

Corporate Transparency Act Held Unconstitutional

March 06, 2024

The Corporate Transparency Act (CTA) is unconstitutional, according to a March 1, 2024, ruling by Judge Liles Burke of the U.S. District Court for the Northern District of Alabama. The National Small Business Association (NSBA), on behalf of itself and its members, sued the Department of Treasury to have the CTA declared unconstitutional and to enjoin the Treasury and any other agency of the United States from enforcing the CTA against it and its members. [*National Small Business United v. Yellen*, No. 5:22-cv-01448 \(N.D. Ala.\)](#). Additionally, on December 29, 2023, a complaint was filed in the U.S. District Court for the Northern District of Ohio by Ohio plaintiffs consisting of a legal professional association and an Ohio-licensed lawyer that asserts the CTA is unconstitutional and requests a nationwide injunction against the enforcement of the Beneficial Ownership Information (BOI) Reporting Rule. *Gargas v. Yellen*, No. 1:23-cv-02468-CEF(N. D. Ohio). The subsequent Ohio complaint is indicative that business is finally paying attention to the implications of the CTA, and that the sides are lining up on its constitutionality and validity.

Effective January 1, 2024, the CTA requires companies to disclose their beneficial owners to the Financial Crimes Enforcement Network (FinCEN) within the United States Department of Treasury. (For a discussion of the CTA, see [Corporate Transparency Act Reporting Begins: Are You Ready?](#))

The ruling applies to NSBA and its members, but not other companies required to comply with the CTA. On March 4, 2024, FinCEN issued the following news release:

On March 1, 2024, in the case of *National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.), a federal district court in the Northern District of Alabama, Northeastern Division, entered a final declaratory judgment, concluding that the Corporate Transparency Act exceeds the Constitution's limits on Congress's power and enjoining the Department of the Treasury and FinCEN from enforcing the Corporate Transparency Act against the plaintiffs. FinCEN will comply with the court's order for as long as it remains in effect. As a result, the government is not currently enforcing the Corporate Transparency Act against the plaintiffs in that action: Isaac Winkles, reporting companies for which Isaac Winkles is the beneficial owner or applicant, the National Small Business Association, and members of the National Small Business Association (as of March 1, 2024). Those individuals and entities are not required to report beneficial ownership information to FinCEN at this time.

Treasury has time to consider whether to appeal, but it is expected that Treasury will appeal the decision in *NSBU v. Yellen*. Assuming the decision is appealed, it could take months, if not years, to resolve. Reporting companies and company applicants not affected by the ruling should continue to comply with the CTA, as

Treasury's own press release following the NSBA ruling specifically states it will not enforce the CTA as to the plaintiffs but makes no mention of any other stand down.

McGlinchey has a team of lawyers ready to assist you with any questions you may have regarding your reporting obligations under the Corporate Transparency Act.

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