No. 25-1290

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

BRIEF OF *AMICI CURIAE* STATE OF WEST VIRGINIA AND 24 OTHER STATES IN SUPPORT OF PETITIONERS

JOHN B. MCCUSKEY
Attorney General

OFFICE OF THE
WEST VIRGINIA
ATTORNEY GENERAL
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25306
mwilliams@wvago.gov
(304) 558-2021

MICHAEL R. WILLIAMS
Solicitor General
Counsel of Record

HOLLY J. WILSON
Principal Deputy Solicitor General

MATTIE F. SHULER
Assistant Solicitor General

Counsel for Amicus Curiae *State of West Virginia*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions & Statutes

Other Authorities

INTRODUCTION AND INTERESTS OF *AMICI CURIAE*[1]

States create corporations. Historically, Congress has not. And this Court has agreed Congress *should* not. Rightly so. The Framers debated giving Congress federal chartering power at the Constitutional Convention. But they voted it down. The Tenth Amendment then locked in the choice to make States the primary charterers. And for more than two centuries, through every expansion of federal regulatory power, Congress seemingly respected the line the Framers drew. Looking back on that long arc, this Court put it plainly: "[n]o principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations." *CTS Corp.* v. *Dynamics Corp. of Am.*, 481 U.S. 69, 89 (1987).

The Corporate Transparency Act takes a major swipe at the States' traditional authority. The moment a small business files papers with a State's Secretary of State, the CTA conscripts its owners to turn over sensitive personal information for a federal law enforcement database; it threatens criminal penalties for anyone who hesitates. 31 U.S.C. § 5336(b), (h). None of these requirements turn on whether the entity has, does, or ever will engage in interstate commerce. The trigger is the act of incorporation alone. So millions of state-chartered entities and tens of millions of state citizens are swept in on that sole basis, at a first-year cost of more than 118 million work-hours and billions of dollars. *Beneficial Ownership Information Reporting Requirements*, 87 Fed. Reg. 59,498, 59,549, 59,581-82 (Sept. 30, 2022). And

---

[1] Under Supreme Court Rule 37.2, *amici* timely notified counsel of record of their intent to file this brief.

the federal government becomes the new corporate recordkeeper.

The States get hit hard. Their residents and small businesses absorb the burden, and their agencies are drafted into the federal reporting scheme. But most fundamentally, the Act quietly redraws States' constitutional authority over the entities they alone bring into being. It bakes new requirements into the state-controlled corporate formation process. And, in a related case, *National Small Business United* v. *United States Department of Treasury*, 161 F.4th 1323 (11th Cir. 2025), the Eleventh Circuit has, for the first time, placed every state-chartered entity in America within Congress's reach. Its decision that corporate formation *is* commerce breaks sharply from the district court here. And its reasoning has no limit: every company in America—active or dormant, commercial or charitable, for-profit or not—is now open to federal control from cradle to grave. That sweeping conception of the commerce power invites Congress to treat every other creature of state law the same way.

The Court should grant the petition here. Amici States have already explained why the Court should grant the petition in *National Small Business United* v. *Bessent*, No. 25-1201 (U.S. filed Apr. 15, 2026). Granting this complementary petition will ensure that the Court has the clearest picture and fullest record in evaluating these important questions.

SUMMARY OF ARGUMENT

I. States form (and largely regulate) domestic corporations. This Court has said so for over a century: corporations are "entities whose very existence and attributes are a product of state law." *CTS Corp.*, 481 U.S. at 89. And out of respect for state sovereignty, this Court's precedents demand that Congress speak with "exceedingly clear" language before intruding on traditional state domains like corporate formation. *U.S. Forest Serv.* v. *Cowpasture River Pres. Ass'n*, 590 U.S. 604, 622 (2020). Federalism should drive the analysis—but the Eleventh Circuit didn't seem to think so. The court didn't engage with federalism at all, even though the CTA is an unprecedented federal power grab. And had it earnestly searched for the clear statement required to shift traditional state power, it would have come up empty. That absence should have been enough to decide this case.

II. The Eleventh Circuit's reasoning opens the door to unlimited federal commerce power. By holding that every state-chartered entity is, by virtue of incorporation, engaged in federally regulable "economic activity," the Eleventh Circuit pushed *Wickard* v. *Filburn*, 317 U.S. 111 (1942), past its breaking point. It collapsed the line *NFIB* v. *Sebelius*, 567 U.S. 519 (2012), drew between activity and inactivity. And it rendered landmark decisions like *United States* v. *Lopez*, 514 U.S. 549 (1995), and *United States* v. *Morrison*, 529 U.S. 598 (2000), meaningless. Left unchecked, the decision will justify federal regulation of nearly any state-created entity or status that might somehow, someday touch commerce.

III. For the States, the stakes are high. FinCEN projects millions of compliance hours and billions of dollars in first-year costs, falling heaviest on the small businesses that are the engines of state economies. 87

Fed. Reg. at 59,573, 59,581-82. Congress expects State agencies to work for free, too, under the CTA's cooperation mandates. 31 U.S.C. § 5336(d)(2), (e)(2)(A), (j). More, CTA-related fraud schemes have already surfaced targeting States' residents. And every day that the CTA remains on the books, these injuries compound.

REASONS FOR GRANTING THE PETITION

I. The CTA upends the federal-state balance.

As the district court below understood, federalism principles set the stage. App.44-45. Yet the Eleventh Circuit brushed past them, endorsing the CTA's sweeping conception of congressional power over corporations. That choice was a mistake. This Court should grant the petition to put States back in the driver's seat—where they belong.

A. Corporations have been grounded in state law since the Founding. At the Constitutional Convention, the Framers proposed giving Congress the power to grant federal charters of incorporation. 2 RECORDS OF THE FEDERAL CONVENTION OF 1787, at 325 (M. Farrand ed., 1911). The delegates rejected the proposals. The prevailing voices warned that a federal chartering power would "prejudice[]" and "divide[]" the States and permit the creation of nationwide "monopolies of every sort." *Id.* at 615-16. The Framers made their choice deliberately, even understanding "that leaving business regulation primarily to the individual states might cause friction within the overall American economy." Allen D. Boyer, *Federalism and Corporation Law: Drawing the Line in State Takeover Regulation*, 47 OHIO ST. L.J. 1037, 1041 (1986). They were "more reluctant … to allow

concentrations of economic power, which they visualized as a government-sponsored monopoly." *Id.*

The Tenth Amendment later confirmed the point. It reserves to the States the powers not delegated to the United States. See U.S. CONST. amend. X. And because federal chartering was not, in fact, delegated to the United States, that power stayed with the States. See David B. Simpson, *Does Federalism Provide A Means to Circumvent Citizens United*?, 20 U.C. DAVIS BUS. L.J. 253, 257 (2020); see also, *e.g.*, *Helvering* v. *Nw. Steel Rolling Mills*, 311 U.S. 46, 53 (1940) (noting the argument that a statute "violate[d] the Tenth Amendment because it interfere[d] with the authority of the states to prescribe the powers of corporations and the conditions under which their powers may be exercised," though finding the statute ultimately did not limit the powers of corporations).

Corporations were creatures of state law in 1789 and remain creatures of state law today. Every modern business entity in America has a state charter. After all, "[a] private corporation in this country can exist only under the express law of the state or sovereignty by which it was created." *Chi. Title & Tr. Co.* v. *Forty-One Thirty-Six Wilcox Bldg. Corp.*, 302 U.S. 120, 124-25 (1937). That framework was chosen by the Framers, ratified by the people, and preserved across every expansion of federal regulatory authority since.

This Court reinforced this well-known rule in two centuries-worth of decisions. "Corporations are creatures of state law," one decision stressed. *Cort* v. *Ash*, 422 U.S. 66, 84 (1975). Regulation of "internal [corporate] affairs" has been "traditionally relegated to state law in an area of primarily state concern." *Id.* at 67, 84. "No principle of corporation law and practice is more firmly established

than a State's authority to regulate domestic corporations." *CTS Corp.*, 481 U.S. at 89. And Justice Scalia put it more plainly still: regulating the governance of state-chartered companies "is a traditional state function with which the Federal Congress has never, to my knowledge, intentionally interfered." *Id.* at 96 (Scalia, J., concurring in part).

So States create corporations, define what they are, and set the terms on which they exist. "[O]nly one State"—and by extension, one sovereign authority—"should have the authority to regulate a corporation's internal affairs." *Edgar* v. *MITE Corp.*, 457 U.S. 624, 645 (1982). That's the State that brought the corporation into being.

This understanding has remained over "heated debate" that competition among States was creating a "race to the bottom" or, maybe, a "race to the top." Carl W. Mills, *Breach of Fiduciary Duty as Securities Fraud:* Sec v. Chancellor Corp., 10 FORDHAM J. CORP. & FIN. L. 439, 448 (2005); Boyer, *supra*, at 1037-38. No matter who's right, it's a feature—not a glitch—that States get to choose their own course. Our constitutional system reflects the judgment that the States' ability to adopt "alternative solutions to the many difficult regulatory problems that arise in corporate law" is valuable—and "cannot be adequately replaced by a uniform federal standard." Mills, *supra* at 498 (quoting Stephen M. Bainbridge, *The Creeping Federalization of Corporate Law*, REGULATION (Spring 2003), at 26, 27-28).

Federalism, in this domain, is an uninterrupted, two-hundred-year practice that must be honored.

B. When a federal statute strikes at the heart of state authority—like the CTA does—this Court's precedents

require more than a post-hoc rationale. Even if one assumes that Congress *does* have the power to act, Congress still must speak with "unmistakably clear" language before it upsets the federal-state balance. *Will* v. *Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989) (cleaned up). And reviewing courts must begin the analysis by asking whether Congress has done so. See *Gregory* v. *Ashcroft*, 501 U.S. 452, 460 (1991). "Congress's ability to legislate in areas traditionally regulated by the States is an extraordinary power in a federalist system, so courts must assume Congress does not exercise that power lightly." *Id.* (cleaned up). To "place [its] intent beyond dispute," Congress must use "exceedingly clear" language. *U.S. Forest Serv.*, 590 U.S. at 621-22. Congress must announce its understanding that it is striking at other sovereigns. Short of that, statutes "will not be deemed to have significantly changed" the constitutional "balance" favoring the States' traditional zones of authority. *United States* v. *Bass*, 404 U.S. 336, 349 (1971); see, *e.g.*, *Sackett* v. *EPA*, 598 U.S. 651, 679-80 (2023) (holding that "overly broad" reading of Clean Water Act would "impinge on" "traditional state authority" without clear statement).

The clear-statement principle does not stand alone. It exists because "the sovereignty of the States is limited by the Constitution itself," *Garcia* v. *San Antonio Metro. Transit Auth.*, 469 U.S. 528, 548 (1985), and because "the background principle[s]" of federalism are "grounded in the very structure of the Constitution" and "protect[] the liberty of the individual from arbitrary power," *Bond* v. *United States*, 572 U.S. 844, 862-63 (2014) (cleaned up). "In the tension between federal and state power lies the promise of liberty." *Gregory*, 501 U.S. at 459. So, the clear-statement rule isn't a judicial hallucination; it is a structural guarantee.

This Court understands why it matters that federal power not crowd out the States. Time and again, this Court has reminded that "more local" governance is "more accountable" governance—an accountability that federal uniformity displaces. *West Virginia* v. *EPA*, 597 U.S. 697, 739 (2022) (Gorsuch, J., concurring) (cleaned up).

C. The CTA overtakes too much state-law ground with too little authority.

Congress chose to "embrace a reporting regime where the federal government, not the states, would collect, hold, and share beneficial ownership information." Kevin L. Shepherd, *Compliance with the New Reporting Regulations Under the Corporate Transparency Act*, PRAC. REAL EST. LAW., Jan. 2024, at 3, 6. And it shifts to the federal level "oversight to the regulation of business entities and their operations" that "traditionally has resided with U.S. states." William E.H. Quick, *The Corporate Transparency Act: A New Federal Reporting Obligation That Impacts Almost Everyone*, 79 J. MO. B. 270, 273 (2023).

Consider the CTA's purpose. Congress announced its "sense" that it was imposing "a clear, Federal standard for incorporation practices." William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 6402(5)(A), 134 Stat. 3388, 4604 (statutory note to 31 U.S.C. § 5336). But given that the first rule of corporate law is that States, not Congress, "regulate domestic corporations," *CTS Corp.*, 481 U.S. at 89, the CTA starts on shaky ground.

Congress's other justifications—money-laundering enforcement and compliance with international anti-money-laundering standards, Pub. L. No. 116-283, § 6402(5)(D)–(E), 134 Stat. 3388, 4604—don't help. The

statute applies to corporate entities the moment they come into existence—before they begin handling money or engaging in commerce. And anyway, when it comes to law enforcement, the States are not Congress's junior partner in addressing such activities. Quite the opposite. It's the States who have "near-complete autonomy, historical primacy, and enormous institutional advantages." Erin C. Blondel, *The Structure of Criminal Federalism*, 98 NOTRE DAME L. REV. 1037, 1099 (2023).

This Court has recognized as much: Congress cannot lightly "convert[] an astonishing amount of traditionally local criminal conduct into a matter for federal enforcement." *Bond*, 572 U.S. at 863 (cleaned up). Yet, the CTA does exactly that. And it does so on a staggering scale. "Despite the limited number of bad actors who form the target of the CTA, the law casts a very wide net"—so wide that "[m]uch of the business community swept into" it "will be unwitting and innocent bycatch." Quick, *supra*, at 271. And the consequences for these many entities are huge. The law's "reporting obligations" "touch on the sensitive issue of personal anonymity historically enjoyed by U.S. beneficial owners." Quick, *supra*, at 273. Too, the Act creates new risks of serious civil and criminal penalties, including thousands in fines and penalties and up to two years in prison, for the thousands of reporting companies doing business in the States.

The CTA also treads into dangerous Tenth Amendment territory. The Act orders all state agencies to "cooperate with and provide information requested by FinCEN" for purposes of administering the federal beneficial ownership database. 31 U.S.C. § 5336(d)(2). That mandate is not optional. So the CTA—at a minimum—rubs up against the anticommandeering doctrine. See *Murphy* v. *NCAA*, 584 U.S. 453, 473 (2018);

Haaland v. *Brackeen*, 599 U.S. 255, 281 (2023). It certainly doesn't respect the traditional state authority over corporate formation preserved in the amendment.

The Eleventh Circuit ignored all these federalism red flags, though. Faced with a statute that reaches every state-chartered entity in America, the Eleventh Circuit focused entirely on the Commerce Clause. The court asked whether the CTA regulated "economic activity," answered yes, and held the statute constitutional on that basis. *NSBU*, 161 F.4th at 1329-30. Whether Congress must respect the structural line between what the States create and what Congress regulates did not figure into the analysis. The court's opinion does not mention the Tenth Amendment or discuss state sovereignty. It does not pause on the Framers' decision to withhold federal chartering power. See *id.* at 1326-1334. And even assuming congressional authority, it does not identify a clear statement reflecting Congress's knowing and intentional choice to upend traditional state control in this field. (If anything, the context—in which the provision was tucked into the otherwise non-germane National Defense Authorization Act—suggests the bill's seismic effects were *not* so knowing, really.)

The result is a constitutional holding that rests on half an analysis. A federal court of appeals cannot nationalize a traditional state domain by reasoning backward from the Commerce Clause. The federalism question is the first question, not the last. And the Eleventh Circuit's failure to ask it at all—or, in the Fifth Circuit, the risk that they will not—is reason enough to grant review.

II. The Eleventh Circuit unleashed unlimited federal commerce power.

The Eleventh Circuit's focus on corporate existence did more than just disadvantage state power. In concluding that state incorporation equates to "economic activity," the Eleventh Circuit also handed Congress plenary authority over every entity States create. No decision of this Court compels that result. Many foreclose it.

A. Article I, Section 8, Clause 3 of the Constitution grants Congress power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Broken down, Congress's commerce power thus includes "three broad categories": (1) the "use of the channels of interstate commerce," (2) the "instrumentalities of interstate commerce, or persons or things in interstate commerce," and (3) "those activities that substantially affect interstate commerce." *Lopez*, 514 U.S. at 558-59. Because the CTA reaches even purely intrastate corporations (a point the Government apparently concedes), this case could only implicate the third category.

The substantial-effects test has always measured Congress' power against the ongoing conduct Congress seeks to regulate. The "economic activity" in *Wickard* was a farmer's decision to grow wheat. 317 U.S. at 114. In *Raich*, it was the cultivation and possession of marijuana. *Gonzales* v. *Raich*, 545 U.S. 1, 18-19 (2005). In *Heart of Atlanta Motel*, an inn was operating and refusing to serve customers. *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241, 258 (1964). Each case asked: what is the regulated party doing today, and is it economic? But the Eleventh Circuit asked: what is the "nature" of the regulated party, and can it be deemed commercial?

NSBU, 161 F.4th at 1330. And the government will invite the Fifth Circuit to ask the same wrong question.

By focusing heavily on the "nature" of the *entity* (and not the activity), the Eleventh Circuit erased the line drawn in *NFIB* v. *Sebelius*, 567 U.S. 519, 551-58 (2012) (opinion of Roberts, C.J.). *Sebelius* saw that Congress's commerce power reaches "activity" only. It does not reach inactivity. *Id.* at 551. The Commerce Clause "presupposes the existence of commercial activity to be regulated," *id.* at 550, and Congress may not target persons or entities "doing nothing," *id.* at 555-56. The "police power to regulate individuals as such, as opposed to their activities, remains vested in the States." *Id.* at 557. And it was not enough that individuals would be forced to engage with the health system—and thus face the consequences of their choice not to buy insurance—in the future. *Id.* at 547 ("Everyone will eventually need health care at a time."). The joint dissent was even more pointed: Congress has no commerce power to regulate something "simply because it exists." *Id.* at 658 (joint dissent).

Yet the CTA regulates even entirely dormant corporations. It compels "any reporting company" that is "formed or registered" under state law to submit beneficial ownership information to FinCEN—without regard to whether that entity is engaged in any preexisting economic activity. 31 U.S.C. § 5336(b)(1)(A)–(D). The statute defines a "reporting company" as an entity "created by the filing of a document" with state authorities, *id.* § 5336(a)(11)(A)(i). So, it regulates state-chartered entities "simply because [they] exist[]," *NFIB*, 567 U.S. at 658 (joint dissent)—and for no other reason. See App.57. Just as people can't be subject to congressional power merely because they exist as

potential market participants, corporations can't, either. Cf. *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706 (2014) ("A corporation is simply a form of organization used by human beings to achieve desired ends.").

The Eleventh Circuit found some regulable activity only by employing a transitive chain of reasoning that the Court has never adopted: a corporate entity can be important to business, and business activity comprises economic activity, so the entity is economic. *NSBU*, 161 F.4th at 1329-30. But even the "run-of-the-mill criminal" activity that the Eleventh Circuit conceded does not fall within Congress's reach would become "economic" activity, *id.* at 1329, as safety and rules are an essential part of economic markets, too. After all, "without … criminal laws penalizing interference with property and contract rights, there could be no large-scale functioning market economy." Michel Rosenfeld, *Law As Discourse: Bridging the Gap Between Democracy and Rights Between Facts and Norms*, 108 HARV. L. REV. 1163, 1173 (1995). But that was the *Lopez* dissent's view—not the reading that won out. See *Lopez*, 514 U.S. at 630-31 (Breyer, J., dissenting) (discussing economic consequences of crime).

In the end, under the Eleventh Circuit's view, a corporation is thought to be engaged in regulable economic activity not because it is doing anything—but because it simply *is*. A dormant LLC with no revenue, no employees, and no business is just as "economic" as a Fortune 500 company. The commercial "nature" of the corporate form, on the Eleventh Circuit's account, attaches at incorporation and never lets go. *NSBU*, 161 F.4th at 1329-30. Considering *Sebelius*, that conclusion is wrong. See App.57.

B. With the same question now before the Fifth Circuit, the cost of getting this wrong is real and immediate. Congress's commerce power is not limitless, and courts evaluate purported exercises "in the light of our dual system of government." *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937). Congress may not extend its power "so as to embrace effects upon interstate commerce so indirect" as to "effectually obliterate the distinction between what is national and what is local." *Id.* The Eleventh Circuit's test ignores this principle, and the consequences of leaving it standing could be devastating for the States.

The Eleventh Circuit's reasoning has no principled stopping point. If being a state-chartered entity amounts to regulable economic activity, Congress's commerce power reaches every creature of state law—partnerships, professional associations, cooperatives, charitable nonprofits, religious organizations, and family trusts alike. Each is state-chartered. Each has an ongoing existence it maintains. Each fits the logic the Eleventh Circuit endorsed. Under the decision below, Congress could require federal reporting from state-chartered nonprofits, governance restrictions on professional associations, or operational disclosures from family trusts—each justified on the same rationale that sustains the CTA. The limit would not come from the Commerce Clause. It would come from the political will of a particular Congress—and even that check is temporary. Never mind the constitutional spillover effects that could result even outside the question of Congress's commerce power. See, *e.g.*, *Ams. for Prosperity Found.* v. *Bonta*, 594 U.S. 595, 619 (2021) (holding that compelled disclosure of non-profit's donors violated the First Amendment right to free association). Every additional circuit that adopts the theory broadens that reach.

The logic doesn't stop there, though. The Eleventh Circuit's rationale would reach natural persons through their state-granted statuses just as readily. Marriage licenses, professional credentials, driver's licenses, and voter registrations are all state issued. Each is maintained by its holder. Each could be characterized, on the Eleventh Circuit's reasoning, as enabling commerce in the aggregate—marriages generate spending, credentials permit work, licenses enable travel. This Court rejected that kind of reasoning when it declined to treat the healthcare individual mandate as regulation of the commerce people would inevitably engage in "over the course of their lives." *NFIB*, 567 U.S. at 557 (Ginsburg, J., concurring in part). The Eleventh Circuit's logic, taken seriously, would leave natural persons no more protected from status-based federal regulation than the corporations whose "nature" it deemed sufficient to trigger Commerce Clause authority.

Justice Thomas warned of this slippery slope in *Lopez*. Without a meaningful limit on the substantial-effects test, he wrote, Congress would wield "a general police power" extending to all aspects of American life. *Lopez*, 514 U.S. at 584 (Thomas, J., concurring). The Eleventh Circuit's decision points to that destination. It accepts a theory of commercial-status regulation with no discernible limit, applies it to one of the oldest domains of state sovereignty in our system, and clears the ground for the same logic to apply to every other. Allowing that result would eliminate "the distinction between what is national and what is local and create a completely centralized government." *United States* v. *Morrison*, 529 U.S. 598, 608 (2000) (cleaned up).

The Eleventh Circuit's Commerce Clause holding cannot be reconciled with this Court's precedent or the enumerated-powers structure those decisions protect. It

makes status the trigger, existence the activity, and every state-chartered entity permanently subject to federal regulation. Without this Court's intervention, that logic could spread. The Court should grant the petition (and the petition in *NSBU*) before it does.

III. The States will suffer.

The constitutional questions before the Court arise against concrete, daily harm to the States' economies and citizens. Those costs justify immediate intervention. Even more so considering that the full scope of the CTA could spring back to life with a change in the administration or a single bad court decision against the Interim Final Rule. Better to relieve these burdens for good—now.

A. The CTA is a time-suck like no other. FinCEN estimated the burden to file initial reports would range between 90 minutes for reporting companies with a "simple structure," to 370 minutes for those with an "intermediate structure," to 650 minutes for those whose structure is "complex." 87 Fed. Reg. at 59,573. Those estimates translated to 118,572,335 hours nationwide in the CTA's first year—followed by another 18,204,421 hours in its second. *Id.* at 59,581.

Bad enough as those admitted numbers are on their own, they're likely underestimates. For example, the time FinCEN allotted for a reporting company with a "simple structure" presumed that a single employee would handle the task and would spend a mere 90 minutes to read and "understand" the statutory and regulatory requirements and definitions; "[i]dentify, collect, and review information about beneficial owners and company applicants"; and "fill out and file [the] report." 87 Fed. Reg. at 59,573. Expecting all that to happen well before lunch on a single

day is unrealistic—especially when a rush job could have severe consequences.

Indeed, when it came to its rule implementing the CTA, FinCEN had many public comments explaining how its "estimated time burden … for filing initial reports was unrealistically low given the complexity of the requirements." 87 Fed. Reg. at 59,553. As the U.S. Chamber of Commerce explained, for instance, "Disclosure of beneficial ownership is an entirely new federal requirement, from an agency that most businesses are unfamiliar with." U.S. Chamber of Com., Comment letter on Proposed Rule regarding Beneficial Ownership Reporting Requirements (Dkt. No. FINCEN-2021-0005), at 3 (May 7, 2021), https://perma.cc/ER3H-5WY5. Another commenter explained, reasonably enough, "that the 20[-]minute allotment to read the form and understand the requirement from the initial report time estimate should be increased to no fewer than 4.5 hours per report." 87 Fed. Reg. at 59,553. Still another explained how FinCEN's estimates "are off by at least 400 percent and quite likely several times that." *Id.* at 59,554.

FinCEN's already-faulty initial numbers didn't even include the time needed to apply for and update FinCEN identifiers—the "unique identifying number[s] that FinCEN will issue to individuals or reporting companies upon request, subject to certain conditions." 87 Fed. Reg. at 59,507. Here, FinCEN estimated an additional time burden of 110,553 hours in year one and 21,091 hours in year two. *Id.* at 59,581. Then add to *that* the time to update initial filings after circumstances like name and address changes, identification number expirations, beneficial owners who pass away, or "management decision[s] resulting in a change in beneficial owner." *Id.* at 59,574. Companies must file updates within 30 calendar

days of each of these triggering circumstances, *id.* at 59,592, requiring (again, under FinCEN's own and questionably low estimates) another 7,657,096 hours in year one, *id.* at 59,581. And unlike the other burdens, this one goes *up* in future years: FinCEN estimated 16,826,105 hours will be needed the second year. *Id.*

The toll isn't just time; it's money, too.

FinCEN estimated each reporting company would incur between $85.14 and $2,614.87 to file an initial report. 87 Fed. Reg. at 59,559. "If all 32,556,929 existing reporting companies have to incur [that expense] in the same single year, the aggregate cost … is approximately $21.7 billion for Year 1" and $3.3 billion after. *Id.* at 59,559, 59,581. FinCEN thought updating reports would cost another $3.3 billion the first two years. *Id.* at 59,581. Put another way, complying with the CTA would impose "undoubtedly significant costs of approximately *$22.8 billion* in the first year and *$5.6 billion each year thereafter*." *Id.* at 59,582 (emphases added). And though the 2025 Interim Rule took pressure off domestic corporations for now, "approximately 40 percent of expected year 1 costs have already accrued." *Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension*, 90 Fed. Reg. 13,688, 13,694 (Mar. 26, 2025).

Again, FinCEN's figures were incomplete. They included employee wages (based on the too-low hour estimates) and costs to engage professionals like attorneys and CPAs—but only for "intermediate structure" and "complex structure" reporting companies. 87 Fed. Reg. at 59,573. The idea that no "simple structure" companies would need help navigating the CTA and completing their filings is irresponsible. After all, "any person"—not just the company itself—who fails

to report "complete or updated beneficial ownership information" faces civil penalties of $500 per day, up to $10,000 in fines, and 2 years in federal prison. 31 U.S.C. § 5336(h)(1), (h)(3)(a). To mitigate that risk, most reporting companies would likely need legal counsel or other expert help to "navigat[e] their FinCEN reporting responsibilities while safeguarding against potential risks and fraudulent practices." Matthew B. Edwards & D. Parker Baker III, *The Basic Ins and Outs of the Corporate Transparency Act*, S.C. LAW., Sept. 2023, at 24, 29. Anyone who has wrestled with corporate tax filings knows the headaches this structure will bring, too. See *The Corporate Transparency Act Sounds Harmless. It's Not.*, WASH. POST (Apr. 19, 2026), https://perma.cc/U9HV-LG5B ("The Corporate Transparency Act, in addition to being unconstitutional, is so confusing that the federal government's 'Frequently Asked Questions' webpage about it has 122 questions.").

Financial costs don't end there. The time to apply for and update FinCEN identifiers carry associated wage costs—FinCEN was willing to admit at least another $6.2 million for that in the first year and around $950,000 afterward. 87 Fed. Reg. at 59,577. Commenters also pointed out that FinCEN missed the "cost of securing data" for reports, "including images of identification documents, as well as the harms should such information not be kept secure." *Id.* FinCEN acknowledged these "potentially significant costs to businesses for securing the data and in increased identity theft risk to individuals in the event of a data breach." *Id.* But curiously, it neglected any "estimates for these costs." *Id.*

B. Every reporting company is bound to suffer, but the financial and resource burden falls heaviest on small businesses. The largest public corporations already

disclose beneficial ownership under the securities laws, and most are exempt from the CTA outright. 31 U.S.C. § 5336(a)(11)(B). Companies employing twenty or fewer people are among the CTA's principal targets. See 31 U.S.C. § 5336(a)(11)(A), (B)(xxi). "According to FinCEN, 32.6 million law-abiding small business owners were required to file their BOI with the federal government." Letter from Josh McLeod, Fed. Gov't Rels. Dir., NFIB, to French Hill, Chairman, and Maxine Waters, Ranking Member, House Fin. Servs. Comm. (Mar. 17, 2026), https://perma.cc/CU6Y-9V7F.

And small businesses are the backbone of state economies. In West Virginia, small businesses make up 98% of *all* businesses and employ almost half of *all* employees. *Entrepreneurship*, W. VA. ECON. DEV., https://perma.cc/HHB5-SVLJ (last visited June 17, 2026). Other States' numbers look similar. *E.g.* OFF. OF ADVOC., U.S. SMALL BUS. ADMIN., 2025 SMALL BUSINESS PROFILE –IOWA, https://perma.cc/8RU3-8EBJ (reporting that small businesses make up 99.3% of all businesses and employ 46% of all employees). Nationally, small businesses employ nearly half the private workforce and generate most new jobs. See U.S. SMALL BUS. ADMIN., FREQUENTLY ASKED QUESTIONS ABOUT SMALL BUSINESS (2024), https://perma.cc/YUN4-UCX2.

Unfortunately, small businesses already bear a disproportionate share of the federal regulatory burden—roughly 63% of total regulatory costs by one estimate, against a national regulatory tab that runs over $1.9 trillion a year. See Jeffrey J. Polich, *Judicial Review and the Small Business Regulatory Enforcement Fairness Act*, 41 WM. & MARY L. REV. 1425, 1432 (2000); CLYDE WAYNE CREWS, JR., COMPETITIVE ENTER. INST., TEN THOUSAND COMMANDMENTS: AN ANNUAL SNAPSHOT OF

THE FEDERAL REGULATORY STATE 6, 33 (2022). And the CTA adds to that load. For businesses that employ twenty or fewer workers, compliance is not an administrative footnote—each employee diverted to a federal reporting obligation is an employee pulled from productive work. And those costs flow directly to consumers, who face nearly 1% price increases for every 10% rise in overall federal regulation. Dustin Chambers et al., *How Do Federal Regulations Affect Consumer Prices? An Analysis of the Regressive Effects of Regulation*, 180 PUB. CHOICE 57, 80-81 (2019). Regulatory burdens of this magnitude also deter investment, as unpredictable legal demands reduce or eliminate the returns investors require. See Richard J. Pierce, Jr., *The Combination of* Chevron *and Political Polarity Has Awful Effects*, 70 Duke L.J. Online 91, 92, 99 (2021).

So, depressing small businesses means depressing state economies.

C. The CTA draws the States directly in, too—at considerable cost.

The States will incur direct costs on top of what their residents and businesses will suffer. The statute authorizes FinCEN to request information from state agencies and contemplates state participation in implementation. 31 U.S.C. § 5336(d), (e)(2)(A). In practice, the offices of state Secretaries of State become conduits for a federal reporting regime they neither built nor asked for. These information requests all take time and money—resources state governments will be required to divert from other enforcement and regulatory priorities.

None of the administrative work involved comes with guaranteed federal reimbursement. Section 5336(j)

authorizes FinCEN to reimburse States for "reasonable costs," but only for three fiscal years, only to the extent Congress appropriates funds, and only subject to FinCEN's discretionary approval. See 31 U.S.C. § 5336(j). "By forcing state governments to absorb the financial burden of implementing [the] federal regulatory program, Members of Congress can take credit for 'solving' problems without having to ask their constituents to pay for the solutions with higher federal taxes." *Printz* v. *United States*, 521 U.S. 898, 930 (1997). But state taxpayers are ultimately forced to fund the state level pieces of the Act's machinery all the same, whether they support the federal policy or not.

The States also absorb the informational burden. Since enforcement began, small business owners have flooded state agencies with compliance questions. The confusion is fair. Regulators have shifted the CTA's definitions, exemptions, and enforcement timelines multiple times over the last two years. State offices now spend their resources explaining a federal law that the law's own administrators cannot consistently interpret.

Fraudsters are capitalizing on the chaos. FinCEN recently warned the public about schemes where criminals impersonate the agency and demand payment to "file" or "process" beneficial ownership reports. See Press Release, FinCEN, *FinCEN Warns of Fraud Schemes That Abuse Its Name, Insignia, and Authorities for Financial Gain* (Dec. 18, 2024), https://perma.cc/GEE9-EAJQ. State consumer protection offices have issued similar advisories in response to scams targeting older business owners, immigrant entrepreneurs, and small landlords. See, *e.g.*, MISS. SEC'Y OF STATE, BOI FILING SCAMS ALERT (2024); *Business and Charities Scams*, COMMONWEALTH OF PA.,

https://perma.cc/TU3E-DL7W (last visited June 17, 2026) (October 16, 2024 – Additional Beneficial Ownership Information (BIO) Scams). These schemes feed on the Act's confusion. Real people lose real money, and the States are left to clean it up. See, *e.g.* Letter from Josh McLeod, Fed. Gov't Rels. Dir., NFIB, *supra* (detailing how small businesses in Oregon, Texas, Michigan and Florida were scammed).

Every day the Act remains on the books, these injuries continue. Small businesses face uncertainty. State agencies field inquiries. Scammers work the ambiguity. And the next change in federal policy could require millions of reports, restore the CTA's full compliance regime, and trigger a new wave of enforcement with no warning. The practical stakes are ongoing, and they will continue to mount. That's reason enough to act now.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,

JOHN B. MCCUSKEY
Attorney General

OFFICE OF THE
WEST VIRGINIA
ATTORNEY GENERAL
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25306
mwilliams@wvago.gov
(304) 558-2021

MICHAEL R. WILLIAMS
Solicitor General
Counsel of Record

Holly J. Wilson
Principal Deputy
Solicitor General

Mattie F. Shuler
Assistant Solicitor General

Counsel for Amicus Curiae *State of West Virginia*

ADDITIONAL LEGAL REPRESENTATIVES OF THE STATES

STEVE MARSHALL
Attorney General
State of Alabama

KRIS KOBACH
Attorney General
State of Kansas

CORI MILLS
Acting Attorney General
State of Alaska

RUSSELL COLEMAN
Attorney General
State of Kentucky

TIM GRIFFIN
Attorney General
State of Arkansas

LIZ MURRILL
Attorney General
State of Louisiana

JAMES UTHMEIER
Attorney General
State of Florida

LYNN FITCH
Attorney General
State of Mississippi

CHRIS CARR
Attorney General
State of Georgia

CATHERINE HANAWAY
Attorney General
State of Missouri

RAÚL LABRADOR
Attorney General
State of Idaho

AUSTIN KNUDSEN
Attorney General
State of Montana

THEODORE E. ROKITA
Attorney General
State of Indiana

MICHAEL T. HILGERS
Attorney General
State of Nebraska

BRENNA BIRD
Attorney General
State of Iowa

DREW WRIGLEY
Attorney General
State of North Dakota

ANDY WILSON
Attorney General
State of Ohio

JONATHAN SKRMETTI
Attorney General
State of Tennessee

GENTNER DRUMMOND
Attorney General
State of Oklahoma

KEN PAXTON
Attorney General
State of Texas

ALAN WILSON
Attorney General
State of South Carolina

DEREK BROWN
Attorney General
State of Utah

MARTY JACKLEY
Attorney General
State of South Dakota

KEITH G. KAUTZ
Attorney General
State of Wyoming