

Corporate Transparency Act Ruled Unconstitutional, but Scope of Judgment Is Limited

March 5, 2024

On March 1, 2024, the U.S. District Court for the Northern District of Alabama held the Corporate Transparency Act (the “CTA”) unconstitutional.¹ The relief granted by the court is limited to enjoining the federal government from enforcing the CTA against the plaintiffs in the case, the National Small Business Association (“NSBA”) and Isaac Winkles, an NSBA member (together, the “plaintiffs”). The judgment, thus, leaves the CTA intact against other parties and is highly likely to be appealed. However, the court’s decision likely paves the way for further challenges to the CTA.

Background. The CTA was enacted as part of the National Defense Authorization Act for Fiscal Year 2021 and, generally, requires the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) to implement a beneficial ownership reporting regime, requiring companies to disclose information about their beneficial owners, senior officers and other control persons to the federal government.

FinCEN’s first regulation implementing the CTA was published on September 30, 2022 and went into effect on January 1, 2024.² It establishes which entities must report beneficial ownership information to FinCEN, what information must be reported and when reports are due. See our client updates on the regulations [here](#) and [here](#).

Complaint. The plaintiffs filed suit against the Treasury Department in November 2022, alleging that the CTA’s disclosure requirements exceed Congress’s authority under Article I of the Constitution and violate the First, Fourth, Fifth, Ninth, and Tenth Amendments.

Decision. The court held that the CTA exceeded the limits of Congress’s power but left aside (and undecided) the plaintiffs’ other allegations regarding violation of the Amendments enumerated above.

¹ *National Small Business United, d/b/a the National Small Business Association, et al., v. Janet Yellen, in her official capacity as Sec’y of the Treasury, et al.*, No. 5:22-CV-1448-LCB (N.D. Ala. Mar. 1, 2024), available [here](#). See the judgment [here](#).

² 87 Fed. Reg. 59498 (Sept. 30, 2022).

The government had argued that the CTA was authorized under three powers: (i) foreign affairs powers, (ii) the Commerce Clause, and (iii) taxing powers. In a 53-page memorandum opinion, the court rejected those arguments.

The court found that the CTA is not authorized under Congress's foreign affairs powers because incorporation is an internal affair and is a power left to the states. The court stated that the foreign affairs powers cannot be applied to the "purely domestic arena of incorporation" in this fashion.

The court also held that the CTA is not authorized under the Commerce Clause. It found that (i) the CTA, by its plain text, does not regulate the channels and instrumentalities of commerce, and (ii) incorporation is a non-commercial activity, and the mere fact that many incorporated entities engage in interstate commerce is not sufficient to invoke the Commerce Clause. The court also stated that the CTA is not necessary and proper to Commerce Clause powers because it is not essential given similar requirements under FinCEN's customer due diligence rule, which requires banks and other financial institutions to collect beneficial ownership information.

Finally, the court determined that the CTA is not authorized under Congress's taxing powers because, although the collection of beneficial ownership information under the CTA can help the IRS with tax collection, simply being useful to tax collection is not sufficient to invoke tax powers.

Potential Consequences. The court's decision is a blow to the CTA but, at least for now, its implications appear limited.

- *First*, the court's final judgment enjoins the federal government from enforcing the CTA against *the plaintiffs*, but it does not extend beyond them.³ (State laws that mimic the federal CTA, such as the one enacted recently by New York State, are not affected by the court's decision.)
- *Second*, and relatedly, in responding to the case, FinCEN did not extend the judgment to the reporting regime as a whole, limiting its reach to the plaintiffs and keeping the CTA website online and operational.⁴

³ It is not clear from the face of the opinion whether the judgment's application to the NSBA extends to its member small businesses, but FinCEN has decided not to enforce the CTA against NSBA members so long as the court's order is in effect. FinCEN, "Notice Regarding National Small Business United v. Yellen, No. 5:22-cv-01448 (N.D. Ala.)" (Mar. 4, 2024), available [here](#).

⁴ Id.

- *Third*, the government is highly likely to appeal the court’s decision and request a stay during the appeal. FinCEN implies an appeal is coming in its response to the court’s order.⁵

All of this being said, this lawsuit is likely to spawn similar litigation, and the success of the plaintiffs may motivate others to try to achieve more broad relief under the same theories.

Next Steps. As noted above, although this court decision may portend limits on the application of the CTA, this outcome is far from certain. For the time being, it may be advisable to move forward under the assumption that the CTA and its implementing regulations will remain in effect, but interested parties should continue to monitor closely this case and others that may still come.

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Please do not hesitate to contact us with any questions.



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⁵ Id. (“FinCEN will comply with the court’s order for as long as it remains in effect,” implying it expects the order might not be in effect permanently).