WINSTON & STRAWN LLP

CLIENT ALERT

Corporate Transparency Act Declared Unconstitutional by Alabama Federal Court – What Does This Mean for Your Company?

MARCH 7, 2024

KEY TAKEAWAYS

- The Treasury and FinCEN will almost certainly appeal to the Eleventh Circuit in the first challenge to the CTA
- Other courts are not bound by the Northern District of Alabama's ruling
- Members of the plaintiff organization inside and outside of northern Alabama are not subject to CTA compliance or enforcement

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On March 1, 2024, a federal judge in the U.S. District Court for the Northern District of Alabama held the Corporate Transparency Act (CTA) unconstitutional. The CTA and its implementing Rule (as explained here and here) require that most privately held corporations, limited liability companies, and similar entities formed or registered to do business in the United States report "beneficial ownership information" (BOI) to the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN). These "reporting companies" (as defined in the implementing Rule) have the rest of this year to file initial BOI reports if they were formed or registered before January 1, 2024; ninety days to file if formed or registered in 2024; or thirty days to file if formed or registered on or after January 1, 2025.

In the decision, *National Small Business United v. Yellen*, the district court concluded as a matter of law that the CTA exceeded the Constitution's limits on congressional authority.[1] The Treasury argued that seeking BOI is a "necessary and proper" exercise of three congressional powers—to oversee foreign affairs and national security, regulate commerce, and impose taxes—but the court was not convinced.[2] Instead, the court characterized the CTA as regulating incorporation, (1) a "purely internal affair[]" that is (2) not clearly economic or commercial in nature and (3) too incidental to tax administration.[3]

The court declared the CTA unconstitutional and permanently enjoined the Treasury and FinCEN from enforcing the CTA against the plaintiffs.[4] **This means the CTA will remain in full effect except as to members of the National Small Business Association (NSBA) and, arguably, reporting companies in the Northern District of Alabama.**

The injunction prevents the Treasury and FinCEN from enforcing the CTA only against "the Plaintiffs."[5] That includes members of the NSBA, as the plaintiff organization appeared before the court on their behalf.[6] Indeed, FinCEN has

already announced that as of March 1, 2024, it has paused enforcement against NSBA members. For them, the injunction extends to activity outside of the Northern District of Alabama.[7]

Otherwise, by default, the CTA will remain law unless Congress chooses to amend or repeal it.[8] In declaring the statute unconstitutional, *this* district court decided not to enforce the CTA, but the effect of that decision depends on other courts' willingness to reach the same conclusion. The decision is not binding on any other court, or even on other judges in the same district.[9] As a result, only reporting companies in northern Alabama[10] and individuals acting on their behalf might reasonably defend against enforcement for the time being (and again, reporting companies formed or registered before January 1, 2024, have until January 1, 2025, to file initial reports regardless).

The Treasury almost certainly will appeal this decision to the Eleventh Circuit and seek a stay while on appeal. The Treasury has thirty days to file notice,[11] and briefing will move quickly after that. Whether the Eleventh Circuit will grant a stay (or the Supreme Court, should the Eleventh Circuit decline) is not a certainty.[12] Nor is the outcome upon review—although narrow readings of the Commerce Clause are generally disfavored.

In the meantime, one challenge to the CTA is pending in district court: *Robert J. Gargasz Co., LPA v. Yellen*, No. 1:23-cv-02468 (N.D. Ohio Dec. 29, 2023). Unlike the complaint in *National Small Business United*, which articulated four clear causes of action, the plaintiffs in *Gargasz* cite a broader array of constitutional rights and statutes to argue that the government has, among other things, represented "a cabal of globalist New World Order [NWO] traitors."[13]

Given the limited effect of this judgment, compliance with the CTA remains best practice until further notice. The Winston & Strawn CTA Task Force will continue monitoring developments. If you have any questions or need assistance with reporting requirements or their litigation implications, please contact **Carl Fornaris** (Partner and Co-Chair, Financial Services Practice), **Richard Weber** (Partner, Government Investigations, Enforcement, and Compliance Practice, and former Chief, IRS–Criminal Investigation, U.S. Department of the Treasury), **Elizabeth Ireland** (Partner, Government Investigations, Enforcement, and Compliance Practice), or your Winston & Strawn relationship attorney.

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[1] Opinion at *3, *Nat'l Small Bus. United v. Yellen*, No. 22-cv-1448 (N.D. Ala. Mar. 1, 2024), ECF No. 51.

[2] *Id.* at *16-17.

[3] *See id.* at *25, *43, *52.

[4] Final Judgment, *id.*, ECF No. 52.

[5] *Id.*; *see* Fed. R. Civ. P. 65(d)(2).

[6] *See Hunt v. Wash. State Apple Adv. Comm'n*, 432 U.S. 333, 342 (1977) (explaining that, when a party with associational standing seeks an injunction, "the remedy, if granted, will insure to the benefit of those members of the association") (quoting *Warth v. Seldin*, 422 U.S. 490, 515 (1975)).

[7] *See Steele v. Bulova Watch Co.*, 344 U.S. 280, 289 (1952) (holding that a district court "exercising its equity powers may command persons properly before it to cease or perform acts outside its territorial jurisdiction"); 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2945 (3d ed. updated April 2023) (noting the same).

[8] *See generally* Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933 (2018) (exploring the history, practice, and implications of judicial review).

[9] *See, e.g.*, *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) ("A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case."); *Georgia v. Pres. of the U.S.*, 46 F.4th 1283, 1304 (11th Cir. 2022) ("The decision of any one of [the federal district or circuit courts] typically has little effect on the other courts of its type[.]").

[10] *See* 28 U.S.C. § 1391(b) (venue).

[11] *See* Fed. R. App. P. 4(a)(1)(A).

[12] *See, e.g.*, *Steele v. United States*, 287 F. Supp. 3d 1, 6 (D.D.C. 2017) (denying motion to stay a court order that permanently enjoined the IRS from charging certain fees pending appeal); *see also Nken v. Holder*, 556 U.S. 418, 425-26 (2009) (listing traditional four factors for a stay: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies").

[13] *Compare* Complaint at *24-37, *Nat'l Small Bus. United v. Yellen*, No. 22-cv-1448 (N.D. Ala. Nov. 15, 2022), ECF No. 51, *with* Complaint at *3, *9-18, *Robert J. Gargasz Co., LPA v. Yellen*, No. 1:23-cv-02468 (N.D. Ohio Dec. 29, 2023), ECF No. 1.

5 Min Read

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