

Challenges to the Corporate Transparency Act



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The Corporate Transparency Act (the “CTA”), which became effective on January 1, 2024, requires certain domestic and foreign companies doing business in the United States to file a beneficial ownership report with the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”). Reporting entities created or registered before 2024 will have until January 1, 2025 to file their initial beneficial ownership report. Reporting entities created or registered in 2024 will have 90 days from filing corporate registration documents with secretaries of state to file a beneficial ownership report with FinCEN. Thereafter, reporting entities created after January 1, 2025 will have thirty days from the initial filing of their registration documents to file beneficial ownership reports with FinCEN.

Earlier this month, in *National Small Business Association v. Yellen*, the United States District Court for the Northern District of Alabama found the CTA unconstitutional in part because the law “exceeds the Constitution’s limits on the legislative branch” and thus is neither necessary or proper to achieve Congress’ policy goals. The District Court rejected the government’s contention that the CTA is a necessary and proper exercise of Congress’ taxing power or its powers over commerce, foreign affairs or national security, finding that such a reading of the necessary and proper clause would “give Congress carte blanche to do as it pleases.” The District Court found it unnecessary to address the plaintiffs’ additional claims that the CTA also violates the First, Fourth and Fifth Amendments to the Constitution.

While the wording of the decision is broad, in fact, the decision only enjoins the Treasury Department from enforcing the CTA only with respect to the plaintiffs in the case. The government promptly appealed and FinCEN announced that it will “continue to implement the Corporate Transparency Act as required by Congress, while complying with the court’s order.”

At the state level, on March 1, 2024, New York Governor Kathy Hochul signed an amendment to the New York LLC Transparency Act (“NYTA”). The NYTA is modeled on the CTA, and addresses the same policy concerns as does the CTA, namely trying to prevent the use of anonymous LLCs in NY to hide various criminal activity. Unlike the CTA, which ostensibly applies to any kind of corporate entity, the NYTA only requires LLCs to provide beneficial ownership information. The recently-signed amendment makes all reporting provisions effective January 1, 2026, and limits

disclosure of beneficial ownership information to law enforcement or as required by court order.

Since the Alabama decision in *National Small Business Association v. Yellen*, at least one other similar suit has been filed thus far. (See, *Small Business Association of Michigan, et al v. Yellen*,). It is not yet known if the Alabama case or the Michigan case will be part of a trend challenging the law, or what the federal appellate courts ultimately decide. The NYTA may also be subject to similar challenges. But for now, other than the specific plaintiffs in the National Small Business Association case, non-exempt reporting entities must follow the beneficial ownership provisions in the CTA.