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The Corporate Transparency Act Declared Unconstitutional: What It Means for You

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On March 1, 2024, a federal district court in Alabama ruled that the Corporate Transparency Act is unconstitutional. This alert briefly describes the ruling and what it means for CTA compliance moving forward. In short, the ruling enjoins enforcement of the CTA only as to the parties to the case, and FinCEN has made clear that it expects everyone else to continue to comply with the CTA. In 2021, the Corporate Transparency Act ("CTA") became law.[1] It is a law designed to help law enforcement investigate potential money laundering by requiring millions of U.S. and non-U.S. entities to file a form with the U.S. Financial Crimes Enforcement Network ("FinCEN") identifying, among other information, the natural persons who are beneficial owners of the entity.[2] **The Ruling** In November 2022, the National Small Business Association ("NSBA") and one of its individual members, Isaac Winkles, brought a lawsuit challenging the constitutionality of the CTA on various grounds.[3] On March 1, Judge Liles C. Burke of the U.S. District Court for the Northern District of Alabama granted the plaintiffs summary judgment.[4] Specifically, the court concluded that the CTA is unconstitutional because it exceeds Congress' enumerated powers. In a lengthy opinion, the court held that the plaintiffs have standing and that the legislative powers cited by the government—including authority over foreign affairs and national security, the Commerce Clause, the taxing power, and the Necessary and Proper Clause—do not provide sufficient authority for the CTA.[5] The court did not address the plaintiffs' arguments that the CTA violates the First, Fourth, and Fifth Amendments.[6] In conjunction with the ruling, the court issued a final judgment in the case that did two things.[7] First, the court declared the CTA unconstitutional. Second, the court permanently enjoined the government from enforcing the CTA ***as to the plaintiffs in the case***. The court did not issue a nationwide injunction preventing the law from being enforced against other entities. **U.S. Government Response** In response to the ruling, FinCEN issued a statement, declaring that:

> *The Justice Department, on behalf of the Department of the Treasury, filed a Notice of Appeal on March 11, 2024. While this litigation is ongoing, FinCEN will continue to implement the Corporate Transparency Act as required by Congress, while complying with the court's order. Other than the particular individuals and entities subject to the court's injunction, as specified below, reporting companies are still required to comply with the law and file beneficial ownership reports as provided in FinCEN's regulations. FinCEN is complying with the court's order and will continue to 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: 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.*[8]

In addition to its appeal, the U.S. government may seek a stay of the district court's ruling pending the appeal, which would pause the effect of the ruling until the Eleventh Circuit decides the case. **What It Means For Entities Subject To The CTA** In light of the narrow

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scope of the judgment in the case, FinCEN's announcement regarding the case, and the government's appeal, ***companies and persons that were not a plaintiff to the case or members of the NSBA as of March 1, 2024 should, at this time, assume that FinCEN continues to view them as subject to the CTA.*** Although the individual circumstances of companies may vary, in general, companies should be prepared to meet any timelines for filings required by the CTA. Companies should also continue to monitor further proceedings in the Eleventh Circuit court as well as any similar lawsuits filed in other courts in the wake of the Northern District of Alabama's decision. For example, in addition to seeking a stay of the Northern District of Alabama's decision, the government may seek an expedited review of the merits, which (if granted) could result in the Eleventh Circuit resolving the case on a faster timeframe. If the Eleventh Circuit publishes its ultimate decision in the case, and assuming no Supreme Court review, then the opinion would create binding precedent on the unconstitutionality of the CTA *in Alabama, Florida, and Georgia*, which could create more certainty in those jurisdictions. In the wake of the Northern District of Alabama's decision, new plaintiffs in other jurisdictions may raise similar challenges to the CTA to seek relief for additional entities. Ultimately, the issue would likely not be resolved nationwide without Supreme Court review (or review in each of the other federal courts of appeals), action from Congress, or the government's acquiescence in the Northern District of Alabama's decision. ***It may be several years before the federal judiciary provides a definitive answer.*** In the meantime, the CTA imposes imminent deadlines for many businesses, for which the law remains in effect. Specifically, for entities formed after January 1, 2024, beneficial ownership information must be reported to FinCEN within 90 days of their formation, unless one of the CTA's 23 exemptions applies. Companies should consider prioritizing any required filings for entities that are subject to these accelerated deadlines. With respect to entities formed on or before December 31, 2023, beneficial ownership filings, if required, are due by January 1, 2025. For these filings, companies should generally ensure that they are taking steps to make any required filings by the end of the calendar year. For companies with a large number of entities subject to the January 1, 2025 deadline, it likely makes sense to continue the review of such entities and preparation of required forms, as analyzing the beneficial ownership of the entities that must make required filings can take considerable time for clients. As always, please reach out to us for advice related to your specific company's situation, as the best approach may vary considerably across companies. We note that this ruling deals only with the federal CTA passed by Congress, not similar legislation passed by states such as New York, which have enacted similar requirements.[9] Gibson Dunn will continue to monitor CTA developments closely.

_____ [1] See William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, Div. F., § 6403 (adding 31 U.S.C. § 5336). [2] Prior alerts by Gibson Dunn explaining the Corporate Transparency Act are available at: https://www.gibsondunn.com/top-12-developments-in-anti-money-laundering-enforcement-in-2023/; https://www.gibsondunn.com/the-impact-of-fincens-beneficial-ownership-regulation-on-investment-funds/. [3] *National Small Business United et al. v. Yellen et al*., No. 5:22-cv-01448 (N.D. Ala. 2022). [4] *National Small Business United et al. v. Yellen et al.*, No. 5:22-cv-01448, Dkt. 51 (N.D. Ala. 2024). [5] *Id.* at 9-52. [6] *Id.* at 52. [7] *National Small Business United et al. v. Yellen et al.*, No. 5:22-cv-01448, Dkt. 52 (N.D. Ala. 2024). [8] *See* Beneficial Ownership Information, FinCEN, https://www.fincen.gov/boi; *see also National Small Business United et al. v. U.S. Department of the Treasury et al.*, No. 24-10736 (11th Cir. 2024). [9] *See* S.995-B/A.3484-A.

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