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Federal District Court Rules Corporate Transparency Act Unconstitutional, but Law Remains in Effect

March 7, 2024

Last Friday, a federal court in Alabama ruled in *National Small Business United v. Yellen* that the beneficial ownership information (BOI) reporting requirements established by the Corporate Transparency Act (CTA) are unconstitutional. These CTA provisions, implemented through the BOI reporting rule promulgated by the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) in September 2022, just started taking effect on January 1, 2024.

Pursuant to the CTA and the BOI reporting rule, unless exempt, any company formed in the US, or any foreign company that registers to do business in the US, by filing a document with a secretary of state or similar office is a covered "reporting company" that must submit information to FinCEN about the company and its beneficial owners (as defined by the CTA and by rule).

The plaintiffs in the case argued that the CTA exceeded the Constitution's limits on the legislative branch and lacked a sufficient nexus to any enumerated power to be a necessary or proper means for achieving the policy goals of Congress. The court rejected FinCEN's arguments that the CTA was necessary and proper to carry out Congress' foreign affairs, national security and taxing powers. Additionally, the court held that the CTA did not regulate interstate commerce or purely economic intrastate activity as authorized by the commerce clause. However, the ruling only enjoins FinCEN and the Treasury Department from requiring the plaintiffs to comply with the CTA. FinCEN subsequently confirmed in a brief notice posted on its website late Monday, March 4, that it will comply with the court's order "for as long as it remains in effect," and is not currently enforcing the CTA against the individually named plaintiff, reporting companies for which he is the beneficial owner or company applicant, the National Small Business Association, and members of the National Small Business Association (as of March 1, 2024).

In other words, it appears that the CTA is still in effect, and FinCEN may still enforce the CTA against individuals and entities other than the plaintiffs. While the court's ruling and FinCEN's response leaves the door open to future litigation (or a legislative change), at this time there is nothing concrete that would suggest that other covered reporting companies do not need to comply and file BOI reports by the applicable deadline. While FinCEN or the Treasury Department also could appeal the district court's ruling and/or seek an injunction, as of March 6, 2024, the agencies do not appear to have done so or indicated that they will do so.

Covered entities should continue to monitor for updates or additional guidance, as we anticipate that the situation will continue to develop. In addition, even leaving aside the CTA, companies should be mindful of other new BOI reporting obligations under new state laws based on the CTA, such as New York's LLC Transparency Act, which remain unaffected by the court's decision in this case.

Cooley associate Cailin Liu also contributed to this alert.

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Key Contacts

Adam Fleisher Washington, DC	afleisher@cooley.com +1 202 776 2027
Jasmine A. Banks Washington, DC	jbanks@cooley.com +1 202 360 6565

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