No. 24A653

IN THE
SUPREME COURT OF THE UNITED STATES

MERRICK GARLAND, ATTORNEY GENERAL, et al.,

Applicants,

v.

TEXAS TOP COP SHOP, et al.,

Respondents.

ON APPLICATION FOR A STAY OF THE PRELIMINARY INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

BRIEF FOR *AMICUS CURIAE* THE NATIONAL SMALL BUSINESS ASSOCIATION IN OPPOSITION TO APPLICANTS' REQUEST FOR A STAY

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
INTEREST OF AMICUS CURIAE 1
INTRODUCTION AND SUMMARY OF ARGUMENT 2
ARGUMENT 6
I. The Pendency Of The NSBA's Fully Briefed and Argued Challenge To The CTA In The Eleventh Circuit Strongly Counsels Against Granting The Government's Request For A Stay 6
II. The Government Is Unlikely To Succeed On The Merits In Any Event 11
CONCLUSION 18

TABLE OF AUTHORITIES

Cases

Carpenter v. United States,
585 U.S. 296 (2018) 16

Cort v. Ash,
422 U.S. 66 (1975) 14

CTS Corp. v. Dynamics Corp. of Am.,
481 U.S. 69 (1987) 14

Does 1-3 v. Mills,
142 S.Ct. 17 (2021) 2

Edgar v. MITE Corp.,
457 U.S. 624 (1982) 14

Labrador v. Poe,
144 S.Ct. 921 (2024) 3, 9

McCulloch v. Maryland,
17 U.S. (4 Wheat.) 316 (1819) 16

NFIB v. Sebelius,
567 U.S. 519 (2012) 5, 13, 14

NSBU v. Yellen,
721 F.Supp.3d 1260 (N.D. Ala. 2024) 2, 7, 13

Ohio v. EPA,
603 U.S. 279 (2024) 5, 6

Packwood v. Senate Select Comm. on Ethics,
510 U.S. 1319 (1994) 11

Printz v. United States,
521 U.S. 898 (1997) 5

United States v. Bramble,
103 F.3d 1475 (9th Cir. 1996) 12

United States v. Di Re,
332 U.S. 581 (1948) 17

United States v. Lopez,
514 U.S. 549 (1995) 15

Constitutional Provisions

U.S. Const. art. I, §8, cl.18.................... 6

U.S. Const. amend. IV 16

Statutes and Regulation

31 U.S.C. §5336(a)(11) 7, 13

Ala. Code §10A-5a-2.01(a) 16

Pub. L. No. 116-283, 134 Stat. 4605 (2021) 6

87 Fed. Reg. 59,498 (Sept. 30, 2022) 7, 15, 17

Other Authorities

Vincent S.J. Buccola, *Opportunism and Internal Affairs*,
93 Tul. L. Rev. 339 (2018) 14

FinCEN, *UPDATED: Notice Regarding* National Small Business United v. Yellen, *No. 5:22-cv-01448 (N.D. Ala.)* (updated Mar. 11, 2024),
https://rebrand.ly/dt3b8lb 8

U.S. Dep't of Comm., Bureau of Econ. Analysis, *Gross Domestic Product, Third Quarter 2024 (Second Estimate) and Corporate Profits (Preliminary)* (Nov. 27, 2024), https://rebrand.ly/opqm12l 15

U.S. Dep't of Treas., Fin. Crimes Enf't Network, *The Role of Domestic Shell Companies in Financial Crime and Money Laundering: Limited Liability Companies* (Nov. 2006), https://rebrand.ly/3wyr2w7.................... 14

U.S. Small Bus. Admin., *Frequently Asked Questions* (Jul. 23, 2024),
https://rebrand.ly/m1xk513 15

INTEREST OF AMICUS CURIAE[1]

National Small Business United, d/b/a the National Small Business Association (NSBA), has a uniquely strong interest in this case, as evidenced by its own pending litigation challenging the Corporate Transparency Act (CTA), which has resulted in a separate injunction—which has been appealed but not stayed—and has been fully briefed and argued in the Eleventh Circuit. NSBA is an Ohio non-profit corporation that represents and protects the rights of small businesses across the United States on a non-partisan basis. Founded in 1937, the NSBA today has over 65,000 members across all 50 states. Those members are active in every sector of the U.S. economy, including manufacturing, retail, food service, and professional services. A principal function of the NSBA is to advocate for its members—and, by extension, the nearly 70 million Americans who make their livings employed by small businesses—before the federal government and to provide them with guidance and data on how to navigate government regulations. The NSBA also represents its members' interests before the courts.

The NSBA was one of the first to identify the enormous burdens and serious constitutional problems posed by the CTA, which requires the vast majority of NSBA members to disclose to the federal government sensitive information that has historically remained private or else face serious civil and criminal penalties.

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Because the CTA is not just burdensome, but also unconstitutional on multiple levels, the NSBA in November 2022 filed suit in the Northern District of Alabama seeking declaratory and injunctive relief to prohibit the government from enforcing the CTA against the association and its members. *See NSBU v. Yellen*, No. 22-cv-1448 (N.D. Ala.). After the district court granted summary judgment to the NSBA and enjoined enforcement of the statute against NSBA members, *see NSBU v. Yellen*, 721 F.Supp.3d 1260 (N.D. Ala. 2024), the government appealed to the Eleventh Circuit without seeking a stay of the injunction. The Eleventh Circuit expedited its review, received full merits briefing (including supplemental briefing), and heard oral argument in September 2024. *See NSBU v. Yellen*, No. 24-10736 (11th Cir.). Given the expedition of the appeal, there is every reason to think that the Eleventh Circuit will issue its decision imminently, providing this Court with the possibility of resolving the constitutionality of the CTA promptly, but in a non-emergency posture. Accordingly, the NSBA has a strong interest in underscoring that there is no need for the government's stay both because the CTA will remain enjoined vis-à-vis the NSBA and its members, and also because the NSBA's case provides a potential vehicle to review the constitutionality of the CTA relatively promptly if this Court so chooses.

INTRODUCTION AND SUMMARY OF ARGUMENT

The government asks this Court to wade into the merits of the CTA's constitutionality in an emergency posture "'on a short fuse without benefit of full briefing and oral argument'" and to stay in its entirety the preliminary injunction issued by the Eastern District of Texas and preserved by the Fifth Circuit. U.S.Br.12 (quoting *Does 1-3 v. Mills*, 142 S.Ct. 17, 18 (2021) (Barrett, J., concurring in the denial

of application for injunctive relief)). In the alternative, the government seeks a partial stay that narrows the preliminary injunction so that it does not cover purported "non-parties," such as members of the National Federation of Independent Business (NFIB) who are not specifically named in NFIB's complaint. U.S.Br.4, 35-36. While granting relief on the emergency docket is necessary in certain circumstances, *see, e.g.*, *Labrador v. Poe*, 144 S.Ct. 921, 934 (2024) (Kavanaugh, J., concurring in the grant of stay), this is plainly not one of them. Indeed, there are far better alternatives for addressing the constitutionality of the CTA in the ordinary course.

The NSBA's pending challenge to the CTA in the Eleventh Circuit strongly counsels against granting the government's emergency request for a stay in this case. The NSBA's challenge is fully briefed and argued, and the parties expect the court of appeals to issue a decision promptly. That court, moreover, is reviewing the CTA's constitutionality in a summary-judgment posture, not a preliminary-injunction posture. The upshot is that—no matter how the Eleventh Circuit rules—this Court should soon have the opportunity to consider the CTA's constitutionality on its merits docket (based on full briefing and oral argument) in a case litigated all the way to final judgment. The Court should await that opportunity instead of immediately allowing the government to enforce the CTA against millions of people after reviewing hastily prepared briefs and a Fifth Circuit order that (as the government repeatedly emphasizes) does not even address the merits. Indeed, giving the green light to the government to enforce the CTA in this context would create a grave risk that the

beneficial owners of millions of state-law entities would unnecessarily have to disclose to the federal government information in which they have a reasonable expectation of privacy pursuant to a statute that this Court may well declare unconstitutional after plenary review in a matter of months. That approach—which would inflict the very irreparable injury that the CTA's challengers are seeking to avoid—has nothing to recommend it, especially because of the asymmetry of interests. If millions of individuals are wrongly forced to disclose sensitive information to the federal government, there will be no way to unring that bell. If, by contrast, the federal government has to wait just one more year to get access to vast quantities of sensitive information that it has never had access to, the sky will not fall.

There is also no basis to grant the government's narrower request for a partial stay of the preliminary injunction, and the NSBA's case in the Eleventh Circuit again illustrates why. Over nine months ago, the district court in that case granted a permanent injunction that applies to all 65,000+ NSBA members, even though only one NSBA member is specifically named in the case. Far from claiming that the scope of that permanent injunction would warrant emergency relief from this Court, the government instead publicly announced as soon as the injunction issued that it would fully comply with it until the NSBA's litigation is fully resolved. And while one might think based on the government's emergency stay application here that it at least vigorously protested the scope of that injunction in the Eleventh Circuit, it did no such thing. To the contrary, the government did not even argue in the Eleventh Circuit that the district court had issued an overbroad injunction. All of that makes

this the very last context in which the Court should make grand pronouncements about whether courts may properly extend an injunction to cover the members of an association who are not specifically identified in a complaint.

In all events, the government's arguments on the merits—which, in the typical case, is often the most important consideration in deciding whether to grant a stay, *see, e.g.*, *Ohio v. EPA*, 603 U.S. 279, 292 (2024)—are severely flawed and only confirm that the CTA is not just an unprecedented overreach, but an unconstitutional one. The government primarily invokes the Commerce Clause, but the CTA regulates companies just because they have filed the papers necessary to bring them into corporate existence (the precise requirements for which vary by State and fall squarely within the province of the States), not because they have engaged in any particular form or quantum of commerce. As this Court has already told the government, the regulation of inactivity does not fall within Congress' Commerce Clause power. *See NFIB v. Sebelius*, 567 U.S. 519 (2012). Nor does "the last, best hope of those who defend ultra vires congressional action," *Printz v. United States*, 521 U.S. 898, 923 (1997)—a.k.a., the Necessary and Proper Clause—advance the ball for the government. Even if the dragnet collection of highly sensitive information—like names, birthdates, addresses, and driver's license or passport numbers—from millions of heretofore-anonymous "beneficial owners" would prove highly useful to the government's law-enforcement efforts, it would hardly be proper. The *raison d'être* of the Fourth Amendment is to prevent the government from engaging in suspicionless and warrantless searches of this sort. And the federal government does

not get to evade the Fourth Amendment by demanding that information in advance of any reasonable suspicion based on the mere fact of corporate existence. The Framers would have never authorized this kind of privacy-negating dragnet, and certainly did not do so in the innocuous confines of Art. I, §8, cl.18. The Court should deny the government's emergency stay application in full.

ARGUMENT

I. The Pendency Of The NSBA's Fully Briefed and Argued Challenge To The CTA In The Eleventh Circuit Strongly Counsels Against Granting The Government's Request For A Stay.

The government's emergency stay application makes two alternative requests: (1) that the Court should stay in its entirety the preliminary injunction issued by the district court in this case and upheld by the Fifth Circuit and (2) that the Court should, at a minimum, narrow the preliminary injunction so that it applies only to entities specifically named in the complaint itself—*i.e.*, not to NFIB's 300,000 members or other alleged "non-parties." U.S.Br.2-4, 12, 35-36. "Like any other federal court faced with a stay request," this Court "must provide the applicants with an answer—grant or deny." *Ohio*, 603 U.S. at 290-91. Although the government's emergency stay application here deserves a denial for numerous reasons, the pendency of the NSBA's challenge to the CTA's constitutionality in the Eleventh Circuit makes the case for denial particularly straightforward.

Congress enacted the CTA in January 2021, *see* Pub. L. No. 116-283, 134 Stat. 4605 (*classified to* 31 U.S.C. §5336), and the Treasury Department's Financial Crimes Enforcement Network (FinCEN) issued a rule in September 2022 stating that most entities subject to the CTA's reporting requirements would have to submit the

information necessary to comply with the statute by January 1, 2025, *see* 87 Fed. Reg. 59,498 (Sept. 30, 2022). As noted, NSBA was one of the first to recognize just how burdensome and unconstitutional that reporting obligation was. Thus, just six weeks after FinCEN established that reporting deadline, in November 2022, the NSBA filed suit in the Northern District of Alabama alleging that the CTA's requirements exceed Congress' enumerated powers and violate the First, Fourth, and Fifth Amendments. *See NSBU*.D.Ct.Dkt.1.[2] The NSBA brought that suit on behalf of its more-than-65,000 members, but the complaint specifically listed only one member—Isaac Winkles, who owns at least one "reporting company" for CTA purposes. 31 U.S.C. §5336(a)(11)(A). After reviewing extensive briefing and hearing oral argument, the district court on March 1, 2024 awarded summary judgment to the NSBA and permanently enjoined the government from enforcing the CTA against the association and all of its members. Unable to "find … any other … federal law like the CTA" in the Nation's history, the court held that the CTA is "unconstitutional because it cannot be justified as an exercise of Congress' enumerated powers." *NSBU*, 721 F.Supp.3d at 1281, 1289.

The government appealed to the Eleventh Circuit without seeking a stay of the injunction, and the parties submitted a joint motion to expedite briefing and oral argument due to the impending January 1, 2025 reporting deadline. *See NSBU*.CA11.Dkt.6. The court of appeals granted that motion and—after considering

[2] "*NSBU*.D.Ct.Dkt." refers to the docket in No. 22-cv-1448 (N.D. Ala.); "*NSBU*.CA11.Dkt." refers to the docket in No. 24-10736 (11th Cir.).

full merits briefing and requesting and receiving supplemental briefing—held oral argument on September 27, 2024. *See NSBU*.CA11.Dkt.26, 88-90, 101. The parties thus are currently awaiting an appellate decision, which they anticipate the court will issue imminently. Indeed, given its decision to expedite in light of the looming January 1, 2025 deadline, presumably the only reason why the Eleventh Circuit has not issued a decision yet is because the government alerted the court that FinCEN had delayed the reporting deadline beyond the original January 1 date in light of the developments in the Fifth Circuit. *See* U.S.Br.9.

Notably, even though the district court's permanent injunction has remained in effect for over nine months as the Eleventh Circuit proceedings have run their course, the government has never sought a stay of that injunction from any court—this one included. Instead, the government publicly announced back in March that it "is complying with the [district] court's order," "will continue to comply with the court's order for as long as it remains in effect," and that, "[a]s a result," it "is not currently enforcing the Corporate Transparency Act against the plaintiffs in [the NSBA's] action: Isaac Winkles, reporting companies for which Isaac Winkles is the beneficial owner or applicant, the National Small Business Association, and members of the National Small Business Association (as of March 1, 2024)." FinCEN, *UPDATED: Notice Regarding* National Small Business United v. Yellen, *No. 5:22-cv-01448 (N.D. Ala.)* (updated Mar. 11, 2024), https://rebrand.ly/dt3b8lb. In fact, the government did not even *argue* in the Eleventh Circuit (either in its merits briefing

or at oral argument) that the district court had issued an overbroad injunction by extending it to NSBA members not specifically identified in NSBA's complaint.

Given the near-final proceedings in the Eleventh Circuit and the government's apparent indifference to the scope of the permanent injunction there, there is no reason for this Court to grant the government's emergency request for a stay here—either in whole or in part. To grant the government's request in full, this Court would have "little choice but to decide the emergency application by assessing likelihood of success on the merits." *Labrador*, 144 S.Ct. at 929 (Kavanaugh, J., concurring in the grant of stay). But by the government's own telling, the Fifth Circuit order that prompted this emergency stay application simply preserved a preliminary injunction "without any analysis of the government's likelihood of success on the merits." U.S.Br.2, 9. And while the parties' briefs here provide at least some discussion of the merits, they are hurried: prepared in a week (or less) around the holidays and snowstorms. While those kind of hurried and truncated proceedings may be a necessary evil in true emergencies, there is little real emergency and an obviously superior path forward here.

In particular, the Court here has the luxury of knowing that it can resolve the CTA's constitutionality on the merits docket—with full briefing and oral argument—in very short order in a case litigated to final judgment in the courts below, where the parties explored how the CTA fares under a broad range of constitutional provisions: the Commerce Clause, the Necessary and Proper Clause, and the First, Fourth, and Fifth Amendments. Indeed, if the Eleventh Circuit rules in the government's favor

and declares the CTA constitutional, the NSBA will promptly file a petition for certiorari. And as the government's emergency filing here suggests, the government will presumably do the same if the Eleventh Circuit rules in the NSBA's favor and finds the CTA unconstitutional. Either way, a petition for certiorari raising the question whether the CTA is constitutional appears heading this Court's way—and it should arrive soon, as the Eleventh Circuit expedited its review for the very purpose of issuing a prompt decision.[3] In these circumstances, by far the most sensible course is to preserve the preliminary injunction issued by the Eastern District of Texas until this Court can resolve a petition for certiorari arising out of the NSBA's case in the Eleventh Circuit. The other option on the table—staying the injunction—would pave the way for the government to demand immediate compliance with the CTA even though this Court may declare that very statute unconstitutional on plenary review in a matter of months. It makes no sense for this Court to inflict the very irreparable disclosure-related injury that the CTA's challengers are seeking to avoid before this Court can review the statute's constitutionality in the usual course. That is particularly true given the asymmetric nature of the stakes. It would be virtually impossible to un-disclose vast quantities of private information to the federal government if the CTA's unconstitutionality is eventually confirmed. By contrast, law-enforcement officials have been tackling money laundering for years without

[3] If the Eleventh Circuit issues a decision finding the CTA unconstitutional after the change in administration, and if the new administration does not file a petition for certiorari, that too would suggest that no emergency existed here in the first place.

access to this information, and the federal government waited 27 months between promulgation of the rule and the initial January 1, 2025 deadline.

Nor does it make any more sense for this Court to "grant a partial stay, narrowing the vastly overbroad injunction to cover only respondents and the members of NFIB who were identified in respondents' complaint." U.S.Br.31. Indeed, if the government truly thought that an injunction that covers associational members not identified in the association's complaint "raises constitutional concerns" and "upsets other legal doctrines," U.S.Br.35, it would have sought a stay of the district court's injunction in the NSBA's case, as that injunction covers tens of thousands of NSBA members who are not identified in the complaint. But the government did well-nigh the opposite: It announced that it would comply with the injunction as long as it remains in effect and then forfeited any challenge to the scope of the injunction by failing to raise that issue on appeal. "[I]t long has been the practice of Members of this Court to grant stay applications only 'upon the weightiest considerations.'" *Packwood v. Senate Select Comm. on Ethics*, 510 U.S. 1319, 1320 (1994) (Rehnquist, C.J., in chambers). The government's determination that the scope of the injunction in the NSBA's case is insufficiently weighty to merit an emergency stay request (or any objection at all) is powerful evidence that this Court should not grant its request here to stay a comparable injunction.

II. The Government Is Unlikely To Succeed On The Merits In Any Event.

As the foregoing demonstrates, the proper place to resolve the debate over the CTA's constitutionality is on the merits docket. Regardless, the government's preview of its merits arguments underscores that this Court is highly likely to find

the CTA unconstitutional. When first forced to defend the CTA's constitutionality—in the NSBA's case—the government insisted that the district court should not even *consider* any Commerce Clause arguments because "the CTA is authorized by the government's foreign affairs and national security powers and the Necessary and Proper Clause." *NSBU*.D.Ct.Dkt.24-1 at 25 (capitalization altered) (citing *United States v. Bramble*, 103 F.3d 1475, 1480 (9th Cir. 1996) ("Because the Supreme Court has held that the Migratory Bird Treaty Act is constitutional as a necessary and proper means of carrying out the treaty-making power, we need not consider whether it is a constitutional exercise of the Commerce Clause power as well.")). The government has now recalibrated its position, first positing that the CTA "fall[s] comfortably within Congress's authority under the Commerce Clause to regulate economic activities" and, in any event, is "also necessary and proper to effectuate several of Congress's enumerated powers" (the very last of which is Congress' "power[] with respect to foreign affairs"). U.S.Br.2-3; *see* U.S.Br.13-20. The government's felt need to switch horses is telling, but the bottom line is that nothing in the Constitution authorized the unprecedented intrusion worked by the CTA, and several provisions affirmatively preclude it.

The government's lead argument in this Court is that the CTA is authorized by the Commerce Clause because the statute purportedly regulates "the anonymous operation of business entities." U.S.Br.2. As the district court in the NSBA's case correctly recognized, however, the government's Commerce Clause argument "runs into trouble" at the outset because the CTA simply "is not a facial regulation of

commercial *activity*," *NSBU*, 721 F.Supp.3d at 1281 (emphasis added)—and the preexistence of actual "activity" to be regulated is the *sine qua non* of permissible Commerce Clause regulation, *NFIB*, 567 U.S. at 551. After all, "by its text," U.S.Br.App.61a, the CTA compels a "reporting company"—*i.e.*, "a corporation, limited liability company, or other similar entity"—to make the disputed disclosures about beneficial owners merely so long as the company 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." 31 U.S.C. §5336(a)(11)(A) (emphases added). As that language makes clear, the CTA seeks to regulate corporate persons simply because they have been brought into "exist[ence]" in conformity with state law. U.S.Br.App.61a. No quantum or type of post-incorporation action is necessary to trigger the CTA's burdens and penalties for non-compliance. That is precisely the sort of "inactivity" that is beyond Congress' legitimate reach under the Commerce Clause.[4] *NFIB*, 567 U.S. at 555.

The government protests that "it is hardly speculative that entities that incur the trouble and expense of filing papers to obtain authority to conduct economic transactions in their own name will go on to exercise that authority." U.S.Br.15-16. But *NFIB* considered and rejected a materially identical argument too: "The

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[4] For this reason (and others), the government's fallback position—that the plaintiffs in this case "have not satisfied the high standard for bringing a facial challenge"—comes up short. U.S.Br.25. There is "no set of circumstances" where regulating mere inactivity is permissible under the Commerce Clause. U.S.Br.25.

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." 567 U.S. at 557. That principle applies with particular force in the context of corporate persons. As this Court has explained, "[c]orporations are creatures of state law," *Cort v. Ash*, 422 U.S. 66, 84 (1975), and "[n]o 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). It is thus up to "the chartering state alone" to "govern a corporation's 'internal affairs,'" Vincent S.J. Buccola, *Opportunism and Internal Affairs*, 93 Tul. L. Rev. 339, 340 (2018) (footnote omitted), which encompasses "matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders," *Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982). Accordingly, when the federal government attempts to regulate the "anonymous ownership" of corporations to sniff out "beneficial ownership information," U.S.Br.14—which obviously concerns the relationship between the corporation and its owners—it is operating well outside of its authority.[5]

Because the CTA does not regulate any actual activity, the government's argument that the statute is an "essential part of a larger regulation of economic

[5] While the government portrays corporate anonymity as an evil, FinCEN itself has previously recognized that anonymous shell companies "are often formed by individuals and businesses to conduct legitimate transactions," like "domestic and cross-border currency and asset transfers, or to facilitate corporate mergers and reorganizations." U.S. Dep't of Treas., Fin. Crimes Enf't Network, *The Role of Domestic Shell Companies in Financial Crime and Money Laundering: Limited Liability Companies* 4 (Nov. 2006), https://rebrand.ly/3wyr2w7.

activity”—*viz.*, “countering money laundering”—collapses too. U.S.Br.15 (citing *United States v. Lopez*, 514 U.S. 549, 561 (1995)). Congress cannot convert an unconstitutional exercise of power into a constitutional one simply by bundling its unconstitutional provisions into a larger regulatory package. In all events, it is hard to see how the CTA could plausibly qualify as “essential” to efforts to combat money laundering when the government has made do without this unprecedented dragnet for decades and most companies subject to the statute have no involvement with such illicit activity at all. The numbers prove the point. Small businesses generate 43.5% of the United States’ $29.4 trillion gross domestic product (GDP). *See* U.S. Dep’t of Comm., Bureau of Econ. Analysis, *Gross Domestic Product, Third Quarter 2024 (Second Estimate) and Corporate Profits (Preliminary)* (Nov. 27, 2024), https://rebrand.ly/opqm12l; U.S. Small Bus. Admin., *Frequently Asked Questions* (Jul. 23, 2024), https://rebrand.ly/m1xk513. That is approximately $13 trillion in economic activity generated by small businesses each year. By contrast, the government recognizes that money laundering implicates at most $300 billion annually—or 1% of GDP. *See* 87 Fed. Reg. at 59,579. Hence, virtually everything that the CTA touches has “nothing to do” with the activity that the government is seeking to counteract several steps down the line. *Lopez*, 514 U.S. at 561.

The government cannot evade its insuperable problems under the Commerce Clause by seeking refuge under the Necessary and Proper Clause and an admixture of “multiple” other constitutional provisions. U.S.Br.17-18. Even accepting the premise that it is “useful” and “convenient” (and therefore “necessary”) for

government "law enforcement" and other "efforts" to collect highly sensitive personal information from millions of Americans even though the government has no individualized suspicion of wrongdoing, U.S.Br.19, that is decidedly not "proper." As Chief Justice Marshall stated 200 years ago, federal regulation is not proper for purposes of the Necessary and Proper Clause if the regulation is "prohibited" by the Constitution or otherwise inconsistent with its "letter and spirit." *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 413, 421 (1819). While there are many "weighty" arguments against the CTA, U.S.App.2a, one of the weightiest is that the statute's authorization for the government to engage in the warrantless collection of sensitive private information is precisely what the Fourth Amendment prohibits.

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." U.S. Const. amend. IV. As this Court has explained, "[w]hen an individual 'seeks to preserve something as private,' and his expectation of privacy is 'one that society is prepared to recognize as reasonable,' … that official intrusion into that private sphere generally qualifies as a search and requires a warrant supported by probable cause." *Carpenter v. United States*, 585 U.S. 296, 304 (2018). Here, beneficial owners or applicants of entities formed under state laws indisputably have a "reasonable expectation of privacy" against having their entities submit their personal information to the government for law-enforcement purposes—indeed, the relationship between the owner and the entity is not publicly available. *See, e.g.*, Ala. Code §10A-5a-2.01(a). It follows that the government should have to obtain a warrant

to procure beneficial-owner information—which is exactly what the CTA excuses. While the government may lament that it "takes an enormous amount of time" to secure "search warrants"—and may believe that "[t]he collection of beneficial ownership information at the time of company formation would significantly reduce the amount of time currently required to research who is behind anonymous shell companies," 87 Fed. Reg. at 59,504—that is a feature, not a bug, of the Fourth Amendment's design. Our "forefathers, after consulting the lessons of history, designed our Constitution to place obstacles in the way of a too permeating police surveillance, which they seemed to think was a greater danger to a free people than the escape of some criminals from punishment." *United States v. Di Re*, 332 U.S. 581, 595 (1948). The CTA inverts that understanding. Thus, while the better course is to address the merits of this dispute on the merits docket, all indications are that the government is going to lose on the merits, further confirming that the Court should deny its emergency stay application.

CONCLUSION

For the foregoing reasons, the Court should deny the government's request for a stay of the injunction issued by the U.S. District Court for the Eastern District of Texas.

Respectfully submitted,

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