

Those Subject to the Corporate Transparency Act Should Continue to Comply with its Requirements

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Authors: [Marisa T. Darden](#), [Jennifer L. Stapleton](#), [Allyson Cady](#)

Don't panic! It is business as usual for those subject to the Corporate Transparency Act (the "CTA").

On March 1, 2024, Judge Liles C. Burke of the District Court for the Northern District of Alabama held the CTA unconstitutional and enjoined the Government from enforcing the CTA "*against the [p]laintiffs.*" *National Small Business United, d/b/the National Small Business Association, et al. v. Janet Yellen*, Case No. 5:22-cv-01448, Dkt. No. 51, 52 (N.D. Ala. March 1, 2024) (emphasis added).

At the outset, Plaintiffs, National Small Business United and Isaac Winkles, filed suit against the Department of Treasury (the "Department") seeking to enjoin the enforcement of the CTA. By virtue of dispositive motions, the Parties asked the Court to determine whether "the Constitution gives Congress the power to regulate [] millions of entities and their stakeholders the moment they obtain a formal corporate status from a State[.]"

To advance their position, the Department argued that four (4) separate and distinct constitutional provisions allow Congress to implement the CTA. The Court rejected each in turn.

Foreign Affairs Power. Citing *Bond v. United States*-a case in which the Supreme Court of the United States overturned a conviction premised upon the Chemical Weapons Convention Implementation Act-the Court determined that the constitutional authority afforded to the federal government does not reach "purely local" conduct such as filing corporate documents in the states.

The Necessary and Proper Clause. The Department argued that the CTA is necessary to effectuate the aforementioned foreign affairs power, and also to adhere to international standards. The Court rejected this argument and noted that any such position would, to the extent a relevant international standard existed, sanction almost *any* exercise of Congressional power.

The Commerce Clause. The Court quickly disposed of the Commerce Clause-based arguments advanced by the Department. *First*, it rejected the notion that the CTA is justifiable as a regulation on the channels of interstate commerce. Instead, it found that the CTA does not regulate the channels and instrumentalities of commerce or prevent their use for a purpose, but instead regulates the entities that *use* those channels themselves. *Second*, it held that the CTA does not suffice as a regulation on conduct with a "substantial effect" on interstate commerce. Though the Court's analysis rests largely on the premise that incorporation, as well as any other activities governed by the CTA, are too attenuated to economic activity.

Taxing Power. The Court strongly advised that, if it accepted the Department's argument with regard to the tax power, it would substantially expand congressional authority. For that reason, these arguments were also summarily dismissed. Fundamentally, the Court determined that any civil

penalties levied by the CTA are not taxes-particularly as those penalties are not fixed, paid to the Department, or provided for in the applicable tax code.

The Department and FinCEN are expected to appeal this decision. However, in the interim, entities that are otherwise subject to the CTA should make arrangements to comply with the reporting requirements set forth therein. Those should include pairing with knowledgeable outside counsel that can shepherd you through the CTA's requirements, advise on the enforcement mechanisms, and provide forward-looking guidance with regard to its constitutionality.

If you have questions regarding the CTA or the impact of the *National Small Business United* decision, the White Collar and Corporate & Securities Practice Groups at Benesch are here to help.

Marisa T. Darden at mdarden@beneschlaw.com or 216.363.4440.

Jennifer L. Stapleton at jstapleton@beneschlaw.com or 216.363.4428.

Allyson Cady at acady@beneschlaw.com or 216.363.6214.