

U.S. District Court Ruling Causes Uncertainty for CTA Enforceability

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On March 1, 2024, the U.S. District Court for the Northern District of Alabama ruled that the Corporate Transparency Act (“CTA”) exceeded Congress’s Constitutional authority, and accordingly prohibited the Treasury Department from requiring some small businesses to disclose personal details about their owners back to the Department’s enforcement arm. See, [National Small Business United v. Janet Yellen, in her official capacity as Secretary of the Treasury \(Case No. 5:22-cv-1448-LCB\)](#) (March 1, 2024).

The Court has not yet ruled on a nationwide injunction and it is expected that the Treasury Department will ask the Justice Department to appeal the ruling to the U.S. Court of Appeals for the Eleventh Circuit. Pending this appeal, it is not clear if the Treasury Department will enforce the CTA against non-parties to the lawsuit. A Treasury Department spokeswoman noted that the agency was “complying with the court’s injunction,” but referred all other inquiries to the Justice Department.

The CTA requires small businesses to share details about their “beneficial owners,” individuals who hold a financial interest in the company or who exercise significant power over business decisions, to the Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”). The law was passed to counter foreign money laundering through domestically established corporations and enacted the CTA as part of the 2021 National Defense Authorization Act. The Treasury Department estimated that these reporting provisions applied to roughly 33 million entities in the United States. Beginning January 1, 2024, all new businesses that did not qualify for one of the CTA’s 23 exemptions were required to disclose their beneficial ownership to FinCEN. While businesses that were formed prior to January 1, 2024 will have until the end of the year to comply with the CTA reporting obligations, newly formed entities must comply within 90 days of formation.

Despite praising the policy ambitions of the CTA, Judge Liles Burke joined critics of the CTA, holding that provisions requiring the disclosure of personal data, including names, addresses, and copies of identification documents, (*i.e.*, “Beneficial Ownership Information”) are beyond the scope of Congress’ enumerated powers. Specifically, Judge Burke was unpersuaded by the Government’s assertion that such power was granted to Congress under its Constitutional delegation of authority over foreign affairs, taxation, or via the Commerce Clause. “Congress sometimes enacts smart laws that violate the Constitution,” Judge Burke wrote in his 53-page opinion. “This case, which concerns the constitutionality of the Corporate Transparency Act, illustrates that principle.”

The National Small Business Association, a nonprofit trade group representing over 65,000 entities, brought this challenge to the CTA. Although Judge Burke’s ruling can be narrowly interpreted to

apply only to the members of the National Small Business Association, the immediate impact the decision has on other businesses is unclear. As discussed above, reporting information would have been due to FinCEN in 2024.

The Government will likely request that the injunction be paused, either by Judge Burke or the Eleventh Circuit. Whether the District Court's injunction is paused or expanded, the Constitutional implications of the ruling may propel it through appeal and to the Supreme Court's docket. Kelley Drye is continuing to monitor this case and we remain available to assist with any questions you may have regarding the CTA.

For more information, please reach out to [Jeffrey Hunter](#), [Matthew Luzadder](#), [Wendy Clarke](#) or [Aaron Rosenfeld](#).