No.

IN THE

Supreme Court of the United States

TEXAS TOP COP SHOP, INCORPORATED, ET AL.,

Petitioners,

v.

TODD BLANCHE, ACTING U.S. ATTORNEY GENERAL, ET AL.,

Respondents.

On Petition for a Writ of Certiorari Before Judgment to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT

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QUESTIONS PRESENTED

The Corporate Transparency Act imposes a first-of-its-kind federal reporting mandate on more than 30 million domestic corporations merely because they exist, without reference to any activity at all. 31 U.S.C. § 5336. The district court in this case held the Act's mandate to exceed Congress's power and enjoined it, and this Court stayed the injunction. *McHenry v. Texas Top Cop Shop, Inc.*, 145 S. Ct. 1 (2025). Subsequently, the Eleventh Circuit split with the district court's decision, holding that corporate entities' mere existence constitutes "economic activity" that substantially affects interstate commerce and therefore may be regulated under the Commerce Clause. *Nat'l Small Bus. United v. U.S. Dep't of Treasury*, 161 F.4th 1323 (11th Cir. 2025). It also held that the Act's requirement that corporations disclose sensitive information about their "beneficial owners" to federal authorities is reasonable under the Fourth Amendment.

The questions presented here are:

1. Whether the Act's regulation of corporations merely because they exist under state law exceeds Congress's Commerce Clause authority.

2. Whether the Act's suspicionless and warrantless searches to further a generalized interest in expedient law enforcement violate the Fourth Amendment.

PARTIES TO THE PROCEEDING

Petitioners (plaintiffs-appellees below) are Texas Top Cop Shop, Inc., Russell Straayer, Mustardseed Livestock, LLC, Libertarian Party of Mississippi, National Federation of Independent Business, Inc., and Data Comm for Business, Inc.

Respondents (defendants-appellants below) are Todd Blanche, Acting U.S. Attorney General, U.S. Department of Treasury, Andrea Gacki, Director of the Financial Crimes Enforcement Network, the Financial Crimes Enforcement Network, and Scott Bessent, Secretary, U.S. Department of Treasury.

CORPORATE DISCLOSURE STATEMENT

Texas Top Cop Shop is a Texas corporation, Mustardseed Livestock is a Utah limited liability company, the Libertarian Party of Mississippi is a Mississippi nonprofit corporation, the National Federation of Independent Business is a nonprofit corporation organized under the laws of California, and Data Comm for Business is a Delaware corporation. None of these entities is publicly traded, and none are owned by any parent corporation or publicly traded company.

RELATED PROCEEDINGS

The related proceedings below are:

1) *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-cv-478 (E.D. Tex.)—Opinion and order of district court enjoining the Corporate Transparency Act issued on December 5, 2024.

2) *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792 (5th Cir.)—Fifth Circuit order of December 26, 2024 vacating stay of injunction.

3) *McHenry v. Texas Top Cop Shop, Inc.*, No. 24A653 (U.S.)—Order of this Court of January 23, 2025 granting stay application.

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PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT

The Corporate Transparency Act looms as a complex and invasive federal registry of entities created by state law and their many beneficial owners. The Act was enacted in 2021 but delayed for years by litigation and regulatory uncertainty. But now this Court has the opportunity to definitively rule that the CTA is unconstitutional twice over. If this Court grants review in *Nat'l Small Bus. United v. U.S. Dep't of Treasury*, 161 F.4th 1323 (11th Cir. 2025), it should likewise grant review here so that the tens of millions of affected parties can get back to business without the CTA's unconstitutional mandate hanging over them.

The CTA is a radical and audacious federal statute that requires more than 30 million entities created by state law to file sensitive reports about their ownership with federal law enforcement agents. The CTA's purpose is expressly to discover and punish money laundering or other criminal activity, and so the Act lays a dragnet of forced disclosure on all entities, regardless of individualized suspicion and without any precompliance review. It also premises federal jurisdiction on an entity's mere existence under state law, and regardless of whether the entity engages in *any* activity—commercial or otherwise.

The CTA tramples on one of the last remaining limits on federal power found in the Commerce Clause because it equates an entity's mere status as economic activity. Indeed, the CTA presumes jurisdiction whenever an entity is created under state law,

regardless of whether that entity ever does anything. This Court rejected that reasoning in *NFIB v. Sebelius*, 567 U.S. 519 (2012) because the constitutional power to "regulate Commerce" "presupposes the existence of commercial activity to be regulated." *Id.* at 550 (opinion of Roberts, C.J.). The federal government doesn't have the power to regulate state law entities just because they exist. The district court rightly enjoined the CTA for this reason. Now, however, with the Eleventh Circuit's contrary ruling, the regulated public again faces its unconstitutional mandate.

Separately, the CTA violates the Fourth Amendment as it establishes a mandatory database of private information for the express purpose of ferreting out crime. Rather than require any level of particularized suspicion, much less allow any means for precompliance review, the CTA imposes substantial civil and criminal sanctions on entities who fail to report this private information to federal law enforcement agencies. The CTA gets the Fourth Amendment backward and marks a disturbing milestone of intrusive governmental surveillance.

This Court should therefore grant review in this case and *NSBU* and hold that the CTA is doubly unconstitutional.

OPINIONS BELOW

The district court's opinion enjoining the Corporate Transparency Act is published at *Texas Top Cop Shop, Inc. v. Garland*, 758 F. Supp. 3d 607 (E.D. Tex. 2024).

The motions panel staying the injunction is available at *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792, 2024 WL 5203138 (5th Cir. Dec. 23, 2024).

The merits panel decision vacating the stay is available at *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792, 2024 WL 5224138 (5th Cir. Dec. 26, 2024).

This Court's decision staying the district court injunction is published at *McHenry v. Texas Top Cop Shop, Inc.*, 604 U.S. ---, 145 S. Ct. 1, No. 24A653 (Jan. 23, 2025).

The Fifth Circuit's order holding the appeal in abeyance is available at *Texas Top Cop Shop, Inc. v. Bondi*, No. 24-40792, 2025 WL 2609731 (5th Cir. Aug. 5, 2025).

JURISDICTION

This Court has jurisdiction to grant a writ of certiorari "before judgment" by the Court of Appeals under 28 U.S.C. § 1254(1). This case "is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." *See* Sup. Ct. R. 11. The Court has often granted certiorari before judgment to ensure that cases presenting the same issue be consolidated for review. *E.g.*, *Learning Res., Inc. v. Trump*, 146 S. Ct. 73 (2025); *Moyle v. United*

States, 144 S. Ct. 540 (2024); *Idaho v. United States*, 144 S. Ct. 541 (2024); *Students for Fair Admissions, Inc. v. Univ. of N. Carolina*, 142 S. Ct. 896 (2022); *ZF Auto. US, Inc. v. Luxshare, Ltd.*, 142 S. Ct. 637 (2021); *McAleenan v. Vidal*, 588 U.S. 919 (2019); *Trump v. N.A.A.C.P.*, 588 U.S. 919 (2019); *United States v. Fanfan*, 542 U.S. 956 (2004); *Gratz v. Bollinger*, 539 U.S. 244 (2003).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant constitutional and statutory provisions are reproduced at App.107-43.

STATEMENT OF THE CASE

A. Legal Background

Corporate formation, whether employed by a profit-making corporation, a small partnership, or an advocacy association, is a critical aspect of modern American law. "The corporate form is now the foundation of the modern market economy. Its benefits are well appreciated: permanent capital grants an autonomous and indefinite life, and a capacity for long-term investment." Giuseppe Dari-Mattiacci, Oscar Gelderblom, Joost Jonker, & Enrico C. Perotti, *The Emergence of the Corporate Form*, 33 J.L. Econ. & Org. 193, 225 (2017).

As important as corporate functions are to a free and flourishing society, a unique feature of our federalist system is that the national government has no constitutional authority over general corporate formation. Instead, the several States compete amongst themselves in the creation and supervision of corporate entities. "Throughout the history of American law, the definition and supervision of business entities has been the task of the states. At the Constitutional Convention, during the Progressive Era, and at the height of the New Deal, the federal government debated whether to enter the corporate area itself and every time declined." Allen D. Boyer, *Federalism and Corporation Law: Drawing the Line in State Takeover Regulation*, 47 Ohio St. L.J. 1037, 1037-38 (1986).

At the founding, corporations were almost always "agencies of government . . . for the furtherance of

community purposes." Pauline Maier, *The Revolutionary Origins of the American Corporation*, 50 Wm. & Mary Q. 51, 55 (1993). As corporate forms began to evolve and the use of private corporations grew, often through state-chartered enterprises engaged in transportation and finance, the States maintained exclusive control over governance and formation. Brian Phillips Murphy, *Building the Empire State: Political Economy in the Early Republic* 12 (2015).

The Framers both implicitly understood that the federal constitution lacked any control over state corporate law and even explicitly rejected a call for such authority. At the 1787 Constitutional Convention, James Madison proposed to grant Congress an enumerated power to charter federal corporations. Madison sought a general power "to grant charters of incorporation where the interest of the U.S. might require & the legislative provisions of individual States may be incompetent." 2 *The Records of the Federal Convention of 1787* 615 (Max Farrand ed., 1911) (Madison's notes). Rufus King of Massachusetts and George Mason of Virginia immediately protested that the States would not stand for it. *See id.* at 615-16. Madison's enlargement of congressional authority was soundly rejected and did not even get a vote. *See id.* at 616. Thus, "[t]he delegates were aware that leaving business regulation primarily to the individual states might cause friction within the overall American economy. They were more reluctant, however, to allow concentrations of economic power, which they

visualized as a government-sponsored monopoly, and therefore chose this course." Boyer, *supra* at 1041.

The national government was delegated certain enumerated powers that may be used to regulate specific activities of individuals and corporations that are created under state law—for instance, when such entities issue securities in interstate commerce or generate income subject to federal tax. But the national government lacks any general power over corporate governance or control over how corporations operate. Indeed, this understanding has continued well into the modern era, with federal law forming an "overlay" on corporate conduct that deals "with the transfer of interests in those business entities" in interstate commerce but not addressing corporate formation or governance itself. *See id.* at 1056. "The era of Populism, Theodore Roosevelt, and Woodrow Wilson, which produced the Sherman and Clayton Acts, the Pure Food and Drug Act, and the Federal Trade Commission, considered the matter, but ultimately chose to leave corporation law under state authority." *Id.* at 1050. Or, as this Court put it: "No 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).

B. The Corporate Transparency Act

Buried within the nearly 1,500 pages of an end-of-the-year budget bill, the Corporate Transparency Act (CTA or Act) seeks to federalize the internal affairs of tens of millions of entities. Its reach extends to for-profit commercial enterprises, political advocacy

organizations, and even religious groups, all of which are subject to invasive disclosures to federal regulators for the purpose of criminal investigation. By so doing, the Act upsets the careful division of power between state and federal actors, and imposes chilling criminal consequences for millions of presumptively innocent people.

Enacted in January 2021, the CTA generally mandates that any "reporting company" report its "beneficial ownership information" to the Financial Crimes Enforcement Network ("FinCEN"). 31 U.S.C. § 5336(b)(1)(A). The statute does not impose this mandate directly but instead provides that it will come into force pursuant to "regulations prescribed by the Secretary of the Treasury" setting initial compliance dates. *Id.* at § 5336(b)(1). Such regulations were required to "be promulgated not later than 1 year after the date of enactment," and be effective for preexisting entities not more than two years after the "effective date of the regulations." *Id.* at §§ 5336(b)(1)(B), (b)(5).

A "reporting company" is an entity "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 "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." *Id.* at § 5336(a)(11). The CTA exempts companies employing more than 20 people and generating more than $5,000,000 per year in gross revenue, publicly traded companies, most financial

businesses, and many nonprofits. *Id.* at § 5336(a)(11)(B).

The "beneficial ownership information" (BOI) that companies must report to FinCEN consists of the identities of their "beneficial owners" and, for each beneficial owner, a full legal name, date of birth, current address, and "acceptable" photo identification. *Id.* at §§ 5336(b)(2), (a)(1). The term "beneficial owner" is defined broadly, to include every natural person who "directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—(i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity[.]" *Id.* at § 5336(a)(3). Companies that have filed reports must file updates when their BOI changes. *Id.* at §§ 5336(a)(2), (b)(1)(D).

Violations of the reporting mandate are subject to substantial civil and criminal penalties. *Id.* at § 5336(h)(3). Failure to report complete or updated BOI can be met by $10,000 in criminal fines or two years of imprisonment (or both). *See id.* § 5336(h). The CTA also authorizes civil penalties of up to $500 for each day of noncompliance. *See id.*

FinCEN must disclose BOI information when requested "from a Federal agency engaged in national security, intelligence, or law enforcement activity, for use in furtherance of such activity" or "from a State, local, or Tribal law enforcement agency," if authorized by a court. *Id.* at § 5336(c)(2)(B). The CTA also authorizes the Treasury to permit disclosure "to

financial institutions and regulatory agencies." *Id.* at § 5336(c)(2)(C).

As noted, the CTA directs FinCEN to bring its reporting mandate into force through regulations. It requires that regulations be promulgated within a year of its enactment and set an "effective date" that, in turn, affects the Act's compliance deadlines. *Id.* at § 5336(b)(5). Companies in existence prior to the effective date "shall … submit" reports to FinCEN "not later than 2 years after the effective date." *Id.* at § 5336(b)(1)(B). And companies formed after the effective date must file BOI reports at the time of formation. *Id.* at § 5336(b)(1)(C). Notwithstanding those provisions, the CTA leaves it to "FinCEN to determine the effective date." 86 Fed. Reg. 69920, 69945 (December 8, 2021).

FinCEN issued its initial implementing regulations, known as the "Reporting Rule," on September 30, 2022. Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498. The Rule set an effective date more than a year in the future: January 1, 2024. *Id.* at 59498. And it provided that existing companies would have to comply with the reporting mandate an additional year after that, on January 1, 2025. *Id.* at 59592.

In response to litigation in this case, on March 26, 2025, FinCEN issued an interim final rule delaying the CTA's effective date and informing the public that it would undertake additional rulemaking. Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension, 90 Fed. Reg. 13688, 13688-89. The interim rule proposed "to exempt

domestic reporting companies and U.S. persons who are beneficial owners of foreign reporting companies from the BOI reporting requirements pending the receipt of comments and issuance of a final rule." *Id.* at 13690. The interim rule became effective on March 25, 2025, and the agency noted its intent "to issue a final rule th[at] year." *Id.* at 13688-89. To date, FinCEN has not done so. *See id.*[1]

C. The CTA's Burden on the Public and Petitioners

As FinCEN has recognized, if fully implemented, the CTA "will have a significant economic impact on a substantial number of small entities." 87 Fed. Reg. at 59550. "FinCEN estimates that there will be approximately 32.6 million existing reporting companies and 5 million new reporting companies formed each year." *Id.* at 59585. Requiring all of those entities to comply would take 126.3 million hours and impose costs of $22.7 billion in the first year that the CTA is fully effective. *Id.* at 59585-86. The estimated burden hours include filing initial reports, reviewing

[1] While the rulemaking remains delayed, Congress has also considered steps to repeal the CTA. Indeed, legislation pending in the House of Representatives and the Senate would, if enacted, repeal the Act entirely. *See Repealing Big Brother Overreach Act*, H.R. 425, 119th Congress (2025) (ordered reported by the House Financial Services Committee on April 21, 2026); *Repealing Big Brother Overreach Act*, S. 100, 119th Congress (2025) (referred to the Committee on Banking, Housing and Urban Affairs on January 15, 2025). To date, none of those legislative measures have been adopted by either chamber.

information and complying with ongoing duties to update them when information changes. *Id.* at 59581.

Petitioners are among those who will be affected by CTA implementation. One Petitioner, the National Federation of Independent Business, Inc., is a membership organization with nearly 300,000 member businesses. App.13-17. While NFIB itself is exempt from the CTA, most of its members, including Petitioners Texas Top Cop Shop, Inc. and Data Comm For Business, Inc., must comply. *Id.*; App.16.

Plaintiffs' injuries go beyond the costs of compliance. For instance, the Libertarian Party of Mississippi is an existing political organization that must comply with the CTA. App.15. It receives donations from individuals and entities, which it uses to promote political candidates for state office and policies affecting Mississippi residents. *Id.* Under its bylaws, no individual owns the entity or its assets, but it is controlled by its members, officers, delegates, volunteers, and major donors. *Id.*. Its bylaws authorize MSLP to make expenditures only with the authorization of its executive committee, or at the direction of 2/3 of its voting delegates, which are registered members of the state party. *Id.* Thus, its beneficial owners include these key party members and donors. *See id.*

To date, none of the Petitioners have filed BOI reports.

D. Proceedings Below

The Reporting Rule took effect at the start of 2024, and Petitioners brought suit in May, more than 7

months in advance of the Rule's reporting deadline for existing companies. App.17. They alleged that the CTA and Reporting Rule exceed the scope of enumerated federal powers, burden associational rights in violation of the First Amendment, and violate the Fourth Amendment by compelling disclosure of private information. They quickly moved for a preliminary injunction of enforcement of the CTA and Reporting Rule.

In December 2024, the district court enjoined the CTA and Reporting Rule and stayed the Rule's compliance deadline under APA § 705. It determined that 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." *See Texas Top Cop Shop, Inc.*, 758 F.Supp.3d at 663. At the same time, the court held, the plaintiffs "have met their burden to show that the CTA and Reporting Rule threaten substantial, imminent, non-speculative, and irreparable harm" "[b]ecause Plaintiffs . . . will suffer unrecoverable compliance costs absent emergency relief," and "because the CTA and Reporting Rule substantially threaten their constitutional rights." *Id.* at 636.

After the district court and appeals court denied the government's requests for stay of the injunction, this Court granted the government's stay request. *See McHenry v. Texas Top Cop Shop, Incorporated, et al.*, No. 24A653, at 1 (2025).

Despite this Court's ruling, the government did not immediately reinstate the CTA's reporting deadline. Because of other litigation, FinCEN delayed the

deadline through March 21, 2025. Then, before the expiration of that deadline, the agency changed course and announced it would engage in a new round of rulemaking that proposed to exempt most domestic corporate entities from the CTA's reporting mandates.

In March 2025, FinCEN issued an interim final rule further delaying the CTA's effective date and promising additional rulemaking. 90 Fed. Reg. 13688, 13688-89. The interim rule exempted domestic companies from immediate compliance "pending … issuance of a final rule." *Id.* at 13690. FinCEN also said it intended "to issue a final rule th[at] year." *Id.* at 13688-89.

Meanwhile, this case proceeded to the merits briefing before the Fifth Circuit. In response to the interim final rule, the Fifth Circuit then requested briefing on whether the rule mooted any aspect of the case. Both the government and Petitioners agreed that the case was not moot. The Fifth Circuit recognized that "the controversy remains live," but put the appeal in abeyance "until the final rule is issued." *Texas Top Cop Shop, Inc. v. Bondi*, No. 24-40792, 2025 WL 2609731, at *1 (5th Cir. Aug. 5, 2025).

To date FinCEN has not issued a final rule, and the appeal remains pending in the Fifth Circuit.

Meanwhile, the Eleventh Circuit considered the same issues of the Act's constitutionality in *Nat'l Small Bus. United v. U.S. Dep't of Treasury*, 161 F.4th 1323 (11th Cir. 2025). That court upheld the CTA's reporting mandate as a valid exercise of Congress's

Commerce Clause authority, *id.* at 1329, not barred by the Fourth Amendment, *id.* at 1333. The *NSBU* plaintiffs now seek this Court's review, presenting the same questions as this petition. *See NSBU v. Bessent*, No. 25-1201, docketed April 21, 2026.

REASONS FOR GRANTING THE PETITION

I. The CTA Exceeds Congress's Commerce Power

The lower courts are now divided on the urgent question of whether the CTA's novel reporting requirements for more than 30 million state law entities and their tens of millions of beneficial owners exceeds the limits of Congress's authority. As the district court correctly held, contrary to the Eleventh Circuit, the CTA is unconstitutional. The CTA's reporting mandate exceeds the federal government's limited, enumerated powers. Any contrary conclusion would result in an unlimited federal power.

A. The District Court Below Correctly Held, in Conflict with the Eleventh Circuit, that the CTA Exceeds Congress's Powers

As the district court correctly recognized, the CTA's unprecedented scope crosses a line long reserved for the states by regulating an entity's status instead of its actions. *See Texas Top Cop Shop, Inc.*, 758 F. Supp. 3d at 644 ("Congress may not invoke the substantial effects doctrine to regulate future activities or no activity at all."). In *NFIB v. Sebelius*, a majority of this Court rejected a Commerce Clause justification for the Affordable Care Act's individual mandate, holding that it "compel[led] individuals to *become*

active in commerce by purchasing a product, on the ground that their failure to do so affects interstate commerce." *See* 567 U.S. at 552 (opinion of Roberts, C.J.) (emphasis in original). The CTA suffers the same defect: it "compels" reporting companies to file beneficial ownership reports with the federal government "on the ground that their failure to do so affects interstate commerce." *See id.* The district court correctly concluded that "construing the Commerce Clause to permit Congress to regulate companies precisely because the Government does not know who substantially benefits from their ownership would similarly 'open a new and potentially vast domain to congressional authority.'" *Texas Top Cop Shop, Inc.*, 758 F. Supp. 3d at 643 (quoting *NFIB*, 567 U.S. at 552).

"In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder." *NFIB*, 567 U.S. at 533. The Tenth Amendment confirms that the federal Constitution reserves all "powers not delegated to the United States by the Constitution, nor prohibited by it to the States," "to the States respectively, or to the people." An individual plaintiff may challenge federal action as exceeding Congress's limited, enumerated, powers. *See Bond v. United States*, 564 U.S. 211, 222 (2011).

The Commerce Clause affords Congress the power "to regulate Commerce ... among the several States." The Court has articulated "three broad categories of activity that Congress may regulate under its commerce power. First, Congress may regulate the use of the channels of interstate commerce. Second,

Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995) (cleaned up).

The Commerce Clause "must be read carefully to avoid creating a general federal authority akin to the police power." *NFIB*, 567 U.S. at 536. After all, "The founding generation understood the term 'commerce' to mean only 'trade or exchange of goods.'" William J. Seidleck, *Originalism and the General Concurrence*, 3 U. Pa. J. L. & Pub. Affs. 263, 269 (2018).

As discussed, "[t]hroughout the history of American law, the definition and supervision of business entities has been the task of the states." Boyer, *supra* at 1037-38. Even as the Court recognized an increasing role for Congress to regulate interstate commerce, it has emphasized that "state law governs in the corporate area. Federal law forms an overlay, significant but secondary, upon state law. It does not provide for business organization, nor does it define or create trusts, partnerships, or corporations. It deals only with the transfer of interests in those business entities." *Id.* at 1056.

Against this backdrop of state regulation, the CTA marks a radical expansion of federal power over the corporate form. For the first time, mere corporate

status triggers a federal reporting obligation for all entities created by state law. *See* 31 U.S.C. § 5336(a)(11), (b)(1)(A). It thus premises federal power on an entity's mere existence under state law, irrespective of any activity, let alone commercial activity. *See id.*

The CTA does not pass constitutional muster. With respect to the first two categories that Congress may regulate under the commerce power, it is common ground that neither applies to the CTA. Indeed, the government conceded as much below. *See Texas Top Cop Shop, Inc.*, 758 F. Supp. 3d at 645. The government has maintained that position in *NSBU*. *See* 161 F.4th at 1328 ("The district court held, and the parties do not dispute, that the CTA does not regulate the channels or instrumentalities of commerce.").

As this Court's decision in *NFIB* makes clear, the CTA cannot be justified under the third category through application of the substantial-effects test. *NFIB* rejected a Commerce Clause justification for a statute that required "individuals who are not exempt and do not receive health insurance through a third party … to purchase insurance from a private company." *See* 567 U.S. at 539, 550 (opinion of Roberts, C.J.), 649 (joint dissent). Congress is empowered only to "regulate Commerce"—a phrase that "presupposes the existence of commercial activity to be regulated." *NFIB*, 567 U.S. at 550 (opinion of Roberts, C.J.); *see id.* at 649-50 (joint dissent). Put another way, "it must be activity affecting commerce that is regulated." *Id.* at 658 (joint dissent). Hence, Congress may not target "inactivity"

for regulation or persons who are "doing nothing." *Id.* at 555-56 (opinion of Roberts, C.J.). Or as the joint dissent put it, Congress does not have commerce power to regulate someone or something "simply because it exists." *Id.* at 658 (joint dissent).

It also did not matter that "[e]veryone will eventually need health care at a time and to an extent they cannot predict, but if they do not have insurance, they often will not be able to pay for it." *Id.*at 547 (opinion of Roberts, C.J.). "The 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." *Id.* at 557 (opinion of Roberts, C.J.) (emphasis added). Congress's power does not extend to the mere potential for commerce. *See id.* Indeed, this Court has "never permitted Congress to anticipate that activity itself in order to regulate individuals not currently engaged in commerce." *Id.* "They are quite simply not participants in that market, and cannot be made so (and thereby subjected to regulation) by the simple device of defining participants to include all those who will, later in their lifetime, probably purchase the goods or services covered by the mandated insurance." *Id.* at 656 (joint dissent).

That the CTA regulates no activity is apparent on its face. It defines a class of "reporting companies," 31 U.S.C. § 5336(a)(11), and then requires them, based on their mere existence, to file reports, *id.* § 5336(b)(1)(A). Indeed, the statute does not regulate or prohibit any transaction and does not require that

anyone operate a business; it does not even refer to or describe any transaction. *See id.* The CTA applies merely because an entity exists. *See id.* But ownership of an entity is no more an activity than ownership of a wallet; such ownership might lead to financial transactions, but they are not themselves commercial activity. The statute regulates entities based on their existence, not any activity that they undertake.

In regulating inactivity based on mere existence, the CTA's reporting mandate is indistinguishable from the ACA's insurance mandate. The insurance mandate compelled the uninsured to purchase health insurance, which the government justified "on the ground that their failure to do so affects interstate commerce." *NFIB*, 567 U.S. at 551. Specifically, the ACA required "individuals who are not exempt and do not receive health insurance through a third party" to purchase "'minimum essential' health insurance coverage." *Id.* at 539 (citing 26 U.S.C. § 5000A). Likewise, the CTA requires non-exempt entities to disclose beneficial-ownership information to the federal government, on the ground that their anonymous existence affects interstate commerce. But *NFIB* squarely rejects the proposition that Congress may "justify federal regulation by pointing to the effect of inaction on commerce." *Id.* at 552 (opinion of Roberts, C.J.); *see also id.* at 657 (joint dissent). That principle dooms the CTA.

B. The Eleventh Circuit's Conflicting Reasoning Is Wrong

The Eleventh Circuit's decision in *NSBU v. Yellen*, 161 F.4th 1323 (2025), split from the decision of the district court in this case, but its reasoning does not withstand scrutiny. Most egregiously, the Eleventh Circuit gave short shrift to the reality that the government's defense of the CTA's reporting mandate brooks no limiting principle. It must be rejected for the same reason that *NFIB* rejected the government's Commerce Clause justification of the individual insurance mandate: That is so for the same reason that the individual insurance mandate in *NFIB* was not a valid exercise of the Commerce Power: "if every person comes within the Commerce Clause power of Congress to regulate by the simple reason that he will one day engage in commerce, the idea of a limited Government power is at an end." *NFIB* at 657 (joint dissent).

Faced with a statute that facially regulates inactivity, the Eleventh Circuit resorted to a slight of hand. "[T]he tailored scope of the act," the court asserted, means that it necessarily "regulates entities that are active in commerce. *See* 31 U.S.C. § 5336(a)(11)(B), (b)(1)(B)." *NSBU*, 161 F.4th at 1331. Thus, the "CTA does not regulate based on an entity's anticipated future conduct. Instead, the CTA anticipates the effects on commerce of active businesses not reporting ownership information." *Id.*

But the CTA's scope is the opposite of "tailored," nor does it require that any subject entity be "active in commerce." The CTA applies to "reporting companies"

based on their existence, subject to certain exemptions. *Id.* at § 5336(a)(11). Those exemptions just happen to encompass mostly economic enterprises, such as exemptions for companies employing more than 20 people and generating more than $5,000,000 per year in gross revenue, publicly traded companies, most financial businesses, and many nonprofits. *Id.* at § 5336(a)(11)(B). Nothing in the CTA requires any entity to be "active in commerce."

The CTA thus regulates far more than just the tens of millions of small entities that operate as commercial businesses. It ensnares homeowners' associations, neighborhood pool clubs, personal LLCs holding a single private home, private and family trusts, and a vast number of charitable organizations and nonprofits that have no need to secure federal tax-exempt recognition because they do not rely heavily on tax-preferred donations. *See, e.g.*, Amicus Curiae Brief of the Community Associations Institute, ECF No. 104, at 1. Many of these entities never engage in any business transactions or engage only in incidental, localized activity for the betterment of family members or the community.

Consider just one of the Petitioners, the Libertarian Party of Mississippi. MSLP is a political party that can only operate within the State of Mississippi, and it can only do so to support local candidates for political office and local issues. App.15-16. Moreover, it has very few assets, which it only uses to make local political expenditures. *Id.* Certainly, the federal government has no conceivable basis to use its commerce powers over the MSLP, as deeming its

activities to be sufficiently commercial for federal control would require this Court to imaginatively aggregate some non-economic factor to such a degree that it is impossible to conceive of any entity that would be out of federal reach.

The Eleventh Circuit's insistence that the CTA only "regulates entities that are active in commerce" is simply wrong. *See NSBU*, 161 F.4th at 1331. The Act's fundamental flaw is that it does not regulate activity, and thereby commerce, at all. It applies merely because these entities exist. That Congress refrained from extending the CTA's reach to even more entities than the tens of millions that it did does not alter that.

The Eleventh Circuit also erred in determining that the CTA could be upheld merely because "Congress reasonably determined that this cumulative activity" "bears a substantial relation to commerce," such that the aggregate effect of the CTA "would substantially affect commerce." *See id.* at 1333. To be sure, the Court's cases do recognize that Congress may, under the Commerce Clause together with the Necessary and Proper Clause, "regulate purely intrastate activity that is not itself 'commercial'" where failure to do so would "undercut the regulation of the interstate market in that commodity." *Gonzales v. Raich*, 545 U.S. 1, 18 (2005) (emphasis added). But, as *NFIB* holds, that logic does not extend to the regulation of inactivity, which would be anything but "incidental" to the exercise of the Commerce power and therefore not a "proper" means of executing it. *NFIB*, 567 U.S. at 560; *see also id.* at 657 (joint dissent).

The premise of the substantial effects argument is also wrong. Unlike prohibiting home non-commercial intrastate cultivation of marijuana, which facilitated the interstate-commerce ban in *Raich*, the CTA is in no way integral to any direct regulation of interstate commerce. Confirming as much is FinCEN's years-long delay in implementing the CTA's reporting requirement, which is at odds with the claim that inability to mandate that reporting would "frustrate" regulation of any "interstate market in that commodity." *See Raich*, 545 U.S. at 18-19. Indeed, the Eleventh Circuit never explained how the CTA's reporting mandate is integral to any provision of the principal statutory scheme it identifies, the Anti-Money Laundering Act. That's because the Act is not an integrated whole but an omnibus that pulled together disparate legislative proposals. *See generally* CRS Report R47255, at 1 ("AMLA spans 59 provisions, including a distinct title known as the Corporate Transparency Act.").

Moreover, the Eleventh Circuit's reliance on "congressional findings," cannot substitute for real activity. *See NSBU*, 161 F.4th at 1332. The Eleventh Circuit noted that Congress made "formal findings" regarding the CTA's "effects on interstate commerce," *id.* at 1332, but it made even more of them in support of the ACA's insurance mandate. *See* 42 U.S.C. § 18091. No matter: under *NFIB*, it is irrelevant that inactivity may affect interstate commerce because it is not, in itself, commerce regulable as such.

The weakness of the Eleventh Circuit's reasoning becomes apparent through its recognition of what the CTA lacks. First, the Court correctly found that "the

CTA is not regulating the act of incorporation," but it took the wrong conclusion from that premise. *See NSBU*, 161 F.4th at 1331. The CTA "addresses only what entities must do after they are registered to do business—provide beneficial owner information to the Treasury Secretary." *Id.* This means that a corporate entity's mere existence triggers a federal reporting obligation. *See id.* But Congress does not have commerce power to regulate someone or something "simply because it exists." *NFIB*, 567 U.S. at 658 (joint dissent).

The Eleventh Circuit was also correct in recognizing that the CTA "lacks a jurisdictional element," but this simply means that it applies even before an entity engages in any activity, commercial or otherwise. *See NSBU*, 161 F.4th at 1331. The statute thus runs headfirst into *NFIB*'s rejection of the "proposition that Congress may dictate the conduct of an individual today because of prophesied future activity." 567 U.S. at 557 (Roberts, C.J.). After all, it was taken as given that every individual would "engage in a health care transaction" at some point, but "that does not authorize Congress to direct them" into action. *Id.* "The Commerce Clause is not a general license to regulate an individual from cradle to grave, simply because he will predictably engage in particular transactions." *Id.* That holds specifically in this context: "Every State in this country has enacted laws regulating corporate governance," but federal power reaches only "transactions" that implicate constitutionally enumerated federal interests. *See CTS Corp.*, 481 U.S. at 89-90.

II. The CTA Violates the Fourth Amendment

The CTA also violates the Fourth Amendment. It demands invasive and concededly private personal information from tens of millions of entities. It does so for the explicit purpose of gathering evidence for law enforcement use. Without requiring a judicial warrant, the CTA mandates disclosure on pain of criminal punishment. This unprecedented and blatant intrusion on the Fourth Amendment rights of millions of Americans urgently requires the Court's review.

A. The CTA Unlawfully Demands Production of Books and Papers Without Any Required Suspicion or Precompliance Review

"[A]n order for the production of books and papers may constitute an unreasonable search and seizure within the 4th Amendment." *Hale v. Henkel*, 201 U.S. 43, 76 (1906); *see also Patel v. City of Los Angeles*, 738 F.3d 1058, 1061 (9th Cir. 2013) (en banc) ("The 'papers' protected by the Fourth Amendment include business records like those at issue here.") *aff'd* 576 U.S. 409 (2015). The "compulsory production of private papers" is both a search and seizure. *Hale*, 201 U.S. at 76. The "papers" protected by the Fourth Amendment include business records. *See id.* 76-77 (subpoena for "all understandings, contracts or correspondence" between corporation and others and "reports made, and accounts rendered by such companies from the date of the organization" was unreasonable under the Fourth Amendment). Thus, when a law mandates that a business compile private

information and disclose it upon demand by law enforcement, this constitutes a "search." *See City of L.A. v. Patel*, 576 U.S. 409, 421 (2015).

The Fourth Amendment also has a strong preference for warrants. Thus, "searches conducted outside the judicial process, without prior approval by a judge or a magistrate judge, are *per se* unreasonable subject only to a few specifically established and well-delineated exceptions." *Id.* at 419 (cleaned up). "This rule applies to commercial premises as well as to homes." *Id.* at 419-20 (citation and quotation marks omitted).

In some circumstances, a warrantless "administrative search" may be permissible "where the primary purpose of the searches is distinguishable from the general interest in crime control." *Id.* at 420 (cleaned up). Even still, "absent consent, exigent circumstances, or the like, in order for an administrative search to be constitutional, the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker." *Id.* And when administrative searches create criminal consequences for noncompliance, "[a]bsent an opportunity for precompliance review," there is an "intolerable risk" that such searches will be abused. *Id.* at 421.

In addition to the need for precompliance review, the government is obligated to demonstrate some level of individualized suspicion before it can demand a business entity's private papers. *See Patel*, 738 F.3d at 1064 ("The government may ordinarily compel the inspection of business records only through an

inspection demand 'sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.'") (quoting *See v. City of Seattle*, 387 U.S. 541, 544 (1967)). Thus, while subpoenas for corporate records are usually permitted on a showing of need less than probable cause, judicial process is still required to determine that "the charge [against the target] is proper and the material requested is relevant," and that the subpoena not be "too indefinite," has not "been issued for an illegitimate purpose, [and is not] unduly burdensome." *McLane Co. v. EEOC*, 581 U.S. 72, 77 (2017); *see also See*, 387 U.S. at 544 ("It is now settled that, when an administrative agency subpoenas corporate books or records, the Fourth Amendment requires that the subpoena be sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.").

The blanket requirement that all reporting companies provide beneficial ownership information with no precompliance process and no individualized suspicion violates the Fourth Amendment. On one side of the equation, the CTA's broad disclosure requirements certainly implicate privacy concerns. Indeed, the Act itself recognizes that beneficial ownership information "shall be confidential and may not be disclosed" by FinCEN except in carefully limited ways. *See* 31 U.S.C. § 5336(c)(2)(A). In a variety of ways, the CTA's disclosure requirements are therefore significantly more intrusive than compelled production of a hotel's guest lists, which was rejected by this Court in *Patel*, 576 U.S. at 419.

On the other hand, the CTA provides *no* limitations. The Act applies to at least 32.6 million existing entities, including those entities with no assets and no operations, and regardless of whether the entity is likely to have committed a crime. Its express purpose is crime control, and the mandated reports are to be used by law enforcement simply to look for potential criminality. There is also no opportunity for precompliance review by *anyone*, yet refusing to file mandated reports comes with criminal liability. The CTA is unsustainable under the Fourth Amendment.

B. The Eleventh Circuit's Reasoning Is Not Compelling

The Eleventh Circuit's reliance on *Cal. Bankers Ass'n v. Shultz*, 416 U.S. 21 (1974) to justify the CTA is unconvincing. *See NSBU*, 161 F.4th at 1333-34. *Shultz* dealt with disclosure requirements under the Bank Secrecy Act, and, in particular, requirements that banks and other financial institutions provide certain reports to the federal government about their customers' transactions. *See* 416 U.S. at 25-26. The Court upheld the statute against challenges from both financial institutions and customers, but its differing treatment of the classes of plaintiffs has profound consequences. *See id.* at 66-67. The Court held that the statute's "requirements for the reporting of domestic financial transactions abridge no Fourth Amendment right of the banks themselves[,]" largely because any "bank is itself a party to each of these transactions, earns portions of its income from conducting such transactions, and in the past may have kept records of similar transactions on a voluntary basis for its own purposes." *Id.* at 66. The

Court then rejected the more significant challenge raised by the accountholders pursuant to the third-party doctrine—the individual account holders had voluntarily disclosed this information and given up their privacy interests in it, while the financial institutions could not vicariously assert the interests of the account holders. *Id.* at 69. The latter holding thus avoided the concerns presented here.

As more recent cases have explained, the outcome in almost all Fourth Amendment cases relies on the presence or absence of a reasonable expectation of privacy in the target of a government search. *See Carpenter v. United States*, 585 U.S. 296, 310 (2018). While *Shultz* showed that the "government may require businesses to maintain records and make them available for routine inspection when necessary to further a legitimate regulatory interest," even that holding was tempered by the requirements that the demand be "'sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.'" *Patel*, 738 F.3d at 1064 (en banc) (citing *Shultz*, 416 U.S. at 45-46 and quoting *See*, 387 U.S. at 544). Indeed, the Court has since explained that *Shultz* was a case involving "requests for evidence implicating diminished privacy interests or for a corporation's own books," and flatly rejecting the view that "the Government may subpoena third parties for records in which the suspect has a reasonable expectation of privacy." *Carpenter*, 585 U.S. at 317-18, 318 n.5.

Shultz does not validate the CTA because the type of information involved is very different. Petitioners have a reasonable expectation of privacy in the

information demanded by the CTA because they must compile it directly and disclose it to the government, even as it is concededly private and confidential, and even as it reveals information that touches on associational rights. Thus, while the Court in *Shultz* held only that *banks* could be forced to disclose routine information about certain financial transactions involving their customers, this says nothing about the larger intrusions involved here. *See* 416 U.S. at 66.

Shultz further demonstrates the flaw in the CTA's design. That case applied the *Oklahoma Press* standard for government demands for private records. *See Shultz*, 416 U.S. at 67 (citing *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 208 (1945)). That was the same standard at issue in *Patel*, which imposes two specific requirements: (1) individualized suspicion and (2) precompliance review. *See Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 415 (1984) ("Thus although our cases make it clear that the Secretary of Labor may issue an administrative subpoena without a warrant, they nonetheless provide protection for a subpoenaed employer by allowing him to question the reasonableness of the subpoena, before suffering any penalties for refusing to comply with it, by raising objections in an action in district court."); *Patel*, 738 F.3d at 1064 (discussing *Oklahoma Press*). Both safeguards are absent from the CTA, though, which only compounds the constitutional violation.

III. This Case Presents an Ideal Vehicle to Resolve the Vital Question of Whether the CTA Exceeds Congress's Power

If this Court grants review in *NSBU*, it should also review this case so that it can resolve the conflict in the lower courts concerning whether the CTA passes constitutional muster. It should do so now, even before final judgment, because the CTA's implementation is delayed by rulemaking. Affected entities have been given no more than a temporary reprieve until this Court can confront whether the statute, and its regulation of corporate entities merely because they exist, exceeds the commerce power. For the tens of millions of affected entities, the stakes remain exceedingly high. And rather than resolve such weighty questions on the emergency docket, this Court can grant merits review in both cases now.

The importance of this case is profound. The CTA's proposed impact on tens of millions of law-abiding citizens is staggering. As FinCEN recognized, once fully implemented, the CTA "will have a significant economic impact on a substantial number of small entities." 87 Fed. Reg. at 59550. "FinCEN estimates that there will be approximately 32.6 million existing reporting companies and 5 million new reporting companies formed each year." *Id.* at 59585. Any of those entities face the threat of serious civil and criminal consequences should they fail to file, or even if they err in filing, highly-sensitive ownership reports. *See* 31 U.S.C. § 5336(h). FinCEN recognized that the bulk of the filing obligations falls on small businesses, and full implementation of the CTA would cost "$22.7 billion in the first year and $5.6 billion in

the years after." *Id.* at 59585-86. *See also The Corporate Transparency Act sounds harmless. It's not.* Washington Post (April 19, 2026), *available at* https://www.washingtonpost.com/opinions/2026/04/19/corporate-transparency-act-is-costly-unconstitutional/.

Petitioners are just some of those affected entities. NFIB is a membership organization with nearly 300,000 member businesses, most of whom must comply with the CTA. App.16. The named Petitioners are all affected individuals or entities, which range from retail enterprises to a local political party. App.13-17. For all of these diverse litigants facing the CTA's compliance and reporting burdens, the Act's underlying validity is vitally important.

More importantly, allowing the Eleventh Circuit's decision to stand would eviscerate any meaningful limit on the commerce power. The Eleventh Circuit expressly equated the mere creation of a corporate entity with "regulat[ing] entities that are active in commerce." *See NSBU*, 161 F.4th at 1331. "But if every person comes within the Commerce Clause power of Congress to regulate by the simple reason that he will one day engage in commerce, the idea of a limited Government power is at an end." *NFIB*, 567 at 657 (joint dissent).

Moreover, the lower courts have now split on the CTA's legality, continuing the longstanding uncertainty that has plagued tens of millions of affected entities throughout this litigation. *See Trump v. Boyle*, 145 S. Ct. 2653, 2655 (2025) (Kavanaugh, J., concurring) ("if we grant a stay but

do not also grant certiorari before judgment, we may leave the lower courts and affected parties with extended uncertainty and confusion about the status of the precedent in question."). The district court correctly recognized the CTA's fatal defect and properly enjoined its initial implementation. The Eleventh Circuit, however, has now explicitly equated mere corporate status with "active [] commerce." *See NSBU*, 161 F.4th at 1331. This Court should resolve the split and restore some limiting principle on the Commerce Clause.

This case also makes an ideal companion to *NSBU*. This Court has often granted certiorari before judgment in order to consolidate multiple cases presenting the same issue. *See supra* pp.3-4. It should follow that practice here.

As with *NSBU*, "this is both the right time and the right case in which to resolve whether this unprecedented statute is constitutional." *NSBU* Pet. at 36. The Eleventh Circuit's decision affects a significant number of small entities. So too does the district court's contrary conclusion in this case. Indeed, given the approximately 300,000 small business members of NFIB, and the diverse interests of the named petitioners, the stakes in this case are even higher. Yet these interests are now threatened by the uncertainty in the courts while being delayed by regulatory action. As this case is currently in abeyance there is no reason to wait indefinitely to resolve the question. Instead, this Court should simply grant review before judgment in this case.

Now is the ideal time to review this issue—while the CTA's implementation is delayed by rulemaking. Indeed, this Court should not wait until the rulemaking is complete. This Court has already been tasked to rule in this case on its emergency docket as the parties hotly contested the CTA's initial compliance date. Now, because of changed regulatory positions, the parties have a brief reprieve pending release of a final rule. That reprieve is far from certain and will last only as long as the agency chooses. Future rulemaking will almost certainly be the subject of renewed litigation, and will undoubtedly yet again reach this Court's emergency docket. Rather than consider the weighty constitutional issues in such circumstances, this Court now has an opportunity to grant review early and benefit from full briefing and argument in both cases.

NSBU is also correct in noting that the CTA's validity presents a live controversy that can be decided while the statute's implementation is delayed. Indeed, all parties and all courts agree that the case is not moot while the CTA's final implementation by rule is delayed. The statute, which Petitioners challenged directly, is or is not constitutional. The Commerce Clause can only be stretched so far. Whether the CTA's regulation of corporate existence is facially compatible with *NFIB* remains a critical issue that is ripe for adjudication. Rather than deferring the issue of the CTA's validity for future litigation, perhaps even again on the emergency docket, this Court should simply grant review in both cases.

CONCLUSION

This Petition, and that in *NSBU v. Bessent*, No. 25-1201, should be granted.

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