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The Corporate Transparency Act is Unconstitutional (According to the Northern District of Alabama)—Should You Still Comply?

by Colson Franse and Bryan Handlos

On March 1, 2024, the United States District Court for the Northern District of Alabama (“Court”) determined that the Corporate Transparency Act is unconstitutional.¹ This decision was made in a case brought by the National Small Business Association (“NSBA”) (whose members include more than 65,000 businesses across the country), along with one individual NSBA member (“Mr. Winkles”) who was a small business owner resident in Alabama (the “Plaintiffs”). According to the court, “the Corporate Transparency Act is unconstitutional because it exceeds the Constitution’s limits on Congress’ power.” The court was unpersuaded by arguments that the CTA could be supported by congressional powers pertaining to foreign affairs and national security, the Commerce Clause, and taxation (other arguments were also made by the Plaintiffs but not addressed by the court).

In addition to its opinion, the Court issued an injunction against enforcing the CTA against *the Plaintiffs* (the NSBA and Mr. Winkles). There is case law to support an interpretation that the injunction may apply to all 65,000+ *current members* of the NSBA. Indeed, FinCEN has announced:

. . . 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.

¹ The first paragraph of the opinion:

The late Justice Antonin Scalia once remarked that federal judges should have a rubber stamp that says STUPID BUT CONSTITUTIONAL. See Jennifer Senior, In Conversation: Antonin Scalia, *New York Magazine*, Oct. 4, 2013. The Constitution, in other words, does not allow judges to strike down a law merely because it is burdensome, foolish, or offensive. Yet the inverse is also true—the wisdom of a policy is no guarantee of its constitutionality. Indeed, even in the pursuit of sensible and praiseworthy ends, Congress sometimes enacts smart laws that violate the Constitution. This case, which concerns the constitutionality of the Corporate Transparency Act, illustrates that principle.

For the full opinion: <https://law.justia.com/cases/federal/district-courts/alabama/aindce/5:2022cv01448/183445/51>

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We expect that the Department of the Treasury will appeal the Alabama decision (which could likely take 10-24 months to be resolved) and cannot predict whether a stay will be issued during the appeal. We have seen some commentators advise that U.S. companies can now ignore the CTA. We strongly suggest that such an approach be taken by a company only after consultation with counsel. FinCEN's announcement (above) indicates they are expecting continued compliance by any company not a member of the NSBA as of March 1, 2024.

Want more information?

Our [CTA resource center](#) provides more details on available exemptions and reporting deadlines, and our previous articles provide additional details on all things CTA, including who qualifies as a beneficial owner. FinCEN also published a [beneficial ownership information reporting FAQ](#) and a [small entity compliance guide](#).

Kutak Rock is here to help clients navigate the CTA compliance process. If you have any questions about how the CTA will affect your business, please contact your Kutak Rock attorney or any member of the CTA Client Service Team listed on the left. You may also visit us at www.kutakrock.com.

