



Alerts

Alabama Federal Judge Finds the Corporate Transparency Act (CTA) Unconstitutional: FinCEN Responds

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Hinshaw Alert

The Corporate Transparency Act (the CTA), which became effective on January 1 this year, was enacted by Congress to combat sources of financial criminal activity and abuse of anonymous companies. The CTA requires a majority of privately held corporations, limited liability companies, and similar entities to file beneficial ownership information reports (BOIR) with the Financial Crimes Enforcement Network (FinCEN), which requires the disclosure of beneficial owners and other persons who benefit from the business.

In an unexpected decision, a federal judge in the District Court for the Northern District of Alabama recently declared the CTA unconstitutional. The plaintiffs, the National Small Business Association (the NSBA) and Isaac Winkles, an NSBA member, filed suit against the Treasury Department in 2022 in the US District Court for the Northern District of Alabama, challenging the constitutionality of the CTA's reporting requirements. Specifically, the plaintiffs alleged that the CTA is:

- (1) unduly burdensome for small businesses;
- (2) a violation of privacy and free speech protections; and
- (3) infringes on a state's power to govern business.

The court ultimately 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..."

However, the court, did not rule on the plaintiff's allegations regarding the burdens on small businesses and violations of privacy and free speech protections.

In response to this decision, FinCEN quickly released a [statement](#) addressing both the court's ruling and how it intended to respond. Without addressing the merits of the plaintiffs' allegations, FinCEN indicated in its statement that the Justice Department (on behalf of FinCEN) had already filed an appeal of the verdict but that, while that litigation is ongoing, FinCEN would respect the Alabama court's ruling and not attempt to enforce the CTA against the two

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named plaintiffs (or any of the other related individuals/entities as specified in the Alabama court's injunction).

However, the statement also made it clear that the Alabama decision will not affect FinCEN's enforcement of the CTA against any individual/entity not expressly included in the Alabama action and that all other "**reporting companies are still required to comply with the [CTA] and file beneficial ownership reports as provided in FinCEN's regulations.**"

Currently, there are similar pending cases in other states that have challenged the requirements of the CTA. However, except as provided above, **the CTA continues to remain in full effect for all reporting companies, and it is imperative that all reporting companies understand and fully comply with their respective obligations under the CTA.** Hinshaw will continue to provide updates on the subject Alabama action and any other legal action that attempts to challenge the CTA.

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