

March 4, 2024

Federal Court Strikes Down Corporate Transparency Act as Unconstitutional

Federal Government Expected to Appeal Decision and Seek a Stay in the Interim

On March 1, 2024, the U.S. District Court for the Northern District of Alabama held that the Corporate Transparency Act (“CTA”)—which requires most reporting companies to file a beneficial ownership information report (“BOIR”) with the Financial Crimes Enforcement Network (“FinCEN”)—is unconstitutional as beyond Congress’s authority. Our prior memorandum (which can be found [here](#)) gives further detail about the CTA’s requirements.

Specifically, the District Court rejected the government’s argument that Congress had the authority to enact the CTA under its Constitutional powers to regulate foreign affairs and interstate commerce and to impose taxes. Although the Court acknowledged Congress’s representation that the CTA was designed to stop U.S. and non-U.S. entities from engaging in money laundering, tax avoidance, and other criminal activities, the Court found that the reporting requirements were not sufficiently tailored to be within Congress’s powers and also impinged on the powers traditionally held by state governments over the terms of the formation of new companies. Additionally, the Court suggested in its decision how Congress might amend the CTA to fit within the Constitution’s Commerce Clause.

Although the CTA came into effect on January 1, 2024, the District Court’s opinion means the law is, for the moment, not in effect. We expect the U.S. government will appeal the District Court’s decision immediately and seek a stay of the decision while the appeal is decided. If a stay is granted, the CTA’s reporting requirements will remain in place. Even if a stay is not granted, if the District Court’s decision is ultimately overturned on appeal, the CTA’s current reporting deadlines may be restored.

Accordingly, entities that will be required to file a BOIR under the CTA should continue gathering the information needed to file their BOIRs on time (e.g., before January 1, 2025 for entities that existed prior to

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January 1, 2024). As for new entities formed this year that have not yet filed their BOIRs with FinCEN, they should monitor developments and have the necessary information at hand to file their BOIRs should the Government be granted a stay of the District Court's decision.

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