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NCLA Amicus Brief Asks Fifth Circuit to Maintain Block Against Corporate Transparency Act

Texas Top Cop Shop, Inc., et al. v. Pamela Bondi, Attorney General of the United States, et al.

Washington, DC (March 3, 2025) – Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) in *Texas Top Cop Shop v. Bondi*, urging the U.S. Court of Appeals for the Fifth Circuit to uphold a preliminary injunction against enforcement of the unconstitutional Corporate Transparency Act (CTA). The Treasury Department announced yesterday that it will not enforce the CTA against U.S. citizens and companies, largely agreeing to the result the injunction would achieve. NCLA’s brief argues the injunction should not be vacated, since the CTA stretches beyond Congress’s and the Administrative State’s authority to regulate Americans.

The CTA mandates that organizations that have filed for incorporation under state law submit detailed reports which include sensitive information to the Department of the Treasury. Americans would be civilly or criminally punished if they fail to comply, whether by omitting information or even accidentally submitting false information. These invasive requirements would apply to over 30 million nonprofit and for-profit organizations nationwide.

The government asks the Fifth Circuit to vacate the U.S. District Court for the Eastern District of Texas’s preliminary injunction against enforcement of the CTA, wrongly claiming the Constitution’s Commerce Clause authorizes this statute. Commerce Clause regulations must target economic activity. The only thing that triggers disclosure under the CTA is coming into existence by filing incorporation paperwork with a state government. That is not economic activity because it does not involve producing, consuming, or exchanging any good or service. The government does not argue that incorporation is an economic activity in itself. Instead, it says the act of incorporation brings organizations “into the class of economic activities that Congress can regulate.” But the Supreme Court held in the Obamacare case (*NFIB v. Sebelius*) that the government cannot justify regulation under the Commerce Clause based on one’s mere capacity for commerce or on one’s likely future economic activities.

The government’s alternative request to narrow the scope of the nationwide preliminary injunction to just the corporate entities that sued in the *Texas Top Cop Shop* case is likewise flawed. The Administrative Procedure Act expressly authorizes the court to “postpone” the Treasury Department’s rule enforcing the CTA, which necessarily extends to the whole country, not just the litigants.

NCLA released the following statement:

“The government asserts power to regulate based solely on a corporation’s *status* as a commercial actor. But every natural person is also a commercial actor who works, consumes, contracts, and otherwise engages in economic activity. If *status* as a commercial actor could be the basis for regulation under the Commerce Clause, then that power would be boundless, and any notion of limited government would cease.”

— **Sheng Li, Litigation Counsel, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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