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Court Finds Corporate Transparency Act Unconstitutional and Unenforceable as to NSBA Members



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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”) is unconstitutional.^[1] The CTA requires many U.S. entities to disclose their individual beneficial owners in a report filed with the U.S. Treasury. The CTA statute was enacted in 2021.^[2] Its implementing regulations require many entities formed in 2024 to report beneficial ownership information within 90 days of formation.^[3] The CTA requires many entities formed prior to 2024 to report beneficial ownership information by January 1, 2025.^[4]

The federal court’s ruling arose in the context of a constitutional challenge by plaintiffs the National Small Business Association (“NSBA”) and one of its individual members, Isaac Winkles. In granting summary judgment for the plaintiffs, the court held that:

- the Commerce Clause, the Necessary and Proper clause, the taxing power, and the U.S. government’s authority over foreign affairs and national security do not provide sufficient authority for the Corporate Transparency Act (“CTA”), and the CTA is unconstitutional as a result; and
- the U.S. government is enjoined from enforcing the CTA as to the NSBA and Isaac Winkles.

The court did not issue a nationwide injunction barring the U.S. government from enforcing the law against other entities within the scope of the CTA’s reporting requirements.

On March 11, 2024, the U.S. Government filed a notice of appeal of the court’s ruling.^[5] The same day, the Financial Crimes Enforcement Network (“FinCEN”), which is the U.S. Treasury bureau that administers the CTA, stated that it will continue to implement the CTA while complying with the court’s order.^[6]

FinCEN clarified that it is not currently enforcing the CTA against two categories of persons:

- individual plaintiff Isaac Winkles and reporting companies for which he is a beneficial owner; and
- the NSBA and its members as of March 1, 2024.

FinCEN stated, “[o]ther than the particular individuals and entities subject to the court’s injunction [. . .] reporting companies are still required to comply with the law and file beneficial ownership reports as provided in FinCEN’s regulations.”^[7]

[1] https://www.govinfo.gov/content/pkg/USCOURTS-alnd-5_22-cv-01448/pdf/USCOURTS-alnd-5_22-cv-01448-0.pdf.

[2] National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, div. F, title LXIV, § 6403 (adding 31 § U.S.C. 5336), available at: <https://www.govinfo.gov/content/pkg/PLAW-116publ283/pdf/PLAW-116publ283.pdf>.

[3] 31 C.F.R. § 1010.380.

[4] *Id.*

[5] https://fincen.gov/sites/default/files/shared/54_Notice_of_Appeal.pdf

[6] <https://fincen.gov/news/news-releases/updated-notice-regarding-national-small-business-united-v-yellen-no-522-cv-01448>

[7] *Id.*
