

insights

TYPES NOT MAPPED YET March 05, 2024 | TTR not mapped yet | Nabil G. Al-Khaled, Frederick R. Strasheim

After Federal District Court Declares Corporate Transparency Act Unconstitutional, FinCEN Responds

On Friday, March 1, 2024, Judge Liles C. Burke of the U.S. District Court for the Northern District of Alabama issued a [Memorandum Opinion](#) and [Final Judgment](#) in *National Small Business United v. Yellen*, No. 22-cv-01448 (N.D. Ala.), declaring the Corporate Transparency Act unconstitutional and permanently enjoining the U.S. Department of the Treasury and Financial Crimes Enforcement Network (“FinCEN”) from enforcing the CTA against the plaintiffs in the case. Those plaintiffs are the National Small Business Association (the “NSBA”) and Isaac Winkles, an NSBA member.

In holding that Congress exceeded its authority in enacting the CTA, Judge Burke rejected the government’s three grounds for Congress’ powers to enact the CTA under Congress’:

1. Foreign affairs and national security oversight powers;
2. Commerce Clause powers; and
3. Taxing powers.

On March 4, 2024, FinCEN issued a [press release](#) stating that “FinCEN will 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.” FinCEN also noted that it viewed the plaintiffs in the action as Mr. Winkles and NSBA members as of the March 1 date of the decision, so FinCEN is not saying that it will not enforce the CTA against NSBA members who join after that date.

Importantly, *other than as to the plaintiffs in the action, FinCEN’s position appears to be that the reporting requirements of the CTA continue to apply.* We anticipate that the government will file an appeal with the Eleventh Circuit Court of Appeals. The appeals process can be lengthy, and it is possible additional suits challenging the CTA may be filed, creating further uncertainty for businesses regarding the CTA. We will be closely monitoring litigation regarding the constitutionality of the CTA and will continue to provide updates.

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