Federal District Court Rules Corporate Transparency Act Unconstitutional, Only Enjoins Actions Against Plaintiffs: What's Next, Given You Weren't a Plaintiff?

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Executive Summary

While the headline "Court Rules Corporate Transparency Act Unconstitutional" may seem like the CTA has gone away, that is not the full story. Given a $500.00 per day penalty for non-compliance, it remains prudent practice to continue to abide by the reporting requirements set forth under the CTA until additional guidance becomes available.

***National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.) and FinCEN's Response**

On March 1, 2024, a federal district court in Alabama entered a judgment that the Corporate Transparency Act (CTA) is unconstitutional and enjoined the Department of Treasury and Financial Crimes Enforcement Network (FinCEN) from enforcing the CTA against the Plaintiffs in the case (i.e., the National Small Business Association (NSBA) and a specific business owner who is a member of the NSBA). The Treasury Department is expected to request a "stay of judgment," i.e., a pause in the proceedings, and file an appeal to the Eleventh Circuit Appeals Court. Other federal district courts may rule on the CTA in the meantime. Given the sweeping impact of the CTA, whichever way the Eleventh Circuit rules, it is likely the case will make its way up to the U.S. Supreme Court.

FinCEN responded on March 4, 2024 with a notice that it is not currently enforcing the CTA as to the Plaintiffs. The inference is that FinCEN will move forward with enforcing the CTA as to all Reporting Companies other than the Plaintiffs that must file the required information with FinCEN.

What Does This Mean for You?

If you were not one of the Plaintiffs, FinCEN signaled it is continuing to move forward with the CTA Beneficial Owner Information Reporting process. While the CTA may eventually be found unconstitutional after all appeals, it may be found constitutional, or Congress may through legislation correct the constitutional errors highlighted by the Alabama District Court. There are a lot of "maybes" and open questions regarding compliance and enforceability.

Nonetheless, waiting until the appeals process is exhausted to comply with the reporting requirements is risky. With penalties of $500 per day, non-compliance can have significant financial consequences while the status of the CTA remains in flux. Until there is further guidance, Reporting Companies should be prepared to report to FinCEN by the applicable deadlines:

- For entities existing prior to 2024: December 31, 2024.
- For entities created in 2024: within 90 days of formation.

Porzio's interdisciplinary CTA Team continues to monitor the evolving legal landscape and will provide timely updates as needed. Contact a member of our CTA Team to learn more about proactive compliance preparation.