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Business Signals – Client Alert

An alert about the legal implications of issues affecting businesses and business owners in the Central Gulf Coast region.

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GREAT NEWS IN THE CORPORATE WORLD—THE CORPORATE TRANSPARENCY ACT HAS BEEN OVERTURNED?

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The business lawyers at Armbrecht Jackson have been busily getting prepared to assist their clients with compliance with the recently passed Corporate Transparency Act (“CTA”). This Act imposed, for the first time ever, a mandatory reporting requirement relating to ownership of small business entities nationwide. The CTA went into effect on January 1, 2024, and requires companies formed in 2024 to report information to the Financial Crimes Enforcement Network (“FINCEN”) with the U.S. Department of the Treasury about both the company and its owners within 90 days of formation. It also requires companies formed before January 1, 2024, to file their CTA reports by the end of the year. The Act includes provisions which would levy significant penalties on small businesses and their owners for failure to comply.

We addressed the details of the Act in a prior Client Alert, located at <https://www.ajlaw.com/wp-content/uploads/2023/12/AJ-Business-Signals-Dec-2023.pdf> Tax and corporate attorneys around the country, as well as government officials with FINCEN, have spent innumerable hours getting their clients ready to meet the requirements of the CTA. However, a recent legal decision has now cast the continued legality of the CTA in doubt. Specifically, in the case of *National Small Business United, d/b/a the National Small Business Association vs. Yellen*, Federal District Judge Liles Burke of the Northern District of Alabama declared that the CTA exceeded Congress’s constitutional limits, as it lacked sufficient connection to any enumerated powers in the Constitution that would allow Congress to pass and enforce the Act. In other words, the Federal Court in the Northern District of Alabama has declared the CTA to be unconstitutional, and accordingly has ordered that it cannot be enforced, at least against the plaintiffs in that case.

In this case, the Department of Treasury had argued that Congress had the power to pass the CTA under its general “foreign affairs” powers, under the Commerce Clause of the U.S. Constitution, and under Congress’s general taxing powers. The Federal District Judge rejected all of the arguments, finding that issues of corporate formation

were primarily a state issue and not a “foreign affairs” issue; that the act went far beyond Congress’s commerce powers because it regulated intrastate activities as well as interstate activities; and finally, that the purpose of collecting useful data for tax administration was insufficient, in and of itself, to invoke Congress’s taxing power.

Because of the foregoing, the Court rejected the government's claims and struck down the CTA as unconstitutional. This is huge news for all small business owners and the lawyers representing those small businesses. It is unclear as of today whether the District Court’s Order is sufficient to strike down the Act in its entirety for all small businesses around the country. The Court’s final judgment, which was entered separately from its memorandum opinion, states that it is declaring The Corporate Transparency Act unconstitutional but is only permanently enjoining the Department of Treasury from enforcing the CTA **against the specific plaintiffs** in the case. FINCEN has also now released a notice, stating that it is complying with the Court’s order but is not currently enforcing the CTA against the particular plaintiffs in that case. See [Notice Regarding National Small Business United v. Yellen, No. 5:22-cv-01448 \(N.D. Ala.\) | FinCEN.gov](#) Accordingly, at least as of March 4, 2024, other businesses are still required to file their CTA reports, unless they decide to file their own lawsuits based on the Court’s opinion.

It is possible that FINCEN or another court will suspend obligations relating to compliance with the CTA based on the opinion, at least while the case works its way through the appellate process, but that is uncertain at this time. Tax and Transactional lawyers at Armbrecht Jackson are paying close attention to this issue and will continue to monitor further developments.

QUESTIONS OR CONCERNS? Please feel free to contact the author as follows:

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