



CAI Lawsuit: Corporate Transparency Act Challenge and Injunction

Frequently Asked Questions (Updated December 30, 2024)

IMPORTANT UPDATE

On Dec. 26, following the Dec. 23 order vacating a temporary preliminary injunction imposed by the U.S. District Court for the Eastern District of Texas, the full panel of judges of the Fifth Circuit Court of Appeals issued an order vacating the stay issued by a three-judge panel of the District Court's preliminary injunction of the enforcement of the Jan. 2025 deadline for reporting compliance under the Corporate Transparency Act in Texas Top Cop Shop v. Garland.

This means beneficial ownership information reporting requirements are once again put on pause by a federal court for applicable community associations.

FinCEN released a statement that BOI filings are now (again) voluntary.

While this continues to be a developing issue and association boards should remain vigilant and informed on these ongoing updates, we expect this pause will remain for the coming months.

Update on CAI's Lawsuit: *On October 24, 2024, CAI's preliminary injunction request was DENIED by the federal judge in this case. This current result means your association board must report BOI information to FinCEN by January 1, 2025, or face financial and criminal penalties.*

While this decision was not the outcome we had hoped for, it does not mark the end of CAI's efforts. CAI appealed the court's denial of the preliminary injunction request on November 4, 2024, and on November 12, 2024, filed its opening brief of the appeal in the Fourth Circuit.

CAI's other lobbying and advocacy efforts continue on Capitol Hill and the lawsuit itself is continuing to go through the legal process even as the preliminary injunction decision is being appealed.

Overview: The Anti-Money Laundering/Corporate Transparency Act, enacted in 2021, requires entities to report business ownership information yearly to the Department of Treasury or face strict penalties. Community associations, also known as homeowners associations, condominium associations, and housing cooperatives, account for more than 365,000 nonprofit, local and volunteer-driven organizations throughout the United States. CAI believes the act that community associations should be deemed exempt from compliance with the act, and that FinCEN's interpretation of the CTA unfairly includes community associations under the act's enforcement umbrella.

A preliminary injunction was GRANTED preliminarily enjoining the Government from enforcing the Corporate Transparency Act in the Texas Top Cop Shop case, which CAI believes applies to community associations. As a result, community associations are NOT CURRENTLY



required to comply with the CTA, however they should still be ready to comply should an appeal change the result of the ruling.

What is the Corporate Transparency Act?

The Corporate Transparency Act is a federal law enacted to combat money laundering, terrorist financing, and other illicit activities. It requires corporations, limited liability companies, and similar entities to disclose information about ownership to the Department of Treasury's Financial Crimes Enforcement Network.

What are community associations?

Community associations are nonprofit organizations or business corporations that manage and govern residential communities such as homeowners' associations, condominium associations, and housing cooperatives. They are typically managed by volunteer boards comprised of homeowners in the community. Volunteer boards are responsible for all operations and ensure the association is following the law and community governing documents.

Why is the CAI filing a lawsuit against the Department of Treasury?

CAI seeks an exemption for community associations from the CTA. CAI believes community associations should not be subjected to the same reporting requirements as corporations and LLCs because they operate differently and are nonprofit entities governed by homeowners.

Compliance with CTA will present a measurable, significant burden on volunteer leaders throughout the nation. Associations will be forced to collect personal information, turn it over to the federal government and update it on an ongoing basis to comply with current reporting requirements. The burden of reporting such information is likely to have a chilling effect on volunteerism. Association boards also will incur high administrative costs to comply with the law.

Are any community associations currently exempt from the CTA?

Yes. Community associations that hold an active 501(c)(4) IRS tax exemption are already exempt from filing. In addition, community associations with more than \$5 million in annual revenue and 20 or more employees qualify under the current exemptions.

What are the penalties for a community association's noncompliance with the CTA?

Noncompliance could result in civil penalties of \$500 per day and criminal penalties of up to \$10,000 and up to 24 months in prison for beneficial owners.

What specific exemption is CAI seeking for community associations?

CAI is seeking an exemption excluding community associations from the CTA's beneficial ownership reporting requirements. This would relieve these entities from the burdensome task of reporting detailed ownership information to the Department of Treasury.

What are the main arguments in CAI's lawsuit?



- **Exemption from the Corporate Transparency Act (CTA):** Community should be exempt from the CTA's reporting requirements, as they are nonprofit organizations under section 528 of the IRS code.
- **Improper Rulemaking Procedures:** FinCEN issued FAQs without following proper notice-and-comment procedures required by the Administrative Procedure Act, making these rules invalid.
- **Arbitrary and Capricious Action:** FinCEN's refusal to exempt community associations from the CTA is arbitrary and capricious, as it fails to consider the low risk of illicit financial activity by such entities.
- **Constitutional Violations:** The CTA violates their constitutional rights under the Fourth, Fifth, and Ninth Amendments by requiring invasive personal disclosures without adequate privacy protections or sufficient cause.
- **Freedom of Speech and Association Violation:** The CTA violates the First Amendment by burdening the right engage in protected speech and private association.
- **Overreach of Federal Powers:** CTA unlawfully usurps state authority to regulate corporate formation and governance, exceeding the federal government's constitutional powers.
- **Equal Protection Violation:** CTA discriminates against community associations by not exempting them as nonprofit organizations, unlike similar entities under section 501(c) of the IRS code.

When was the lawsuit filed?

The lawsuit was filed September 10, 2024.

Why was the lawsuit filed in the U.S. District Court for the Eastern District of Virginia?

CAI is pursuing this case in the U.S. District Court for the Eastern District of Virginia. It is the sensible venue as CAI is incorporated in the District of Columbia and headquartered in Virginia. The Eastern district is known for having a rapid docket process that allows it to hear cases more quickly than other federal courts and offers the potential for a faster resolution. Finally, the Eastern district is accustomed to hearing federal statutory and constitutional challenges compared to other jurisdictions.

What is preliminary injunctive relief and why was it requested?

CAI included a motion for preliminary injunctive relief. Preliminary injunctive relief is temporary relief that preserves the status quo until the court decides the merits of the case. This would delay the requirement for community associations to comply as the lawsuit goes through the court process.

When was the ruling on preliminary injunctive relief for CAI issued?



The ruling was issued on October 24, 2024.

What does the ruling denying preliminary injunctive relief mean for associations?

In short, this ruling means that associations will need to report BOI information to FinCEN by January 1, 2025 unless CAI's advocacy efforts are successful.

When did CAI begin its appeal of the preliminary injunctive relief ruling?

CAI appealed the court's denial of the preliminary injunction request on November 4, 2024, and on November 12, 2024, filed its opening brief of the appeal in the Fourth Circuit.

What does CAI's appeal mean?

CAI's appeal means that the courts will be taking a second look at the request for preliminary injunction, even as the lawsuit itself continues to move through the legal process.

What are the potential consequences if CAI's lawsuit is unsuccessful?

If the lawsuit is unsuccessful, community associations will be required to comply with the CTA's reporting requirements. This could lead to increased administrative costs and challenges for volunteer-run boards to collect and submit the required information.

What does the Texas Top Cop Shop ruling mean for community associations?

A preliminary injunction was GRANTED in the Texas Top Cop Shop case on December 3rd, which CAI believes applies to community associations. As a result, community associations are NOT CURRENTLY required to comply with the CTA, however they should still be ready to comply should an appeal change the result of the ruling.

How can community association members support CAI's lawsuit?

Members can support the lawsuit by:

- Staying informed about the case's progress.
- Donating to CAI's legal fund to help cover litigation costs.
- Contacting their local representatives to express support to exempt community associations from the CTA.

What is the expected timeline for CAI's lawsuit?

September 10, 2024 – Lawsuit filed

October 11, 2024 – CAI filed a notice of hearing on the motion for Friday, October 11. The court should hear our arguments on the motion. It is unlikely the court would rule or issue an opinion that day; it is more likely to be days or weeks following October 11. CAI's legal team will be making arguments urging a rapid response due to the pending deadline for compliance.

Updates on significant milestones and developments will be provided to members as they occur.



What results are expected from the lawsuit?

CAI aims to achieve an exemption for community associations from the CTA's reporting requirements. The request for preliminary injunctive relief seeks to protect community associations from these requirements during the legal proceedings.

Where can I find more information about the lawsuit and the CTA?

Members can find more information on www.caionline.org/cta . Updates on the lawsuit and detailed explanations will be regularly posted. Additionally, CAI's publications will provide ongoing coverage and analysis.

A link to the full complaint and motion for preliminary injunction may be found at the bottom of the web page – www.caionline.org/cta

Should community associations be prepared to file by Dec. 31 if the lawsuit is not resolved or the law has not changed?

Yes, community associations should be prepared to comply with the act and file the required beneficial ownership information by Dec. 31 if the lawsuit is not resolved or the law has not been amended. While the CAI is actively pursuing legal action to seek an exemption, it is prudent for associations to prepare to comply to avoid potential penalties and ensure they meet all legal requirements.

Does the law currently apply to community associations?

YES. As preliminary injunctive relief was not granted, all community associations must comply with reporting requirements unless CAI's advocacy efforts are successful. Compliance is required by January 1, 2025.

The CTA mandates all covered entities, including nonprofit organizations such as community associations, disclose their beneficial owners to the Department of Treasury's Financial Crimes Enforcement Network. However, CAI's lawsuit seeks to change this by obtaining an exemption specifically for community associations. Until a legal exemption is granted or the law is amended, community associations must adhere to the current requirements of the CTA.

What else is CAI doing to assist community associations on this matter?

CAI has been actively advocating for an exemption for community associations or a one-year delay of the CTA with members of Congress. Visit www.caionline.org/takeaction to contact your Members of Congress.

Are there other lawsuits arguing the validity of the CTA?



Currently, there are the following pending CTA challenges nationwide:

- [Massachusetts](#): BECMA et al v Yellen (5/29/2024)
- [Texas](#): NFIB et al v Yellen (5/28/2024)
- [Maine](#): William Boyle v. Yellen (3/15/2024)
- [Michigan](#): Small Business Association of Michigan et al v. Yellen (3/1/2024)
- [Ohio](#): Robert J. Gargas Co., L.P.A. et al v. Yellen (12/29/2023)
- [Alabama](#) (appealed): NSBA et al v. Yellen (11/15/2022)
- [Utah](#): Phillip Taylor and the nonprofits The People Restored, Ranchers Cattlemen Action Legal Fund United Stockgrowers of America, and Utah OSR Land Cooperative.
- [Oregon](#): Gerald Earl Cummings, II, Lindsay Berschauer, Tayler Hayward, Lisa Ledson, Katerina Eyre, Michael Firestone and Thomas Reilly

What if I have additional questions?

Email: government@caionline.org

Contact

Dawn M Bauman, CAE

CAI's Chief Strategy Officer

703-970-9224 or dbauman@caionlin.org

Phoebe Neseth, Esq.

CAI's Sr. Director of Government and Public Affairs

703-970-9256 or pneseth@caionline.org

Resources

www.caionline.org/CTA