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includes the controversial Beneficial Ownership Information reporting requirements, to be unconstitutional.

Isaac M. O'Bannon • Mar. 12, 2024



Updated March 12, 2024. (Originally published March 4, 2024.)

A federal district court in Alabama has found the Corporate Transparency Act (CTA), which includes the controversial **Beneficial Ownership Information** reporting requirements, to be unconstitutional. The court document includes the statement that the CTA, “exceeds the Constitution’s limits on the executive branch.” The

National Small Business Association (NSBA), a trade group, initiated the lawsuit. The

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government will appeal this decision.

The NSBA issued a [statement](#) on Tuesday, March 5, 2024, stating: “The ruling by Judge Liles Burke to strike down the CTA is a victory for law-abiding small-business owners everywhere who would have been forced to disclose their sensitive personal information to a government database.”

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The challenge to the CTA began in 2022 when the NSBA and Huntsville business owner Isaac Winkles first brought their case before the District Court. While the case was being considered in court, the U.S. Treasury Department’s implementation of the CTA has fallen short of expectations – millions of small-business owners still do not know about the requirements of the CTA The database is ripe for data security issues and confusion which could saddle small-business owners with hefty penalties or even jail time.

“As the court noted, the ultimate goals of the CTA, countering money laundering and terrorism financing are laudable,” said John Neiman, counsel for the NSBA and Winkles. “But as the court also noted, the Constitution sets limits on what Congress can do to achieve even the most laudable of goals, and Congress violated those limits here. Congress can find a way to achieve these goals without exceeding the limits on its powers under the Constitution.”

In his opinion, federal circuit court judge Burke stated:

Even in the pursuit of sensible and praiseworthy ends, Congress sometimes enacts smart laws that violate the Constitution. This case, which concerns the constitutionality of the Corporate Transparency Act, illustrates that principle.

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Wolters Kluwer's Vice President of Government Affairs, [Mark Friedlich](#), opined that it's best practice for all small businesses who are considered reporting companies under to file on their reporting deadlines irrespective of the Federal District Court's ruling.

"Not surprisingly, the Department of Justice appealed the Alabama Federal District Court's decision holding the Corporate Transparency Act (CTA) unconstitutional to the 11th Federal Circuit Court of Appeals. What is surprising is that the government didn't request the Appeals Court to stay or suspend the lower court's holding while the appeal played out.

Bottom line, however, is that the Corporate Transparency Act (CTA) will continue to be enforced for 99.8% of the 30+ million small businesses who are considered reporting companies under the CTA. Only National Association of Small Business members as of 3/1/2024 will escape FinCEN enforcement...for now."

Former IRS Commissioner Charles Rettig advised:

"Right now, you see most businesses, most professionals continue to follow the law as we understand it," Rettig said in an [interview with Bloomberg Law](#). "Most tax professionals wait until you have a circuit court opinion to really react—and particularly if you're outside of the area of the district court.

"There's a feeling in the tax professional community that as burdensome as the Transparency Act is, it needs to be complied with until there's really a clear line saying no," he said.

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