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Corporate Transparency Act Ruled Unconstitutional*

On March 1, 2024, the U.S. District Court for the Northern District of Alabama declared the Corporate Transparency Act (CTA) unconstitutional in the case *Nat'l Small Bus. United v. Yellen*, No. 5:22-cv-01448-LCB (N.D. Ala. 2022). By way of background, on January 1, 2021, U.S. Congress enacted the Anti-Money Laundering Act of 2020 ("AMLA") as part of the Nationwide Protection Authorization Act, which is intended to reform and modernize BSA-related laws and regulations. The CTA was adopted under AMLA and mandates that corporations, limited liability companies, and similar types of entities that are created by filing with a secretary of state (each referred to as a "Reporting Company") provide beneficial ownership information to FinCEN upon formation. This mirrors what financial institutions are currently required to obtain from legal entity customers under FinCEN's 2016 beneficial ownership rule ("CDD Rule").

Consistent with the requirements of the CTA and AMLA, on September 30, 2022, FinCEN issued a final rule ("Reporting Company Rule"), requiring a Reporting Company to file information to FinCEN information about the beneficial owners of the Reporting Company. The Reporting Company Rule is one of three rulemakings planned to implement the CTA. FinCEN has stated that it still intends to engage in additional rulemakings to: (i) establish rules for who may access the beneficial ownership information FinCEN maintains; and (ii) revise FinCEN's CDD Rule.

In 2022, National Small Business United, also known as the National Small Business Association ("NSBA"), along with one of its members, initiated this case, seeking a permanent injunction against implementation of the CTA. The court entered a declaratory judgment thereby permanently enjoining the Department of the Treasury and FinCEN from enforcing the CTA against the plaintiffs in the case. The court's final judgment specifically concluded that "the Corporate Transparency Act is unconstitutional because it exceeds the Constitution's limits on Congress' power."

While the court deemed the CTA unconstitutional, its impact remains limited. Currently, the judgment only prohibits CTA enforcement against the NSBA itself and its members. On March 4, 2024, FinCEN posted on its website an acknowledgment of the court's final judgment and also stated that "FinCEN is complying with the court's order and will continue to comply with the court's order for as long as it remains in effect." FinCEN continued, "[a]s a result, the government is not currently enforcing the Corporate Transparency Act against the plaintiffs in that action." It is anticipated that the U.S. Treasury, including FinCEN, will appeal the court's judgment.

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For now, despite ruling that the CTA is unconstitutional, the CTA and FinCEN's Reporting Company Rule will remain enforceable against Reporting Companies that are not plaintiffs in *Nat'l Small Bus. United v. Yellen*. Stay tuned!

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