

CLINE WILLIAMS

WRIGHT JOHNSON & OLDFATHER

Federal Court Finds the Corporate Transparency Act Unconstitutional: What does that mean for you and your business?

On March 1, 2024, the U.S. District Court for the Northern District of Alabama issued a 53-page opinion declaring the Corporate Transparency Act (“CTA”) unconstitutional and permanently enjoined the government from enforcing the CTA against the plaintiffs in the case. National Small Business United v. Yellen, No. 5:22-cv-01448 (N.D. Ala.) At first glance, the decision could be read as banning the federal government from enforcing the significant and burdensome reporting requirements included in the CTA for millions of businesses. However, the Court’s ruling only applies to approximately .1%-.2% of all businesses in the United States. Additionally, on March 11th, the Federal Government entered a Notice of Appeal on the decision to the United States Court of Appeals for the Eleventh Circuit, which could overrule the decision in National Small Business United v. Yellen.

BACKGROUND

The CTA was enacted as part of the National Defense Authorization Act for Fiscal Year 2021 and requires the Financial Crimes and Enforcement Network (“FinCEN”) to implement reporting requirements on certain entities. These mandatory reporting requirements require entities subject to the CTA to disclose information to FinCEN in the form of a Beneficial Ownership Information Report (“BOI Report”) which requires sensitive information about the entity itself, its owners, and the individuals who formed the entity, such as attorneys or other professional advisors.

The principal object of the CTA is to combat illicit financial activity, including tax fraud, money laundering, and financing for terrorism and organized crime, by creating a national database of information concerning individuals who, directly or indirectly, own a substantial interest in, or exercise substantial control over certain types of entities.

FinCEN estimates that in 2024 alone, over 32.5 million existing entities will be subject to the CTA. FinCEN expects an additional 50 million entities will be subject to the CTA over the next decade. According to FinCEN, by mid-February of this year, almost 500,000 BOI Reports have been filed. Failure to comply with the CTA may result in severe civil or criminal penalties, or both.

PROCEDURAL HISTORY

In November of 2022, a member of the National Small Business Association (“NSBA”) filed a suit on behalf of the NSBA against Janet Yellen, the Secretary of the Treasury, and Himamauli Das, the Director of FinCEN. NSBA alleged that the CTA’s reporting requirements unconstitutionally exceeded Congress’ enumerated powers and infringed upon the rights of NSBA members under the First, Fourth, Fifth, Ninth, and Tenth Amendments.

DECISION

The Court held that the CTA exceeded the limits of Congress's power but did not decide the plaintiff's other allegations regarding violations of the Amendments listed above.

WHAT DOES THE DECISION MEAN FOR ENTITIES SUBJECT TO THE CTA?

While the Court's decision creates uncertainty regarding entities' ongoing obligations under the CTA, the injunction entered in the case only applies to a specific group of entities, members of the NSBA as of March 1, 2024. In response to the case, FinCEN released a press release on March 4, 2024, stating as follows:

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. 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.

Given the limited scope of the decision, it is unlikely that FinCEN will publish any further guidance on the Court's decision. Additionally, because of the narrow nature of the decision, BOI Reports will still be required for the tens of millions of businesses that were not members of the NSBA prior to the Court's decision on March 1, 2024.

Many believe that all reporting companies, even members of the NSBA, should still file BOI Reports with the CTA due to the severe penalties which may be imposed if the case is overturned by the Eleventh Circuit. By choosing to file when not constitutionally required, you may lose the costs associated with the filing, but staying in filing could avoid the more significant financial and criminal penalties associated with non-compliance.

On March 11th, 2024, FinCEN appealed the Court's decision to the United States Court of Appeals for the Eleventh Circuit. FinCEN may request a stay of judgement while the appeal process takes place. If the stay is granted, the Court's order would be temporarily lifted for the members of the NSBA during the appeal. The Eleventh Circuit should provide additional guidance on the CTA and its enforcement.

If you are not a member of the NSBA, and you formed an entity in 2024, your BOI Report is due within 90 days of formation, and if the entity was formed on or before December 31, 2024, the BOI Report is due on or before December 31, 2025. For those entities created before 2024, you may be deciding whether you should "wait and see" how this case develops, but deciding to wait may be a mistake. It is generally advisable to begin gathering documents to comply with the CTA now, as the information reported can be time-consuming, and the decision by the Court may not even apply to you or your business.

Even if the case is upheld by Eleventh Circuit, the Court's decision gave Congress a roadmap to make the CTA clearly enforceable. The Court noted that if Congress had included a simple "jurisdictional hook" in the statute, such as including the language of "affecting commerce," the Court would have found that CTA was constitutional. The Court compared the reporting requirements under the CTA to other reporting requirements promulgated by Congress by stating: "These cases also illustrate how easily Congress could have written the CTA to pass

constitutional muster.” Because the CTA has clear bipartisan support, Congress may simply amend the statute to comply with the Court’s holding. In December of 2023, the United States House of Representatives voted 420-1 on extending the date for certain reporting requirements under the CTA. This bill is currently awaiting a vote in the Senate and approval by the President before it become law.

CONCLUSION

While the decision in National Small Business United v. Yellen is important, the decision does not apply to tens of millions of entities in the United States. **Unless you are exempt from the CTA’s reporting requirements or you are a member of the NSBA as of March 1, 2024, you will have to file a BOI Report. Additionally, even members of the NSBA may be required to file a BOI Report if the Court’s decision is overturned or a stay is entered by the Eleventh Circuit.** A decision in the Court of Appeals may not occur by the end of the year, which may result in penalties for those entities who do not file due to the Court’s decision.

This decision may cause many business owners to delay their plans to comply with the CTA and may cause advisors to inadvertently tell their clients that the Court has eliminated the CTA for the entire country, which is certainly not the case.

The CTA and its reporting requirements for companies and business owners is a significant change in the law that will affect nearly all corporations, limited liability companies, and other entities formed in the United States. Given the scope of the CTA, and its penalties for non-compliance, business owners should determine whether and what information must be submitted to FinCEN.

For more information regarding the CTA, please reach out to [Michael C. Pallesen](#), [Sean D. White](#), [Evan D. Runge](#), or another member of the Cline Williams’ Transactional Section at www.clinewilliams.com

The information included in this document is for general informational purposes only and not for the purpose of providing legal advice. You should contact your Attorney to obtain advice with respect to any particular issue or problem. Use of and reference to this document or any website it may appear on does not create an attorney-client relationship between Cline Williams and the user or browser.