No. 24-40792

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TEXAS TOP COP SHOP, INC., *et al.*,

Plaintiffs-Appellees,

v.

PAMELA BONDI, ATTORNEY GENERAL OF THE UNITED STATES, *et al.*,

Defendants-Appellants.

BRIEF OF *AMICI CURIAE* NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS AND JOB CREATORS NETWORK FOUNDATION IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS

Pursuant to this Court's Rule 29.2 and Federal Rule of Appellate Procedure 26.1, the National Association of Wholesaler-Distributers and the Job Creators Network Foundation submit this supplemental certificate of interested persons to fully disclose all those with an interest in this motion and provide the required information as to their corporate status and affiliations.

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case, in addition to those listed in the briefs of the parties. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Amicus Curiae: National Association of Wholesaler-Distributers is a 501(c)(6) non-profit trade association. It has no parent corporation or subsidiary, it does not issue shares or securities, and no publicly held corporation owns 10% or more of its stock.

Amicus Curiae: Job Creators Network Foundation is a 501(c)(3) non-profit organization. It has no parent corporation or subsidiary, it does not issue shares or securities, and no publicly held corporation owns 10% or more of its stock.

/s/ Grady J. Block
Grady J. Block

Counsel of Record for the National Association of Wholesaler-Distributers and the Job Creators Network Foundation

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INTERESTS OF *AMICI CURIAE*[1]

National Association of Wholesaler-Distributors (NAW) is an employer and a non-profit, non-stock, incorporated trade association that represents the wholesale distribution industry—the essential link in the supply chain between manufacturers and retailers as well as commercial, institutional, and governmental end users. NAW is made up of direct-member companies and a federation of national, regional, and state associations across 19 commodity lines of trade which together include approximately 35,000 companies operating nearly 150,000 locations throughout the nation. The overwhelming majority of wholesaler-distributors are small-to-medium-size, closely held businesses. As an industry, wholesale distribution generates more than $8 trillion in annual sales volume providing stable and well-paying jobs to more than 6 million workers.

The Job Creators Network Foundation (JCNF) is a 501(c)(3) nonpartisan organization founded by entrepreneurs committed to educating employees of Main Street America about government policies that harm economic freedom. JCNF's Legal Action Fund defends against government overreach to ensure that America's free market system is not only protected but allowed to thrive.

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[1]All parties consented in writing to the filing of this brief, no party's counsel authored this brief in part or in whole, and no person other than *amici* and their counsel made any monetary contribution to fund its preparation or submission.

Amici file this brief on their own behalf and on behalf of their members, whose operations and employees are placed at risk by the Corporate Transparency Act.

SUMMARY OF THE ARGUMENT

There is no reason for the Court—for this Panel—to change course. The Corporate Transparency Act (Act or CTA) is unconstitutional and will imminently and irreparably harm small-to-medium-size businesses and the people that run them nationwide. The federal regulators' attempt to implement the Act through the Reporting Rule also is unconstitutional and—17 days before the new compliance deadline and 28 days before this Court will hear argument—imminently and irreparably harmful. Despite all the procedure in this case, *see* Pls.-Appellees' Br.-in-Chief 11–16, those same central defects have not changed.

Acknowledging the strength of the plaintiffs' case, the weaknesses of the government's case, and the nationwide harms, the district court enjoined operation of the CTA. The Act's universal, invasive reporting scheme transcends Congress's enumerated powers under the Commerce Clause and otherwise, intrudes on traditional areas of state authority, and imperils core privacy and associational rights. The government's contrary contentions not only are wrong, but also ignore the extensive, irreparable harms that small-to-medium-size businesses—like many wholesaler-distributors—will suffer. The district court was correct to enjoy the CTA, and this Court should stay its course and affirm the district court's decision.

ARGUMENT

I. THE CTA EXCEEDS CONGRESS'S POWER UNDER THE COMMERCE CLAUSE.

The Corporate Transparency Act sets out a universal disclosure obligation that ensnares countless state-chartered businesses whose day-to-day activities have no discernible connection to interstate commerce. That indiscriminate approach runs counter to Supreme Court precedent holding that purely local, non-economic matters do not fall within the federal commerce power. *See United States v. Lopez*, 514 U.S. 549, 567 (1995); *United States v. Morrison*, 529 U.S. 598, 617–18 (2000). Although Congress may indeed regulate economic activity that substantially affects commerce across state lines, the Constitution does not sanction a blanket directive that targets every entity—even those with no meaningful link to any broader market.

Moreover, the CTA contrasts with the statutory schemes upheld in *Wickard v. Filburn*, 317 U.S. 111 (1942), and *Gonzales v. Raich*, 545 U.S. 1 (2005), where the federal government regulated tangible goods—wheat or marijuana—whose production, distribution, or use in integrated national markets had a clear effect on interstate supply and demand. By comparison, the CTA requires corporate information filings from businesses irrespective of whether they produce or trade any commodity at all. There is no underlying market dynamic needing federal supervision, such as stabilizing commodity prices or preventing arbitrage in interstate supply. Instead, the statute predicates its reporting requirement on one fact

alone: whether an entity is on file with a State. This leaps well beyond the bounds of *Wickard* and *Raich*, which never endorsed the idea that Congress may freely impose regulations on entities whose commercial footprint is negligible or nonexistent.

The CTA's approach also parallels a constitutional defect identified in *NFIB v. Sebelius*, 567 U.S. 519 (2012), where the Supreme Court struck down part of the Affordable Care Act for attempting to regulate individuals "precisely because they are doing nothing." *Id.* at 552. Ignoring *NFIB*, the CTA does not even mandate the purchase of a product, it tries to regulate companies nationwide simply for their galling decisions ***to exist***. But Congress does not have constitutional authority to extend its power that far.

Nor can the government salvage the CTA by casting it as part of a broader regulatory effort to combat money laundering or other crimes. While Congress can address financial misconduct that truly spans state or national borders, this statute captures far more than the subset of entities even plausibly implicated in such behavior. A local business with no customers outside state lines, or one formed but never activated, faces identical criminal penalties for noncompliance—despite lacking any tangible connection to interstate or foreign commerce. The Constitution demands a real commercial or economic nexus, and penalizing "inactivity" by mere virtue of being a registered corporation falls outside that framework. *See Lopez*, 514 U.S. at 566; *Morrison*, 529 U.S. at 610–11.

Additionally, regulating a corporation's creation and governance has long been a prerogative reserved to the States. *See CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89 (1987). States have historically determined the parameters for forming, operating, and dissolving business entities within their own boundaries. To be sure, Congress may displace certain state laws where truly interstate economic forces are at play, but it cannot nationalize the process of business registration by labeling it a tool to thwart illicit activities. By sweeping in every corporate entity in the United States, the CTA intrudes on a traditionally local function without establishing the constitutionally required connection to commerce among the States. In doing so, the Act disregards the notion that corporate formation falls "at the heart of state sovereignty," and transforms a local matter into an alleged federal concern. That is the kind of overreach the Framers looked to prevent, and the district court rightly concluded that such a universal mandate exceeds the power granted to Congress under the Commerce Clause.

The Government attempts to salvage the statute by insisting that, at least "as applied" to the plaintiff companies, the law would be valid because those businesses allegedly engage in interstate commerce. That argument, however, misapprehends how the CTA works and overlooks *NFIB v. Sebelius*, which bars Congress from inventing a commercial "activity" as a means of exercising power.

Even if some plaintiff businesses incidentally traverse state lines or sell goods to out-of-state customers, the CTA is still constitutionally suspect because the statute is not regulating that preexisting commerce. Instead, it compels universal, ongoing reporting obligations that do not naturally arise from actual commercial conduct but are artificially imposed on every state-formed entity. *NFIB* teaches that Congress "may not compel individuals to become active in commerce," *id.* at 552, yet that is what the CTA does in the corporate context: it legally compels businesses—regardless of their genuine commercial footprint—to file federal disclosures under threat of criminal sanctions. The "activity" the government points to, then, is not a voluntary participation in interstate markets but rather a coerced compliance regime that the Act itself brings into being. This is a classic example of Congress creating a scenario for itself to regulate, something the Constitution does not allow.

Because the CTA's coverage hinges not on whether a company truly affects interstate commerce, but on the bare fact that it is registered under state law, the Government's proposed "as-applied" approach fails. The possibility that the plaintiffs may have ***inter***state business does not cure the structural flaw that the Act compels new "activity"—extensive information filing—even for those whose economic operations, if any, are ***intra***state. By requiring universal disclosure so that the government has something to regulate, the CTA puts the cart before the horse: rather than identify specific commercial transactions ripe for federal oversight, it

insists every enterprise must first submit ownership data as though each were by definition involved in interstate markets. That backwards logic violates the principle at the heart of *Lopez* and *Morrison*, which forbids legislating based on speculative or manufactured connections to commerce. It likewise runs afoul of *NFIB*'s strict admonition that Congress cannot conjure up a regulated class by imposing a duty that did not exist in the normal course of commercial conduct.

Under these circumstances, the district court rightly recognized that limiting the remedy to certain plaintiffs would still leave the fundamental infirmity intact. The CTA's universal coverage, enforced by criminalizing all noncompliance, does not allow for workable distinctions between companies that meaningfully cross state lines and those that do not. Nor can the Government fix the law's overreach by focusing on the handful of businesses that might indeed engage in interstate trade, because the very premise of the Act is to rope in every entity—dormant, purely local, or otherwise—and then declare it subject to federal supervision. Faced with this all-or-nothing statute, the lower court correctly deemed the CTA unconstitutional on its face. No as-applied exception for the plaintiffs (or any other subset of firms) could paper over the CTA's core defect of manufacturing "commerce" to regulate, rather than responding to existing commercial activity that truly implicates federal power.

II. THE CTA IS NOT SAVED BY THE NECESSARY & PROPER CLAUSE OR OTHER ENUMERATED POWERS.

The CTA cannot be salvaged by invoking the Necessary and Proper Clause or

any other enumerated power. Merely branding the statute "helpful" or "useful" for broader federal aims does not render it constitutionally sound. Although Congress may sometimes rely on its taxing power to enact ancillary reporting requirements, the Act does not raise revenue in any meaningful sense or even directly target tax evasion. Calling something "conducive" to tax administration, without more, is too speculative to satisfy the Supreme Court's teachings in *NFIB v. Sebelius*, and *United States v. Lopez*. Instead of serving as a legitimate adjunct to an established revenue measure or tax-collection mechanism, the CTA just invents a reason for the federal government to invade non-federal activity.

The government's attempt to tether the CTA's reporting mandates to the Commerce Clause through the Necessary and Proper Clause likewise fails. The Commerce Clause itself is confined to regulating genuine economic activities (or classes of activities) that substantially affect interstate commerce—*Lopez* and *Morrison* make that limitation plain. For the many companies or entities that do not participate in interstate markets yet are supposedly within the Act's grasp, there is no "commerce" to regulate. *See NFIB*, 567 U.S. at 552 ("Congress cannot…compel individuals to become active in commerce…"). The Necessary and Proper Clause does not relax or expand the outer bounds of the Commerce Clause. In converting non-regulated entities into a regulated class by *fiat*, the Act skips over the threshold requirement that some underlying activity fall within federal reach.

Nor do foreign affairs or national security justifications save the CTA. Courts have never sanctioned an unfettered federal authority over purely domestic or non-economic spheres simply by branding them matters of international concern. While Congress may regulate genuinely cross-border finance activities that implicate money laundering or terrorism, the CTA extends far beyond that by forcing disclosure from tens of millions of local companies that have no nexus whatsoever to foreign markets or transactions. Merely citing "national security" does not obviate the need for a demonstrable connection to an enumerated power. In fact, this dragnet approach underscores how the CTA is not "narrowly tailored" or "incidental" to any legitimate foreign commerce or military objective; it is a one-size-fits-all regulation imposed even on small, wholly local businesses.

Finally, the Necessary and Proper Clause does not function as a standalone source of authority. *See United States v. Comstock*, 560 U.S. 126, 148 (2010). It exists to facilitate the exercise of constitutionally enumerated powers, not to license roving federal regulation of everything that might be labeled a helpful crime-fighting tool. Even if there were a valid interest in preventing money laundering or tax evasion, such interests still demand a substantial link to some constitutionally granted power, whether under the Commerce Clause, the Taxing Power, or another enumerated authority.

By compelling universal ownership disclosures, the CTA sets up a regime that is neither narrowly tied to regulating an established channel of interstate commerce, nor limited to facilitating a permissible federal tax measure, nor properly incidental to any enumerated power involving foreign commerce or national security. Instead, it piles broad reporting demands upon any company with a state filing, stifling core prerogatives of state corporate regulation and reaching far beyond the boundaries that the Necessary and Proper Clause allows.

III. THE CTA WILL CAUSE UNWARRANTED HARMS TO SMALL-TO-MEDIUM-SIZE BUSINESSES NATIONWIDE.

The equitable considerations here overwhelmingly favor affirming the district court's decision. Allowing the CTA to stand would irreparably injure the small-to-medium-size businesses swept under the Act's expansive scope. It would harm the States too.

Starting with the States, the Supreme Court has long recognized that intruding on state prerogatives constitutes a serious harm because it disturbs the core structural balance of our federal system. By imposing federal oversight and criminal penalties on any state-registered business that does not comply, the CTA unduly supplants the States' historic role in administering their own corporate rules. This structural intrusion is far from trivial: it strikes at the heart of the constitutional design.

Equally grave are the burdens thrust upon small businesses, many of which lack the legal or financial resources to navigate the CTA's dense reporting mandates.

Although the Government downplays these costs, data cited by Ms. Harned in her testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs underscores the sweeping nature of compliance expenditures. Even by FinCEN's own estimates, businesses face $85 to $2,615 in costs simply to complete each mandated submission, with complex ownership arrangements inflating those amounts further. *See Beneficial Ownership Information Reporting Requirements*, 87 Fed. Reg. 59,569, 59,585 (Sept. 30, 2022). Worse still, these duties repeat whenever beneficial ownership changes, posing a relentless drain on resources that stifles economic growth. Ms. Harned's testimony also highlighted the pervasive uncertainty about the scope of "beneficial ownership" and "substantial control," exposing small-business owners to harsh civil and even criminal penalties for innocent oversights. Such mandated over-reporting—coupled with FinCEN Director Kenneth Blanco's admission that his agency lacks a robust system to verify the accuracy of submissions—compounds the sense that the Act primarily burdens law-abiding businesses while offering no guaranteed improvement in tracking illicit finance.

The irreparable harm extends beyond financial metrics. Once a business shares sensitive personal information—residential addresses, birth dates, or identification numbers—that data's confidentiality is irretrievably lost. Even if the courts later confirm that the CTA is unconstitutional, no final judgment can un-ring

the bell, Appellees' Supp. Record Excerpts at 34—restoring the privacy and security given up in the interim. For many, the fear of criminal liability creates a chilling effect, discouraging entrepreneurs from forming or maintaining local companies under state law, or prompting them to alter their ownership structures to avoid entanglement with uncertain federal regulations. And because the CTA's penalties accrue daily, any inadvertent noncompliance could prove disastrous to a small- or medium-size business.

These injuries become even more profound when one considers how the CTA intrudes on associational freedom. By forcing organizations—particularly those with expressive or political purposes—to identify and disclose their beneficial owners, the law imposes a substantial risk of chilling membership and participation. *See NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958). Whether the organization is religious, philanthropic, or engaged in advocacy, individuals may be deterred from joining, donating, or taking on leadership roles out of concern that their personal information will be catalogued by the federal government, potentially exposed to public scrutiny or abuse. Once disclosed, that information can never be fully reclaimed, making the harm to First Amendment associational rights permanent and irreversible. This further underscores that the Act's blanket reporting regime imposes real and concrete harms on entities that had no reason to expect federal interference in their wholly local organizational or business activities.

Nor does the government's invocation of national security or law-enforcement priorities overcome these concerns. Congress already wields an extensive arsenal of statutory measures targeting money laundering, terrorism financing, and tax fraud, none of which require every local business entity in the country to surrender sensitive ownership details and private information. The district court recognized that the CTA's universal sweep is more than an incremental enhancement of existing criminal statutes; it is a new and constitutionally suspect intrusion into matters traditionally within state purview. *See* Appellees' Supp. Record Excerpts at 5. Any legitimate public interest in combating wrongdoing must still fit within the constitutional boundaries that safeguard both federalism and fundamental rights. As the district court rightly concluded, the Act's imposition of ubiquitous disclosure obligations transcends those constitutional limits.

The equities weigh decisively in favor of affirming the district court's preliminary injunction. On one side stands a federal statute that threatens the sovereignty of States, imposes steep and irreparable harms on small businesses, and chills associational and privacy rights. On the other side, the government has countless other tools for targeting financial crimes. In these circumstances, the district court's narrow remedy of blocking enforcement pending a full determination on the merits is not just reasonable, it is correct. Preserving the status quo ensures that the Constitution's framework is respected, privacy rights are not irretrievably

lost, companies are not unfairly and irreparably burdened, and States retain their authority, all while leaving existing federal laws to address actual illicit activity.

CONCLUSION

For the foregoing reasons, NAW and JCNF respectfully urge this Court to affirm the district court's preliminary injunction.

DATED this 4th day of March, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 2,991 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman font size 14.

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