No. 24A653

In the Supreme Court of the United States

MERRICK GARLAND, ATTORNEY GENERAL, ET AL., APPLICANTS

v.

TEXAS TOP COP SHOP, INC., ET AL.

REPLY IN SUPPORT OF APPLICATION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

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Respondents offer no meritorious defense of the district court's universal preliminary injunction against the enforcement of the Corporate Transparency Act (CTA or Act), 31 U.S.C. 5336. On the merits, respondents do not dispute that Congress has often enacted, or that this Court has repeatedly upheld, laws that require private persons to report information to the government—for example, laws that require people to file tax returns, to register under the Selective Service System, or to testify in agency proceedings. Respondents attempt to distinguish the CTA from those statutes by arguing that the CTA lacks an adequate link to Congress's enumerated powers. But especially given Congress's express findings that the Act helps counter activities such as money laundering, human and drug trafficking, securities fraud, financial fraud, tax fraud, and the financing of terrorism, the Act falls comfortably within Congress's powers under the Commerce Clause and the Necessary and Proper Clause.

On the equities, respondents dismiss the federal government's interests in the enforcement of the Act as unimportant. But Congress expressly determined that the

Act is essential to protect national security and prevent financial crime. Those interests plainly outweigh respondents' interests in avoiding the minimal burden of filling out the form required by the Act.

Respondents also offer no sound defense of the scope of the district court's relief. The court issued both (1) a universal injunction against the enforcement of the Act itself and (2) a universal stay of the compliance deadline set by FinCEN's Reporting Rule. Both actions greatly exceed the scope of the court's equitable authority. And while respondents focus on the stay, they fail to defend the injunction, which sweeps far beyond the relief respondents sought below and imposes serious burdens extending even further than those imposed by the stay.

This Court should stay the district court's order in full. At a minimum, the Court should narrow that order's vastly overbroad scope. Because the lower courts need guidance on the propriety of universal injunctions, the Court also may wish to treat the government's application as a petition for a writ of certiorari before judgment presenting the question whether the district court erred in entering preliminary relief on a universal basis.

A. Respondents Have Not Overcome The Strong Presumption In Favor Of Allowing Challenged Acts Of Congress To Remain In Force Pending Final Review In This Court

Respondents do not deny that, in reviewing emergency applications, this Court has long applied a strong presumption that federal statutes "should remain in effect pending a final decision on the merits by this Court." *Turner Broadcasting System, Inc.* v. *FCC*, 507 U.S. 1301, 1301 (1993) (Rehnquist, C.J., in chambers) (citation omitted). Seeking to sidestep that presumption, respondents argue (Opp. 12) that "the CTA's reporting mandate * * * had to be brought into force by regulation." But the CTA itself required FinCEN to issue such an implementing rule. See, *e.g.*, 31 U.S.C.

5336(b)(1). And the district court's decision rests on a conclusion that the *statute* exceeds Congress's constitutional authority, not on a conclusion that the implementing regulation exceeds the agency's statutory authority. See Appl. App. 96a-97a ("The CTA is likely unconstitutional as outside of Congress's power. Because the Reporting Rule implements the CTA, it is likely unconstitutional for the same reasons."). Critically, in "virtually all" cases where a lower court has held a federal statute unconstitutional, this Court has "granted a stay if requested to do so by the Government." *Bowen* v. *Kendrick*, 483 U.S. 1304, 1304 (1987) (Rehnquist, C.J., in chambers).

Respondents cite (Opp. 12) three cases in which this Court "upheld preliminary injunctions concerning federal statutes." But those cases did not involve emergency applications. Rather, in each of those cases, the Court granted certiorari, received briefing and heard argument on the merits, and then issued a final decision that the statutes at issue violated the Constitution. See *Agency for International Development* v. *Alliance for Open Society International, Inc.*, 570 U.S. 205, 221 (2013); *Ashcroft* v. *ACLU*, 542 U.S. 656, 673 (2004); *Reno* v. *ACLU*, 521 U.S. 844, 849 (1997); see also *Munaf* v. *Geren*, 553 U.S. 674, 691 (2008) (explaining that, in reviewing a preliminary injunction, this Court has the discretion to "proceed further and address the merits"). Because the Court has not issued a final decision here, the CTA should be allowed to remain in effect.

B. The Government Is Likely To Succeed On The Merits

Respondents concede (Opp. 41) that, if the Fifth Circuit affirms the district court's injunction, this Court would likely grant the government's petition for a writ of certiorari. But they argue (Opp. 12-26) that the government is unlikely to succeed on the merits and that the CTA violates the Constitution on its face. Respondents' contentions are unsound.

1. In arguing that the CTA exceeds Congress's power under the Commerce Clause, respondents rely almost exclusively (Opp. 13-18) on this Court's decision in *NFIB* v. *Sebelius*, 567 U.S. 519 (2012), that the Commerce Clause did not empower Congress to require individuals to buy health insurance. But respondents overlook critical differences between *NFIB* and this case.

First, the mandate to buy health insurance in *NFIB* regulated "inactivity." 567 U.S. at 555 (opinion of Roberts, C.J.). The CTA, by contrast, targets an economic activity, namely, the "ownership and operation of businesses." Appl. App. 6a. Respondents argue (Opp. 14) that "ownership of a[n] entity is no[t] * * * an activity." But forming a business entity is an economic activity; the reporting requirement applies to entities whose "'defining feature' is their ability and propensity to engage in commercial activity" in their own name and capacity; and, in any event, "[n]one of the [respondents] have claimed that they do not engage in commercial activity." Appl. App. 6a. The statute requires those who choose to form or maintain a business to report information to the government, while exempting entities that meet the statutory criteria for inactive businesses. See 31 U.S.C. 5336(a)(11)(B)(xxiii). That is a regulation of economic activity.

Second, in *NFIB*, the "mandate's regulation of the uninsured as a class [wa]s * * * particularly divorced from any link to existing commercial activity." 567 U.S. at 556 (opinion of Roberts, C.J.). "The mandate primarily affect[ed] healthy, often young adults who [we]re less likely to need significant health care." *Ibid.* "If the individual mandate [was] targeted at a class, it [wa]s a class whose commercial inactivity rather than activity [wa]s its defining feature." *Ibid.* The CTA, by contrast, primarily affects entities that are actively engaged in business. The Act expressly exempts many non-profit organizations, political organizations, trusts, and entities

that have ceased doing business. See 31 U.S.C. 5336(a)(11)(B)(xix) and (xxiii). Even other entities that are not exempt and do not engage in business as such would typically engage in financial transactions affecting commerce. The CTA thus targets economically active entities in a way that the mandate in *NFIB* did not.

Third, the mandate in *NFIB* regulated "individuals." 567 U.S. at 552 (opinion of Roberts, C.J.). By contrast, the CTA regulates artificial entities. A central purpose of the formation of most such entities is to engage in economic activity. Recognizing Congress's authority to regulate such entities, including through disclosure of who owns or controls them, would not transform the Commerce Clause into "a general license to regulate an individual from cradle to grave." *Id.* at 557. Respondents note (Opp. 17-18) that States have traditionally regulated the formation of business entities, but the Act does not displace or affect the States' authority to do so. The Act simply provides that, once a covered entity has been formed or registered in accordance with state law, it must report information about its applicants and beneficial owners to the federal government. In any event, Congress's power to regulate the formation of corporations has been settled since this Court upheld the chartering of the Bank of the United States in *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819).

Finally, this Court's decision in *NFIB* rested on the understanding that the Commerce Clause grants Congress "the power to *regulate* commerce, not to *compel* it." 567 U.S. at 555 (opinion of Roberts, C.J.). Before *NFIB*, "Congress ha[d] never attempted to rely on [the commerce] power to compel individuals not engaged in commerce to purchase an unwanted product." *Id.* at 549. The CTA, however, does not compel regulated parties to engage in commerce or to buy an unwanted product. It instead requires them to provide information to the government—and that, too, only because other entities or individuals have chosen to form or maintain the entity that

is required to report. As the government's stay application shows (at 20-23), and as respondents never dispute, Congress has often required individuals and entities—even "inactive" ones—to submit information to the government.

2. Respondents also fail to show that the CTA exceeds Congress's authority under the Necessary and Proper Clause. Respondents accept (Opp. 17) that, as a general matter, the Clause empowers Congress to implement an enumerated power through a reporting requirement. Respondents thus do not dispute that Congress may implement the commerce power by requiring individuals to provide evidence in agency proceedings, that it may implement the taxing power by requiring taxpayers to file annual tax returns, or that it may implement the power to raise armies by requiring men to register under the Selective Service System.

Respondents argue (Opp. 17) only that, unlike the reporting requirements that this Court has upheld in previous decisions, "[t]he CTA's requirement is not" "firmly tethered to the exercise of an enumerated power." In general, however, the "closeness of the relationship" between the means of implementing a power and the underlying power is a matter "for congressional determination." *Burroughs* v. *United States*, 290 U.S. 534, 548 (1934). A court should ask only whether the statute "represent[s] a rational means for implementing" a granted power. *United States* v. *Comstock*, 560 U.S. 126, 143 (2010). The CTA easily satisfies that deferential test.

In particular, respondents are wrong to argue (Opp. 16) that the Act lacks an adequate link to Congress's power to regulate interstate and foreign commerce. In the Act, Congress found that "malign actors seek to conceal their ownership" of corporations and similar entities "to facilitate" activities such as "money laundering," "human and drug trafficking," "securities fraud," and "financial fraud." § 6402(3), 134 Stat. 4604. Respondents do not dispute that the Commerce Clause authorizes

Congress to prohibit those activities. And given Congress's express findings, respondents cannot seriously dispute that the CTA is "useful" and "convenient" for effectuating those prohibitions. *McCulloch*, 4 Wheat. at 413.

Respondents are similarly wrong to argue (Opp. 19) that the Act lacks an adequate link to Congress's taxing power. Congress expressly found that the CTA will help counter "serious tax fraud," § 6402(3), 134 Stat. 4604, and preventing tax fraud is plainly necessary and proper for the collection of taxes. Respondents emphasize (Opp. 19) that CTA reports are collected by FinCEN rather than the Internal Revenue Service (IRS). But the Act provides that "[o]fficers and employees of the Department of the Treasury," which includes the IRS, "may obtain access to beneficial ownership information for tax administration purposes." 31 U.S.C. 5336(c)(5)(B). Respondents also argue that a law is necessary and proper to implement the taxing power only if it, "in some way, generate[s] some revenue." Opp. 19 (citation omitted). But the CTA does generate revenue by countering "serious tax fraud." § 6402(3), 134 Stat. 4604. And in any event, the Necessary and Proper Clause authorizes Congress to include in its statutory schemes provisions that do not themselves raise revenue but that effectuate other provisions that do.

Respondents likewise err in arguing (Opp. 22) that the CTA lacks a sufficient link to Congress's foreign-affairs powers. Respondents assert (*ibid.*) that "[t]he CTA applies exclusively to entities that register with domestic officers or agencies." But the CTA's definition of "reporting company" includes any corporation or similar entity that is "formed *under the law of a foreign country* and registered to do business in the United States." 31 U.S.C. 5336(a)(11)(A)(ii) (emphasis added). Respondents also argue that the CTA "regulates a domestic issue: anonymous existence of companies registered to do business in a U.S. state." Opp. 22 (citation omitted). But as Congress

and FinCEN have both found, foreign actors often register shell companies in the United States in order to facilitate financial crimes. See Appl. 26-27. That is an international issue, not simply a domestic one.

Finally, respondents assert (Opp. 20-21, 23) that "the government's argument has no limiting principle" and that, "if the CTA passes muster," the government could require citizens to disclose "their assets, friends and romances, travel, and more." That concern is unfounded. This case involves the reporting of information by corporations and other artificial entities. In addition, a reporting requirement falls within Congress's power under the Necessary and Proper Clause only if the requirement is a "reasonably adapted" "means of pursuing" the implementation of a granted power. *Comstock*, 560 U.S. at 148. The "links" between the information and the power must not be "too attenuated," and the requirement must not be "too sweeping in its scope." *Id.* at 146. The CTA satisfies those tests, but other requirements might not.

If anything, it is respondents' argument that lacks a cogent limiting principle. Scores of federal laws require private persons to provide information to the federal government. See Appl. 20-22. This Court has repeatedly upheld such laws under the Necessary and Proper Clause. See *ibid.* Yet respondents "offer no account of how their argument fits within the landscape of [the Court's] case law. * * * They are also silent about the potential consequences of their position. Would it undermine established cases and statutes? If so, which ones? [Respondents] do not say." *Haaland* v. *Brackeen*, 599 U.S. 255, 279 (2023).

3. At a minimum, respondents have failed to satisfy the high standard for bringing a facial challenge: establishing that "no set of circumstances exists under which the Act would be valid." *United States* v. *Salerno*, 481 U.S. 739, 745 (1987). Respondents dispute (Opp. 25) the applicability of that standard to claims that Con-

gress exceeded its enumerated powers, but their argument conflicts with this Court's decision in *Sabri* v. *United States*, 541 U.S. 600 (2004). In the course of rejecting a facial enumerated-powers challenge to a federal bribery statute, the Court applied "the demanding standard set out in [*Salerno*]." *Id.* at 604. The Court emphasized that facial challenges "depar[t] from the norms of adjudication in federal courts," "invite judgments on fact-poor records," and "carr[y] too much promise of 'premature interpretation of statutes.'" *Id.* at 609 (brackets and citation omitted).

"Rather than consider the circumstances in which [the CTA is] most likely to be constitutional," respondents "focu[s] on hypothetical scenarios where [the statute] might raise constitutional concerns." *United States* v. *Rahimi*, 602 U.S. 680, 701 (2024). For instance, they claim (Opp. 4) that the reporting requirements will apply to "homeowners' associations, neighborhood pool clubs, personal LLCs that own a single private home, innumerable private and family trusts, and a vast number of charitable organizations and nonprofits." Even putting aside that those entities, too, typically engage in commercial activity, any claim that Congress lacks the power to regulate those entities should be addressed in suits brought by those entities. See, *e.g.*, *Katzenbach* v. *McClung*, 379 U.S. 294, 296 (1964) (addressing an as-applied challenge to a federal civil rights law brought by "a family-owned restaurant"). Respondents, who are indisputably engaged in commercial activities, may not "attack the statute on the ground that * * * it might also be taken as applying to other persons or other situations in which its application might be unconstitutional." *United States* v. *Raines*, 362 U.S. 17, 21-22 (1960).

C. The Equities Strongly Support A Stay

1. The district court's universal injunction causes serious and irreparable injury to the federal government by preventing the government from implementing

the CTA. In arguing otherwise, respondents essentially dismiss (Opp. 26) the Act's objectives as unimportant, breezily stating that "our nation has made do" without the Act "so far." Congress, however, found that the Act is necessary to "protect vital United States national security interests," "counter money laundering, the financing of terrorism, and other illicit activity," and "bring the United States into compliance with international anti-money laundering and countering the financing of terrorism standards." CTA § 6402(5), 134 Stat. 4604. "[A] court sitting in equity cannot 'ignore the judgment of Congress, deliberately expressed in legislation.'" *United States* v. *Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 497 (2001) (citation omitted).

In seeking to minimize the government's interests, respondents also assert (Opp. 26) that "the CTA has not taken effect" yet. That is incorrect. The CTA took effect when Congress enacted it four years ago, and FinCEN's Reporting Rule took effect on January 1, 2024. FinCEN's Reporting Rule established deadlines by which entities must comply with the Act's reporting requirements, some of which had already passed for many reporting companies even before the district court entered its universal injunction. For instance, the rule required entities created or registered during 2024 to comply within 90 days after formation or registration. See Appl. 6. The lower court's universal injunction thus did more than "delay" the future implementation of a statute (Opp. 26); it interrupted and suspended the execution of a statute that the federal government had already started implementing.

In any event, it makes no difference whether the CTA's reporting requirements had already taken effect when the district court issued its injunction. Whenever a sovereign is prevented "from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland* v. *King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). That is true even for newly enacted statutes that

have not yet taken effect. Courts of equity should hesitate "to delay the will of Congress to put its policies into effect at the time it desires." *Heart of Atlanta Motel, Inc.* v. *United States*, 85 S. Ct. 1, 2 (1964) (Black, J., in chambers).

Respondents also argue (Opp. 27) that "the government's dire claims of injury are belied by its own delay in implementing the CTA's reporting mandate." That, too, is wrong. In setting deadlines for compliance with the Act, FinCEN "balance[d] the need for effective outreach and notice to preexisting companies with the need to collect beneficial information in a timely manner." *Beneficial Ownership Information Reporting Requirements*, 86 Fed. Reg. 69,920, 69,941-69,942 (Dec. 8, 2021) (notice of proposed rulemaking). The deadlines were designed "to provide reporting companies sufficient time to receive notice of the reporting requirement"—and thus "to ensure that the database is highly useful to law enforcement." *Id.* at 69,942; see *Beneficial Ownership Information Reporting Requirements*, 87 Fed. Reg. 59,498, 59,510 (Sept. 30, 2022) (final rule) (discussing "FinCEN's ability to develop an outreach strategy and publicize the new reporting requirements"). The regulatory deadlines were thus designed to promote the Act's goals; they do not signal that the government regards timely implementation of the Act as unimportant.

As we have explained (Appl. 28), moreover, FinCEN has invested millions of dollars and dedicated thousands of hours to ensure that reporting companies are aware of the CTA's reporting requirements. Respondents assert (Opp. 28) that "there is no indication that [the government's] efforts achieved much of anything," but FinCEN's Director has submitted a declaration explaining that FinCEN's efforts "have been successful, with an exponential increase in reporting since the multimedia campaign began, increasing the filing rate to nearly one million reports filed per week" in the weeks preceding the district court's order granting universal relief. Appl. App.

105a. If that relief were allowed to remain in effect for a substantial period, "these resources will have been largely squandered"—an irreparable injury. *Id.* at 107a.

Respondents also attempt (Opp. 2) to minimize the harm to the government by predicting that the Fifth Circuit will take only "three months or so" to decide this case. But the Fifth Circuit has scheduled oral argument for March 25, 2025—which is almost *four* months after the issuance of the district court's decision. See Appl. 10. The Fifth Circuit will presumably need further time after the oral argument to issue its decision. If the Fifth Circuit reverses, the injunction might nonetheless remain in place pending en banc proceedings, which could take an extended period.[1] And if the Fifth Circuit affirms, the injunction would presumably remain in place while this Court considers a petition for a writ of certiorari, receives merits briefing, hears oral argument, and issues its decision. In other words, if this Court denies a stay now, the CTA could remain blocked for years before the Court issues a final decision. The United States would suffer serious and irreparable harm from such an extended delay in the implementation of the Act.

2. Respondents contend that staying the district court's order would irreparably injure them by subjecting them to "nonrecoverable compliance costs." Opp. 30 (citation omitted). As an initial matter, respondents overstate those costs. FinCEN does not charge a filing fee, and FinCEN found that, for a typical reporting company, the time needed for compliance is equivalent to "$85.14." 87 Fed. Reg. at 59,573.

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[1] See, *e.g.*, *Feds for Medical Freedom* v. *Biden*, No. 22-40043 (preliminary injunction granted on January 21, 2022; expedited briefing and argument completed on March 8, 2022; en banc proceedings ended March 23, 2023); *Cochran* v. *SEC*, No. 19-10396 (injunction pending appeal granted on September 24, 2019; expedited briefing and argument completed on November 5, 2019; en banc proceedings ended December 13, 2021); *Wages & White Lion Investments, LLC* v. *FDA*, No. 21-60766 (stay pending appeal granted October 26, 2021; expedited briefing and argument completed on January 21, 2022; en banc proceedings ended January 3, 2024).

Respondents observe (Opp. 31) that, for some companies with more complex structures, "the cost of compliance can extend into the thousands of dollars." But respondents do not "contend that they have more complex structures that would require more time or money." Appl. App. 8a. Respondents instead invoke the interests of "others subject to the CTA's reporting mandate," Opp. 29 (capitalization and emphasis omitted), but they have no standing to do so.

At any rate, it is not enough for respondents to assert irreparable harm. This Court must still "balance the equities" and "explore the relative harms to applicant[s] and respondent[s]." *Trump* v. *International Refugee Assistance Project*, 582 U.S. 571, 580 (2017) (per curiam) (citation omitted). "When balancing [respondents' interest in avoiding the costs of filing the required forms] against the public's urgent interest in combatting financial crime and protecting our country's national security, equity favors a stay." Appl. App. 8a; cf. *Winter* v. *NRDC, Inc.*, 555 U.S. 7, 23 (2008) ("[E]ven if plaintiffs have shown irreparable injury from the Navy's training exercises, any such injury is outweighed by the public interest and the Navy's interest in effective, realistic training of its sailors.").

Respondents also assert (Opp. 31) that they face an "additional constitutional injury" because the CTA purportedly violates the First and Fourth Amendments. But the district court's injunction rested on respondents' enumerated-power claims; the court did not reach their First and Fourth Amendment claims. See Appl. App. 91a. Nor do respondents discuss their First and Fourth Amendment claims in the merits section of their brief (Opp. 12-26). Respondents' assertions of "constitutional injury" based on those claims (Opp. 31) thus are not properly before this Court.

Regardless, respondents' First and Fourth Amendment claims lack merit. Respondents cite (Opp. 31-32) decisions applying First Amendment scrutiny to laws that

required political or charitable groups to disclose their members or donors to the government. See *Americans for Prosperity Foundation* v. *Bonta*, 594 U.S. 595, 618 (2021); *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 466 (1958). But the CTA requires disclosure only of beneficial owners and applicants, not of members or donors. See 31 U.S.C. 5336(a)(3) and (b)(2). Congress also has exempted many political and non-profit groups from the Act's requirements. See 31 U.S.C. 5336(a)(11)(B)(xix). Respondents cite no case in which this Court has held that ordinary businesses—such as Texas Top Cop Shop (a firearms dealer), Data Comm (an information-technology company), or Mustardseed (a company that runs a dairy farm)—have a First Amendment right to operate anonymously.

The Fourth Amendment forbids unreasonable searches and seizures. Even assuming for the sake of argument that the Act's reporting requirement is a "search," it complies with the Fourth Amendment because it is reasonable. The Act requires the reporting of only "an applicant or owner's name, date of birth, address, and 'unique identifying number'"; that narrow requirement "serves government interests of the highest order"; and "any asserted privacy interests are sufficiently protected by the statutory safeguards provided in the CTA." *Firestone* v. *Yellen*, No. 24-cv-1034, 2024 WL 4250192, at *10 (D. Or. Sept. 20, 2024), appeal pending, No. 24-6979 (9th Cir.); see *California Bankers Ass'n* v. *Shultz*, 416 U.S. 21, 59-60 (1974) ("[R]eporting requirements are by no means per se violations of the Fourth Amendment.").

Respondents argue (Opp. 34) that a stay "risks mooting" their claims by forcing them to report the information that they seek to withhold. That argument is wrong on multiple levels. First, the CTA requires reporting companies not only to file initial reports, but also to update those reports when ownership information changes. See 31 U.S.C. 5336(b)(1)(D). A stay thus would not moot respondents' claims; because

the CTA subjects reporting companies to ongoing obligations, respondents would still retain a stake in the outcome. Second, the risk of mootness does not, by itself, entitle a litigant to an injunction. Third, concerns about mootness would, at most, justify granting relief to respondents; such concerns would not justify universal relief.

3. Finally, respondents argue (Opp. 34) that "suddenly reinstating the CTA's compliance deadline" would produce "utter chaos, as those responsible for reporting scramble to understand and fulfill obligations that the government informed them only weeks ago had been postponed." But respondents have themselves generated public confusion by waiting for years after the enactment of the statute to file this suit, and the district court granted a universal injunction that they did not even request shortly before the principal compliance deadline of January 1, 2025. See Appl. 30. Respondents should not be heard to argue that staying the injunction would add to the "chaos" that their suit has triggered and that they now seek to defend. Opp. 34.

Regardless, respondents' concerns are misplaced. After the court of appeals motions panel stayed the district court's injunction, FinCEN extended the January 1, 2025, compliance deadline to January 13, 2025, finding it appropriate to allow reporting companies additional time to comply given the period when the preliminary injunction was in effect. See Appl. 9. FinCEN has informed this Office that, if this Court grants a stay, FinCEN would again briefly extend the deadline in light of the injunction's having been in effect. The Act's reporting requirements thus would not "sprin[g] back into force" immediately, and reporting companies would not need to "scramble" to comply with the Act. Opp. 34. Moreover, any companies that are unaware of the reinstated compliance deadline would not be subject to the CTA's reporting penalties, which apply only to the "intentional violation of a known legal duty."

31 U.S.C. 5336(h)(6).

D. Respondents Fail To Justify The Vastly Overbroad Scope Of The Relief Ordered By The District Court

1. The district court's remedy included two main components. First, the court issued a universal injunction in which it purported to enjoin the CTA itself and prohibited the enforcement of the CTA even against non-parties. See Appl. App. 97a ("[T]he CTA, 31 U.S.C. § 5336[,] is hereby enjoined."). Second, invoking a provision of the Administrative Procedure Act (APA), 5 U.S.C. 705, the court stayed on a universal basis the compliance deadline set by FinCEN's Reporting Rule. See Appl. App. 97a ("Enforcement of the Reporting Rule, 31 C.F.R. 1010.380[,] is also hereby enjoined, and the compliance deadline is stayed under § 705 of the APA.").

Respondents do not meaningfully defend the universal scope of the injunction, which they did not even seek, instead focusing (Opp. 35-41) on the stay under Section 705. Respondents do not argue that Section 705, which authorizes courts to postpone the effective date of "agency action," 5 U.S.C. 705, itself authorized the district court to enjoin enforcement of the CTA. But they do argue (Opp. 35) that, because "the CTA's reporting mandate was only carried into legal force through * * * the Reporting Rule," the injunction is functionally "the same" as the "Section 705 stay."

That argument is incorrect. Some of the CTA's reporting provisions do not depend on FinCEN's Reporting Rule. For instance, the CTA makes it unlawful for anyone to willfully provide "false or fraudulent beneficial ownership information" to FinCEN. 31 U.S.C. 5336(h)(1)(A). The district court's order did not specify which portions of the Act were being enjoined and thus could be read to enjoin that provision as well. See Appl. App. 97a ("The CTA, 31 U.S.C. § 5336[,] is hereby enjoined."). That potential overbreadth illustrates the district court's failure to exercise its equitable

discretion with care and highlights that the injunction causes a broader injury than the Section 705 stay.[2]

In all events, Section 705 did not empower the district court to issue a universal stay of the compliance deadline. Section 705 provides remedies for *agency* errors (*e.g.*, regulations that exceed the agency's statutory powers), not *congressional* errors (*e.g.*, statutes that exceed Congress's enumerated powers). Section 705's text refers to "agency action," 5 U.S.C. 705, and the APA defines "agency" to exclude "Congress," 5 U.S.C. 701(b)(1)(A). Respondents also concede that Section 705's purpose is to enable courts to grant interim relief when "the *administrative agency* has committed errors of law." Opp. 35 (quoting *Scripps-Howard Radio, Inc.* v. *FCC*, 316 U.S. 4, 10 (1942)) (emphasis added). Section 705's structure leads to the same conclusion. Section 705 provides that either the "reviewing court" or the "agency" itself may "postpone the effective date" of agency action. 5 U.S.C. 705. But respondents do not suggest that Section 705 empowers an agency to hold an Act of Congress invalid and to postpone the effective date of an implementing regulation based on that conclusion. See *Thunder Basin Coal Co.* v. *Reich*, 510 U.S. 200, 215 (1994) ("[A]djudication of the constitutionality of congressional enactments has generally been thought beyond the jurisdiction of administrative agencies.").

In this case, the district court did not hold that FinCEN's Reporting Rule, standing alone, was legally erroneous—*e.g.*, that it was arbitrary and capricious or issued without proper procedures. The court instead determined that, "*[t]he CTA* is

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[2] Since the filing of the government's stay application, another district court has concluded that the Act likely exceeds Congress's enumerated powers. See D. Ct. Doc. 30, at 33, *Smith* v. *United States Department of the Treasury*, No. 24-cv-336 (E.D. Tex. Jan. 7, 2025). That court issued a party-specific injunction prohibiting enforcement of the Act against the plaintiffs alongside a universal stay of the Reporting Rule under Section 705. See *id.* at 33-34. This Court's disposition of the government's application here will likely affect that case as well.

likely unconstitutional as outside of *Congress's* power" and that, "[b]ecause the Reporting Rule implements the CTA, it is likely unconstitutional for the same reasons." Appl. App. 96a-97a (emphasis added). For the reasons discussed above, however, Section 705 is not designed to provide a remedy for that type of claim.

Regardless, even where Section 705 applies, it authorizes a court to "postpone the effective date of an agency action" only when "necessary to prevent irreparable injury." 5 U.S.C. 705. Respondents and the district court have not even attempted to explain why an injunction limited to respondents would be inadequate to fully redress respondents' alleged injuries. There accordingly was no basis for the sweeping relief the district court ordered under Section 705. And even assuming that some relief under Section 705 was warranted, respondents and the district court have not explained why granting relief to non-parties is "necessary" to "prevent irreparable injury" to the respondents. *Ibid.* Instead, relief limited to respondents plainly would suffice. Respondents assert (Opp. 39) that "[p]ractical considerations" supported the universal scope of the remedy, but they fail to explain why, as a practical matter, providing relief to "32.6 million existing reporting companies," Appl. App. 95a (citation omitted), is necessary to redress irreparable injury to the six respondents. They also insinuate (Opp. 39) that the government conceded in the district court that universal relief was necessary to protect the 300,000 members of the National Federation of Independent Business (NFIB). But the court itself acknowledged that the government "did not concede that nationwide relief was necessary or appropriate." Appl. App. 14a-15a (citation omitted); see *id.* at 15a (clarifying that "the Court did not categorize the Government's statement * * * as a concession").

2. The district court further erred by granting relief to NFIB members who were not identified in the complaint. Respondents argue (Opp. 40) that the govern-

ment's position conflicts with this Court's precedents on "associational standing." But the cases that respondents cite address only an association's standing to sue at the outset of the case, not the appropriate scope of relief at the end of the case. See, *e.g.*, *Warth* v. *Seldin*, 422 U.S. 490, 510-514 (1975). Respondents do not meaningfully address the government's arguments that awarding relief to absent and unidentified members of NFIB would violate Article III, circumvent rules limiting class actions, lead to asymmetrical results, and conflict with rules requiring injunctions to spell out their terms in reasonable detail. See Appl. 35-36.

E. This Court May Wish To Grant Certiorari Before Judgment To Consider The Lawfulness Of Universal Relief

Respondents argue (Opp. 41) that, because "the injunction entered by the district court * * * is accompanied by a stay under Section 705," "this case is not a promising vehicle" for resolving the lawfulness of universal relief. That is incorrect. As explained above, universal relief under Section 705 in the form of a stay is improper here, just as a universal injunction is improper. See H. Rep. No. 1980, 79th Cong., 2d Sess. 43 (1946) (explaining that the authority granted by what is now Section 705 "is equitable" and would "normally, if not always, be limited to the parties complainant"). And in any event, as discussed above, the district court's universal injunction against the enforcement of the Act and its Section 705 stay are distinct remedies with distinct legal consequences and distinct practical effects. See pp. 16-17, *supra*; see also *Griffin* v. *HM Florida-ORL, LLC*, 144 S. Ct. 1, 2 & n.1 (2023) (statement of Kavanaugh, J.) (stating that the question whether a district court may "enjoin the government from enforcing [a] law against non-parties" is "distinct from the issue of a court's setting aside a federal agency's rule"). This Court therefore could grant certiorari before judgment to consider the injunction; the Court would not

need to consider Section 705 as well.

This Court should reject respondents' request (Opp. 41) to review "the merits question of the CTA's validity" alongside "the question of universal injunctions." Over the past several years, the question whether district courts may grant universal relief has percolated extensively in the lower courts and in opinions of individual Justices. By contrast, no court of appeals has yet addressed the validity of the CTA. In addition, we have suggested certiorari before judgment on the lawfulness of universal relief precisely because that important issue has repeatedly evaded review when paired with the merits. See, *e.g.*, *DHS* v. *Regents of the University of California*, 591 U.S. 1, 36 n.7 (2020) ("Our affirmance * * * makes it unnecessary to examine the propriety of the nationwide scope of the injunctions."); *Trump* v. *Hawaii*, 585 U.S. 667, 711 (2018) ("Our disposition of the case makes it unnecessary to consider the propriety of the nationwide scope of the injunction."). In short, although review on the merits would likely be warranted if the Fifth Circuit affirms, it would be premature now.

Finally, respondents argue (Opp. 41) that the government's petition for a writ of certiorari in *Department of Education* v. *Career Colleges & Schools of Texas*, No. 24-413, cert. granted Jan. 10, 2025, provides "a superior vehicle" to address the lawfulness of universal relief. But shortly after respondents filed their response, this Court declined to review the remedial issue in *Career Colleges*. And as the government has noted (Appl. 38 n.2), this case presents a remedial issue (whether traditional principles of equity permit universal injunctions against the enforcement of statutes) that differs from the issue in *Career Colleges* (whether the APA permits universal relief from agency rules).

* * * * *

The preliminary injunction entered by the district court (including its stay of the Reporting Rule's compliance deadline) should be stayed in full pending the consideration and disposition of the government's appeal and, if the court of appeals affirms, pending the timely filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court. At a minimum, the injunction should be stayed except to the extent it protects respondents and the members of NFIB identified in the complaint. Finally, the court may wish to treat this application as a petition for a writ of certiorari before judgment on the question whether the district court lacked authority to enter a universal injunction, grant the petition, and set the remedial question for argument this Term.

Respectfully submitted.

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JANUARY 2025