

Cracks in the Corporate Transparency Act?

March 5, 2024

On March 1, 2024, an Alabama federal court declared the Corporate Transparency Act (CTA) unconstitutional—but only enjoined its enforcement as to the specific litigants.

As described in our prior alerts, the CTA effectuates a sea change in the entity formation and reporting regime in the United States. It requires many entities formed or registered in the United States to report information to the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN). This includes detailed information about both the company itself and its beneficial owners. The CTA is intended to combat money laundering and terrorism financing, among other purposes. Reporting timelines are strict, and both civil and criminal penalties may be imposed for failing to comply with the CTA. You can find further **background on the CTA here**.

In ***National Small Business Association v. Yellen***, the U.S. District Court for the Northern District of Alabama issued a 53-page opinion granting summary judgment to the National Small Business Association and one of its members. The government argued the CTA is a proper exercise of the federal government's foreign affairs power, under the Commerce Clause, and of its taxation power. Despite acknowledging the government's legitimate interests in achieving the stated purposes of the Act, the court held that the CTA "exceeds the Constitution's limits on the legislative branch and lacks a sufficient nexus to any enumerated power to be a necessary or proper means of achieving Congress' policy goals." Specifically, the court determined that there was no direct tie to foreign affairs or interstate commerce because entities are creatures of state law, and the CTA does not regulate either the channels or instrumentalities of commerce. The court similarly found that although Congress may anticipate the effects of economic activity on commerce, it may not anticipate the economic activity itself—which the CTA effectively does by applying to all non-exempt entities upon formation. The court also determined that CTA disclosures are not necessary to exercise federal taxation power.

The court's judgment is limited to the specific plaintiffs, but the CTA is also quite young, having taken effect January 1, 2024. An appeal of this case and decisions in other jurisdictions may follow. For additional information, or if you would like guidance relating to the CTA or assistance forming or registering an entity, please contact your Miller Canfield attorney to discuss a specific engagement.