No. 25-1290

In the Supreme Court of the United States

TEXAS TOP COP SHOP, INCORPORATED, ET AL.,
Petitioners,
v.
TODD BLANCHE, ACTING ATTORNEY GENERAL, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE BUCKEYE INSTITUTE AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTIONS PRESENTED

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.

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INTEREST OF AMICUS CURIAE[1]

The Buckeye Institute was founded in 1989 as an independent research and educational institution—a think tank—to formulate and promote free-market policy in the states. The Buckeye Institute accomplishes its mission by performing timely and reliable research on key issues, compiling and synthesizing data, formulating free-market policies, and marketing those policy solutions for implementation in Ohio and replication across the country. The Buckeye Institute also files lawsuits and submits amicus briefs to fulfill its mission. The Buckeye Institute is a nonpartisan, nonprofit, tax-exempt organization, as defined by I.R.C. section 501(c)(3).

SUMMARY OF THE ARGUMENT

The Court should grant the instant petition as a companion to *National Small Business United v. Bessent*, No. 25-1201 (*NSBU*) because Petitioners sharpen the importance of the questions at stake. The Corporate Transparency Act (CTA) converts every act of state incorporation into a license for the Federal Government to collect sensitive personal information en masse. The Financial Crimes Enforcement Network's (FinCEN) March 2025 interim rule has suspended CTA reporting by domestic entities—for now. Mere executive forbearance, however, is not a

[1] Pursuant to Supreme Court Rule 37.6, no counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae made any monetary contribution toward the preparation or submission of this brief. Counsel timely provided the notice required by Rule 37.2.

statutory repeal. The CTA remains law, and its provisions stand ready to take effect the moment any Presidential administration withdraws this grant of executive grace. A constitutional question of this magnitude cannot ride on agency discretion, nor await a return to this Court in the compressed posture of the emergency docket.

While the *NSBU* petition alone may satisfy that reason for resolution, Petitioners' case will make a useful companion to *NSBU*. *NSBU* comes to the Court as a trade association, seeking redress for the economic injury of its members. Petitioners here, by contrast, include parties with concrete, individualized, and variegated stakes in invalidating the CTA. For example, the Libertarian Party of Mississippi (MSLP), whose nature as a political party makes it particularly adverse to identifying its members and donors to a federal database, presents significant First Amendment issues not raised in *NBSU*.[2] The presence of such petitioners, combined with the challengers in this case prevailing below, presents the same questions as *NSBU* in a different light, to ensure the associational dimensions of the statute remain squarely in view. Pairing the two petitions yields a fuller picture of whom the CTA reaches and the constitutional implications of that reach.

This fuller picture bears directly on the Fourth Amendment question presented in both petitions. The

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[2] While MSLP may be a political organization in common parlance, the record below concedes it is not classified as a political organization under IRC Section 527, which are exempt from the CTA. *See* Compl. ¶ 104.

associational-privacy principle articulated in *NAACP* v. *Alabama*, 357 U.S. 449 (1958), and *Americans for Prosperity Foundation* v. *Bonta*, 594 U.S. 595 (2021), bears directly on the reasonableness inquiry that lies at the core of the Fourth Amendment question.[3] Compelled disclosure of individuals who control an expressive association (such as MSLP) touches First Amendment interests this Court has previously subjected to exacting scrutiny, underscoring why one cannot construe the warrantless assembly of ownership information as a routine reporting requirement.

ARGUMENT

I. The Court should grant review before judgment because this case and *NSBU* are complementary vehicles.

The Court should grant the petition in this case together with the petition in *NSBU*. The two cases raise the same constitutional questions about the same statute, but through different perspectives. By hearing these cases in tandem, the Court can resolve those questions with a more complete record. Two factors support this course. First, granting review before judgment to a companion case on the same legal issue has become a familiar part of this Court's practice. Second, Petitioners differ from those in *NSBU* in legally significant ways. Petitioners' presence demonstrates the consequences of the CTA

[3] This associational-privacy principle is not a freestanding question in either case, and amicus does not ask the Court to treat it as one. Instead, amicus invokes this principle to inform on the full scope of the questions presented.

and highlights the harms that would not be explicit in *NSBU* alone. Pairing the two petitions would cost the Court little, but it will materially improve the Court's vantage on the constitutional questions implicit in the CTA.

A. Certiorari before judgment is an established tool for deciding recurring questions through paired cases.

In recent Terms, this Court has shown an increasing willingness to grant certiorari to a pending case to decide it together with a companion case already on the Court's docket. The Court has done so specifically to resolve a circuit split in interpreting a statute. *ZF Automotive US, Inc.* v. *Luxshare, Ltd.*, 596 U.S. 619, 625–627 (2022) (consolidating a petition before judgment from the Sixth Circuit with a petition from final judgment in the Second Circuit). The Court similarly granted certiorari before judgment to clarify the scope of the President's emergency powers. *Learning Res., Inc.* v. *Trump*, 146 S. Ct. 628, 637 (2026). And it has long used this device to take up a single constitutional question presented in multiple cases. See, *e.g.*, *Gratz* v. *Bollinger*, 539 U.S. 244, 259–260 (2003); *Students for Fair Admissions, Inc.* v. *Univ. of North Carolina*, 600 U.S. 181, 198 (2023). The companion case use of certiorari before judgment is the least exceptional one and draws the strongest support from historical pedigree. Granting certiorari before judgment to companion cases is most easily justified when doing so aids the completeness of the record. See *ZF Automotive US, Inc.*, 596 U.S. at 624 ("[W]hile these cases present the same threshold legal question, their factual contexts differ."). And, the court

has recognized the wisdom of granting certiorari before judgment "so that [the] Court [can] address the constitutionality . . . in a wider range of circumstances." *Gratz*, 539 U.S. at 260.

Granting certiorari before judgment is all the more appropriate because the Court of Appeals has set the merits aside indefinitely. The Fifth Circuit has held the appeal below in abeyance pending FinCEN's revision of its interim final rule. *Texas Top Cop Shop, Inc.* v. *Bondi*, No. 24-40792, 2025 WL 2609731, at *1–2 (5th Cir. Aug. 5, 2025). FinCEN represented that it would issue a final rule in 2025. It did not, and the interim rule exempting domestic reporting remains in place, with no final resolution in sight. More fundamentally, the long-awaited final rule cannot resolve the underlying legal question. The constitutional defects Petitioners identify in the CTA remain in the statute, regardless of the regulations implementing it. No matter how FinCEN ultimately chooses to enforce the CTA, the statute's Commerce Clause and Fourth Amendment infirmities remain. Because the Fifth Circuit has declined to reach the merits below—and is not poised to reach the merits for the foreseeable future—this Court should decide them now.

B. This case adds to the Court's understanding of the questions presented.

Granting this petition alongside *NSBU* will give the Court a more complete view of whom the CTA's reporting regime reaches, and in what ways. *NSBU* comes to the Court through a single trade association and one of its constituent members. The *NSBU* petitioners frame their injury as the economic burden of complying with the CTA's reporting requirements. This certainly represents a substantial interest, but the actual injuries are homogenous compared to the heterogeneous harms inflicted by the CTA and presented by Petitioners. In addition to for-profit businesses and nonprofit membership organizations, Petitioners' number includes MSLP, an expressive political association. The individuals who control an entity formed to advance political beliefs experience a particularly acute injury from the CTA's disclosure regime. For a minor political party, compelled identification of its controlling members carries a heightened risk of reprisal, making the chilling effect on associational activity correspondingly more severe. See *Brown* v. *Socialist Workers '74 Campaign Comm.*, 459 U.S. 87, 93 (1982). The *NSBU* petitioners cannot speak to this effect because their posture only allows them to speak on the financial costs imposed without authority under the Commerce Clause.

II. Notwithstanding the interim rule, this case raises important questions that should be resolved now.

FinCEN's March 2025 interim rule gives Petitioners temporary relief from the unconstitutional disclosure requirements of the CTA. That temporary relief, however, does not obviate the persisting constitutional questions this litigation raises. For example, the CTA defines "reporting company" to mean "a corporation, limited liability company, or similar entity" created by the filing of a document with a secretary of state. 31 U.S.C. § 5336(a)(11)(A). That definition admits to no limiting principle—such as an activity requirement or a threshold size. Moreover, the catch-all "or other similar entity" offers no cognizable boundary for the category. If a state entity does not fall within one of the statute's exceptions, the disclosure regime reaches it by virtue of its mere existence. The constitutional defect in that definition is no less defective merely because FinCEN—as a matter of executive grace—chooses not to enforce the statute at this time. The Court should resolve these important issues now, to avoid resolving them piecemeal later on the emergency docket.

The interim rule does not promise anything more than temporary, uncertain executive grace. The CTA, and its constitutionally suspect provisions, remain enacted law. FinCEN may start enforcing the statute at any time, and so the important constitutional questions it raises may become live issues at any time. Choosing not to resolve this issue now only delays the Court taking this question up in the future, if and

when the Executive Branch resumes enforcement of the CTA.

Further, deferral will not improve the Court's consideration of these issues when they return. When enforcement resumes, and challengers seek relief, the constitutional questions will likely reach this Court—as they have before—on the emergency stay docket, and therefore on a compressed schedule, without the benefit of full briefing or full argument. See *McHenry* v. *Texas Top Cop Shop, Inc.*, 145 S. Ct. 1 (2025). Considering the public criticism that has attached itself to the Court's use of the "shadow docket" in recent years, it may be prudent not to invite any more cases onto that docket than necessary. See, *e.g.*, *Merrill* v. *Milligan*, 142 S. Ct. 879, 883 (2022) (Kagan, J., dissenting from grant of applications for stays). And granting an emergency stay without also granting certiorari before judgment would leave lower courts and the affected parties in extended uncertainty. See *Trump* v. *Boyle*, 145 S. Ct. 2653, 2655 (2025) (Kavanaugh, J., concurring in grant of application for stay). Whatever benefit might ordinarily come from letting the question "percolate" below, *id.*, is unavailable here. As discussed above, the Court of Appeals' abeyance has set the merits of this case aside indefinitely. Prudence and judicial economy counsel resolving the CTA's constitutionality now, with a full record and complete briefing, rather than by piecemeal when resumed enforcement drives the questions back to this Court's emergency docket.

III. The CTA's compelled disclosure implicates the First Amendment, heightening the Fourth Amendment question.

Because the CTA disclosure regime implicates First Amendment concerns, see generally C.A. Amicus Curiae Br. of The Buckeye Institute, Dkt. No. 250, it sharpens the importance of the Fourth Amendment question. Compelled identification of the controlling members of an expressive association heightens the expectation of privacy to exacting scrutiny. This First Amendment dimension bears on the reasonableness of the CTA's warrantless collection regime.

Compelled disclosure of those who form and support an expressive association can be as severe a deterrent on associational freedom as a direct prohibition. *Americans for Prosperity Found.*, 594 U.S. at 606 (citing *NAACP*, 357 U.S. at 462). Such disclosure earns exacting scrutiny from the Court, requiring a "substantial relation" between the information demanded and a "sufficiently important" governmental interest. *Id.* at 607. The government must narrowly tailor its demand to meet that interest. *Id.* at 608. Where the disclosure is directly to the government, demand for narrow tailoring is no less exacting merely because the government promises not to make the information public. *Id.* at 616; see also Appellee's Br. at 11–15, *The Buckeye Inst.* v. *IRS*, No. 25-3170 (6th Cir. Nov. 19, 2025) (discussing recent leaks of sensitive private party information by federal agencies). The CTA fits the template put forth in *Americans for Prosperity Foundation* v. *Bonta*. The CTA compels any individual who controls a state-chartered entity to identify himself to a federal

enforcement agency or face civil and criminal penalties. The CTA does not tie this compelled disclosure to any showing that a particular entity presents the risks Congress invoked in the Act.

This associational dimension bears directly on the Fourth Amendment question presented by Petitioners. The First Amendment requires "scrupulous exactitude" for any compelled government production of information that identifies membership in an expressive association. *Zurcher* v. *Stanford Daily*, 436 U.S. 547, 564–65 (1978) (quoting *Stanford* v. *Texas*, 379 U.S. 476, 485 (1965)). Because the CTA's warrantless disclosure regime reaches the controlling members of expressive associations (including one of the instant Petitioners), its targets have a heightened privacy interest. Any Fourth Amendment reasonableness inquiry must account for this heightened interest.

MSLP illustrates this point in its starkest form. MSLP is a political party formed to advance contested ideological commitments. Notwithstanding the interim rules, MSLP would fall under the CTA's disclosure requirements. The Act would compel MSLP to identify its officers, delegates, and significant donors to federal law enforcement officers. MSLP occupies almost exactly the position this Court identified as constitutionally intolerable in *NAACP*. See *NAACP*, 357 U.S. at 462. Mississippi's own laws recognize the sensitivity of such information and forbid disclosure of a political nonprofit's membership list without the organization's consent. Miss. Code § 79-11-291. Because the CTA's warrantless collection regime reaches the controlling members of such

associations, the heightened First Amendment interest they hold must inform any assessment of the regime's reasonableness under the Fourth Amendment.

CONCLUSION

Petitioners make for natural companions to the *NSBU* petitioners, and their inclusion will enhance the Court's understanding of the questions presented. This case raises important questions that merit immediate resolution, notwithstanding FinCEN's interim rule change, and deferring those questions would worsen their resolution in the future. For all the above reasons, if this Court grants the *NSBU* petition, it should also grant this instant petition for certiorari before judgment as a companion case to *NSBU*.

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