Top Cop Shop* and other decisions challenging the constitutionality of the CTA, three of which are currently pending in various federal courts. We will continue to monitor the developments in all of the pending lawsuits.

<sup>1</sup> Unpublished Order, *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792 (5th Cir. Dec. 23, 2024), ECF No. 140-2.

<sup>2</sup> *Id.*

3 *Beneficial Ownership Information*, FinCEN, <https://fincen.gov/boi> (last accessed Dec. 23, 2024).

## Corporate Transparency Act Again Unenforceable After Fifth Circuit Merits Panel Vacates Stay of Injunction



By **Christian Larson**  
Special Counsel | White Collar Defense and Investigations



By **Keyes Gilmer**  
Associate | Global Litigation

The Corporate Transparency Act (CTA) is currently unenforceable while the Fifth Circuit considers the federal government's expedited appeal of a nationwide preliminary injunction that enjoins implementation of the CTA.

On December 3, 2024, the U.S. District Court for the Eastern District of Texas issued a nationwide preliminary injunction in *Texas Top Cop Shop, Inc., et al. v. Garland*, enjoining the federal government from enforcing the CTA, its implementing regulations, and its reporting deadlines after finding that Congress likely exceeded its authority in enacting the law.<sup>1</sup>

On December 23, 2024, a three-judge motions panel of the Fifth Circuit stayed the injunction, finding that the government had “made a strong showing that it is likely to succeed on the merits in defending CTA’s constitutionality.”<sup>2</sup>

Just three days later, on December 26, 2024, a Fifth Circuit merits panel vacated the portion of the motions panel’s order that stayed the injunction.<sup>3</sup> As a result, the district court’s nationwide preliminary injunction is in effect once again and the CTA is currently unenforceable.

A FinCEN alert published after the December 26, 2024 order states that “reporting companies are not currently required to file beneficial ownership information with FinCEN and are not subject to liability if they fail to do so while the [U.S. District Court] order remains in force.”<sup>4</sup> FinCEN also stated that reporting companies may continue to voluntarily submit their reports.<sup>5</sup>

The constitutionality of the CTA has been challenged in several other courts. In a separate case in the Eastern District of Texas, a U.S. district court found the CTA is likely unconstitutional and stayed the effective date of the CTA’s implementing regulation.<sup>6</sup> The CTA’s constitutionality is also on appeal in the Eleventh Circuit, where a U.S. district court in Alabama found the CTA unconstitutional.<sup>7</sup> However, in Michigan, Oregon, and Virginia, U.S. district courts have denied preliminary injunctions with respect to the CTA.<sup>8</sup> FinCEN’s recent alert states, “[t]he government continues to believe—consistent with the orders issued by the U.S. District Courts for the District of Oregon and the Eastern District of Virginia—that the CTA is constitutional.”<sup>9</sup>

The government’s appeal in the Fifth Circuit remains on an expedited track, with oral argument scheduled for March 25, 2025.<sup>10</sup>

In addition, the government has applied to the U.S. Supreme Court for a stay of the injunction.<sup>11</sup> Justice Samuel Alito has set a January 10, 2025 deadline for plaintiffs’ response.<sup>12</sup>

We will continue to monitor developments related to the enforceability of the CTA.

<sup>1</sup> *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-CV-478, 2024 WL 4953814 (E.D. Tex. Dec. 3, 2024).

<sup>2</sup> Unpublished Order, *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792 (5th Cir. Dec. 23, 2024), ECF No. 140-2.



- 3 Order, *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792 (5th Cir. Dec. 26, 2024), ECF No. 160-2.
- 4 Beneficial Ownership Information, FinCEN, available at <https://fincen.gov/boi> (last accessed Jan. 9, 2025).
- 5 *Id.*
- 6 Memorandum Opinion and Order Granting Motion for Preliminary Relief, *Smith v. U.S. Dep't of the Treasury*, No. 6:24-cv-336-JDK (E.D. Tex. Jan. 7, 2025), ECF No. 30.
- 7 Notice of Appeal, *Nat'l Small Bus. United v. Yellen*, No. 5:22-CV-1448-LCB (N.D. Ala. Mar. 11, 2024), ECF No. 54.
- 8 Case Management Order, *Small Bus. Ass'n. of Mich. v. Yellen*, No. 1:24-cv-314 (W.D. Mich. Apr. 26, 2024), ECF No. 24; Notice of Appeal, *Firestone v. Yellen*, No. 3:24-CV-1034-SI (D. Or. Nov. 18, 2024), ECF No. 19; Notice of Appeal, *Cmty. Associations Inst. v. Yellen*, No. 1:24-CV-1597 (MSN/LRV) (E.D. Va. Nov. 4, 2024), ECF No. 41.
- 9 Beneficial Ownership Information, FinCEN, available at <https://fincen.gov/boi> (last accessed Jan. 9, 2025).
- 10 Clerk's Memorandum, *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792 (5th Cir. Dec. 26, 2024), ECF No. 165-2.
- 11 Application for a Stay of the Injunction Issued by the United States District Court for the Eastern District of Texas, *Garland v. Texas Top Cop Shop, Inc.*, No. 24A653 (Dec. 31, 2024).
- 12 Docket Entry, *Garland v. Texas Top Cop Shop, Inc.*, No. 24A653 (Jan. 3, 2025).

## **Bonnie Neuman Named to 2025 Lawdragon 500 Leading Lawyers in America**

Real Estate Practice Head Bonnie Neuman was among 13 Cadwalader partners selected to the 2025 *Lawdragon* 500 Leading Lawyers in America, announced January 10. Each Cadwalader lawyer was selected based on journalistic research, submissions and vetting.

For details and a complete list of 2025 honorees, read the announcement [here](#).

## **Cadwalader Guides Centro City Financing**

Cadwalader represented JVP Management as lender in the financing of a major mixed-use development in the center of Miami-Dade County, announced on January 7.

Terra Group, a South Florida real estate development firm, secured a \$187 million loan from JVP Management for the first phase of its Centro City project, a 38-acre mixed-use development located near Miami's Little Havana neighborhood. The loan will be used for the project's multifamily residential component. Terra Group also secured an additional \$104 million loan for Centro City's retail component. The loans will be used to pay off the project's existing construction financing and to complete the construction of the multifamily residential component. Once completed, Centro City's first phase includes 350,000 square feet of renovated and new retail space, along with three multifamily buildings containing 470 market-rate apartments.

The Cadwalader Real Estate team was led by Bonnie Neuman and includes Sulie Arias, Krista Gresia, Michael Genoino, Molly Lovedale and Wilson Chow.