

CLIENT ALERT

Alabama Federal Judge Declares Corporate Transparency Act Unconstitutional: *Issues Permanent Injunction Against Enforcing It Against Plaintiffs*

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On March 1, 2024, Judge Liles C. Burke of the United States District Court, Northern District of Alabama permanently enjoined enforcement of the Corporate Transparency Act (the “**CTA**”), against the plaintiffs in the case – the National Small Business Association and one of its members – in an action that challenged the constitutionality of the CTA.¹ In doing so, the Court ruled that the CTA’s reporting requirements exceed “the Constitution’s limits on the legislative branch and lacks a sufficient nexus to any enumerated power to be a necessary or proper means of achieving Congress’ policy goals.” We expect that the federal government will move to stay the Court’s injunction pending appeal. If upheld, the decision would not only complicate the government’s administration and enforcement of the CTA, but would also have far-reaching implications regarding the scope of the Commerce Clause. In the meantime, non-exempt “reporting companies” outside the Northern District of Alabama that are not plaintiffs in this case are unaffected by the ruling, and remain obligated to

¹ *National Small Business United v. Yellen*, No. 5:22-cv-01448-LCB at 5 (N.D. Ala. Mar. 1, 2024) [hereinafter, the “*Opinion*”].

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comply with the beneficial ownership reporting and other requirements of the CTA, including the 90-day deadline for entities formed in 2024 to report beneficial ownership information.²

In addition to finding that the CTA is not justified by Congress' foreign policy powers, its power to regulate non-commercial intrastate activity, or its taxing power, the opinion discusses "how easily Congress could have written the CTA to pass constitutional muster." For example, the Court notes that Congress could have imposed similar, but constitutional, reporting requirements by requiring entities to report beneficial ownership information at the point where they engage in interstate commerce. The Court also compares the CTA requirements to customer due diligence ("**CDD**") requirements imposed on regulated financial institutions by the Treasury Department's Financial Crimes Enforcement Network ("**FinCEN**"), noting that the CDD requirements are constitutionally sound because they apply to regulated entities that move in commerce.

As noted above, the Court's permanent injunction prevents FinCEN from enforcing the CTA reporting requirements against the plaintiffs. We also expect that additional lawsuits challenging the CTA will be filed in other districts, citing this case as persuasive authority, and that the constitutionality of the CTA will ultimately be decided by the Supreme Court. In the meantime, we recommend that non-exempt reporting companies not covered by this (or any potential future) injunction continue to timely comply with the requirements of the CTA.

² For additional details on the requirements of the CTA, please see: [The Corporate Transparency Act: What's New for the Insurance Industry](#) (Feb. 24, 2024), [Are You Ready to Report? Here's What Non-U.S. Investment Advisers Need to Know about the Corporate Transparency Act](#) (Feb. 22, 2024), and [Are You Ready to Report? Here's What You Need to Know about the Corporate Transparency Act](#) (Dec 26, 2023).

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