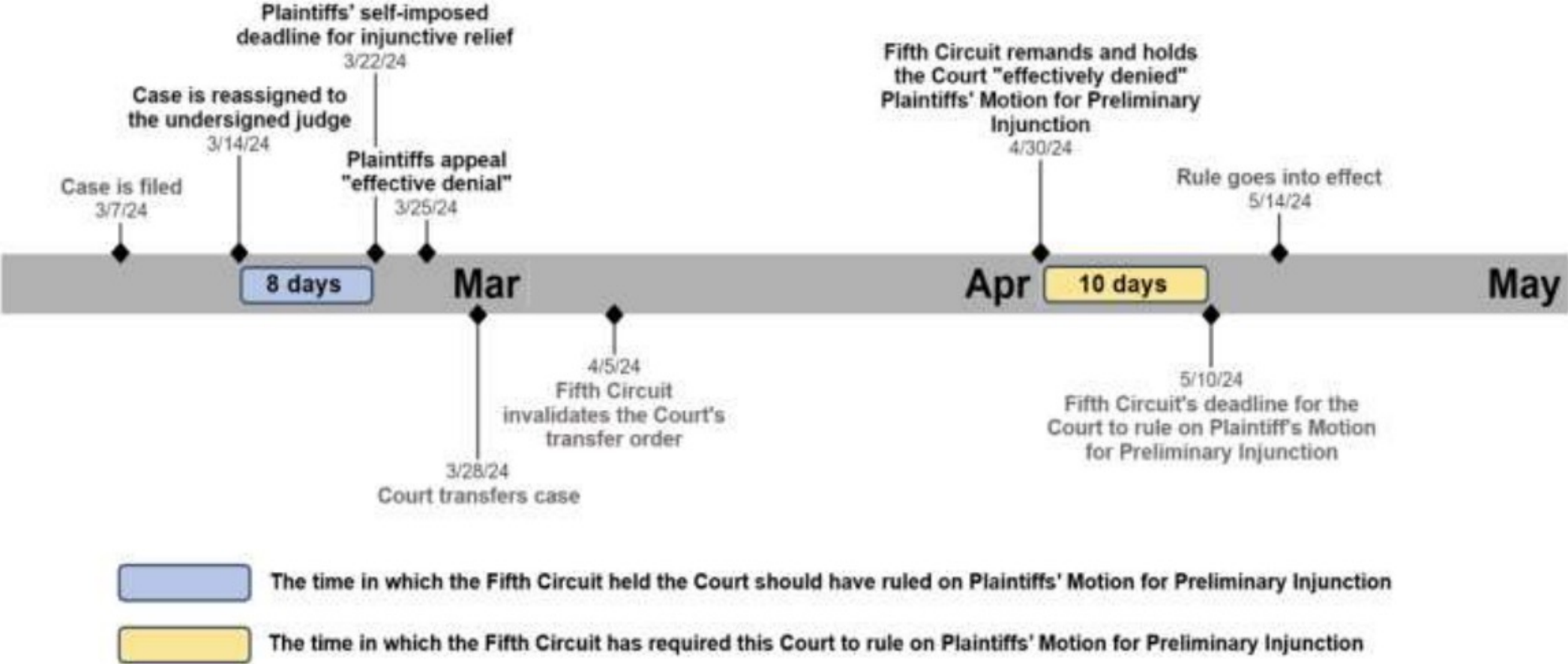


# CFPB Late Fee Rule Litigation: Overview

- CFPB issues final rule on March 5, 2024
  - Part of larger effort – includes various FTC initiatives and other CFPB guidance & rulemakings (e.g., NSF fees)
- Key effects:
  - Key provisions apply to issuers with over 1 million credit card accounts, not “smaller card issuers”
  - Late fee safe harbor under Regulation Z reduced from \$30 to \$8
  - No more annual inflation adjustments to safe harbor
  - No more distinction between first and subsequent violations
- *Chamber of Com. of United States v. CFPB*, No. 4:24-CV-00213-P (N.D. Tex.):
  - Filed March 7, 2024
  - Eventually assigned to Judge Pittman
  - Parties:
    - American Bankers Association, Consumer Bankers Association, U.S. Chamber of Commerce,
    - Texas Association of Business, Longview Chamber of Commerce, Fort Worth Chamber of Commerce

# CFPB Late Fee Rule Litigation: Judge's timeline



# CFPB Late Fee Rule: What's next?

- PI issued May 10: Rule is Stayed
  - Based on *CFSA v. CFPB*
  - CARD Act, TILA, and APA arguments “compelling” but court did not address them
- Court requested briefing on live pleadings on May 13
  - Complaint is live
  - CFPB’s Brief states:
    - PI mooted “effective denial” appeal—CFPB moved to dismiss in 5<sup>th</sup> Circuit
    - Motion to transfer in limbo—CFPB may renew motion to transfer
    - CFPB may move to vacate or dissolve PI if *CFSA v. CFPB* is reversed
  - Plaintiffs’ Brief states:
    - No other issues remain live
    - Best way to move forward with case is two-fold:
      - supplemental briefing on *CFSA v. CFPB* impact (one week post SCOTUS decision)
      - briefing schedule on cross-dispositive motions on other claims

# Corporate Transparency Act Litigation

- What is the Corporate Transparency Act?
  - Requires filing beneficial ownership information (BOI) with FinCEN for “reporting companies”
  - Beneficial owner: substantial control (e.g., senior officer) or 25% or more ownership interest (e.g., stocks)
  - Contains nearly two dozen exemptions
- *Nat'l Small Bus. United v. Yellen*, No. 5:22-CV-1448-LCB, 2024 WL 899372 (N.D. Ala. Mar. 1, 2024)
  - CTA unconstitutional because it exceeds Congress’s enumerated powers: not authorized under foreign affairs powers, the Commerce Clause, or the taxing powers
  - Emphasis on act of incorporation
  - Enjoined enforcement as to plaintiffs only
- Appeal is pending in 11<sup>th</sup> Circuit
  - DOJ & National Small Business United have filed briefs
  - Members of Congress have also filed amicus brief (Reed, Warren, Waters, Whitehouse, Wyden)
- FinCEN will continue CTA implementation for other entities
- A few other lawsuits have popped up in Maine and Michigan challenging the CTA