CLIENT ALERTS & INSIGHTS

Just a Simple Misunderstanding? The Latest Argument from the United States Department of Treasury Concerning the Constitutionality of the Corporate Transparency Act.

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As expected, shortly after receiving the Order from Judge Liles C. Burke of the District Court for the Northern District of Alabama that rendered unconstitutional the Corporate Transparency Act (the "CTA"), the United States Department of Treasury (the "Treasury") expeditiously filed an appeal to the Eleventh Circuit Court of Appeals.

In a brief filed on Monday, April 15, 2024, the Treasury posited that Judge Burke simply misunderstood the scope and purpose of the CTA when analyzing its constitutionality.

Recall that on March 1, 2024, Judge Burke found that the CTA exceeded the constitutional limitations on congressional power. More specifically, he found that the CTA lacks "a sufficient nexus to any enumerated power to be a necessary and proper means of achieving Congress' policy goals." He also believed that the interpretation proffered by the Treasury with regard to the necessary and proper clause was too broad, as was the argument that the CTA is justified by the commerce clause.

In its most recent filing, the Treasury rebuts the aforementioned position by arguing that rather than a "single-subject statute," the CTA plays a key role in a larger, federal government-based program to combat financial crime. According to the Treasury, Congress found that the information sought pursuant to the CTA is necessary to detect and prosecute financial crime.

Additionally, as argued in the lower court, the Treasury maintained that Congress understood the CTA to be essential in implementing its commerce and foreign affairs powers, as well as the power of the President over law enforcement and foreign affairs.

The Parties to the appeal agreed to an expedited briefing and argument schedule as evidenced by their recently filed joint motion. That motion is pending before the Court.

The CTA sets forth a compliance deadline of January 1, 2025 and applies to most covered entities. As advised in a previous bulletin, those entities should continue making arrangements to comply with the reporting requirements set forth in therein. That includes pairing with knowledgeable, forward-thinking outside counsel who are up-to-speed with regard to its requirements and path through the court system(s).

If you have questions regarding the CTA or the impact of the pending appeal, the White Collar and Corporate & Securities Practice Groups at Benesch are here to help.

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