

## Insights

# CORPORATE TRANSPARENCY ACT: ONGOING LITIGATION NOT LIKELY TO CHANGE END-OF-YEAR FILING DATES

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After the U.S. Congress enacted the federal Corporate Transparency Act (the “CTA”) on January 1, 2021, a wide range of plaintiffs immediately brought suit against the government challenging its constitutionality. Currently, there are about fourteen cases filed in federal court challenging the validity of the CTA. Some reporting companies have watched these cases closely to see if a ruling would change their obligations to make a filing for existing entities by January 1, 2025.

So far, *National Small Business Association v. U.S. Department of the Treasury* is the only case where a trial court has upheld such a challenge. The parties in this case are now in the Eleventh Circuit contesting with a focus on whether the CTA is a valid exercise of Congress’s power under Article I of the Constitution, and whether the CTA constitutes an unreasonable search violative of the Fourth Amendment. Though the Eleventh Circuit has not made a decision as to whether the CTA is constitutional, its decision may not affect the way FinCEN enforces the CTA against entities or individuals outside of the plaintiffs in that case.

At this point in time, it does not appear that a federal court case will cause any CTA filing obligations to be suspended or postponed prior to the end of the year for any reporting company that was not part of the National Small Business Association as of March 2024. Reporting companies should not rely on *National Small Business Association* or any other ongoing litigation to exempt themselves from the reporting obligations imposed by the CTA through the end of this year, nor should they delay filing while these cases are still pending.

## WHAT IS THE CTA?

Effective as of January 1, 2024, the CTA is a federal law requiring “Reporting Companies” to file certain beneficial ownership-related information with the Financial Crimes Enforcement Network (“FinCEN”), a division of the U.S. Treasury. For instance, a Reporting Company is required to inform FinCEN who the “beneficial owner(s)” and “company applicant(s)” for the Reporting Company are. Failure to comply with the CTA may result in monetary penalties and imprisonment.

Learn more about the CTA and whether it applies to your entity with our [Interactive CTA Tool](#).

# ***NATIONAL SMALL BUSINESS UNITED V. U.S. DEPARTMENT OF THE TREASURY***

Two plaintiffs sued the U.S. Department of the Treasury: Isaac Winkles and the National Small Business Association (“NSBA”), an advocacy group representing about 65,000 small businesses. The plaintiffs claim that the CTA exceeds Congress’s power to regulate commerce under Article I of the Constitution and that it encroaches on state sovereignty as provided by the Ninth and Tenth Amendments. The plaintiffs additionally claim that the CTA violates their expectation of privacy and right against self-incrimination provided by the Fourth, Fifth, and Ninth Amendments. Finally, the plaintiffs assert two additional counts against the government for compelled speech in violation of the First Amendment and failure to provide due process in violation of the Fifth Amendment.

The trial court, the U.S. District Court for the Northern District of Alabama, only found that the CTA was unconstitutional as an exercise of Congress’s enumerated Article I powers and did not decide whether the CTA violates the First, Fourth, and Fifth Amendments. Addressing each of the government’s arguments, the court found that the CTA was not a proper exercise of Congress’s foreign affairs powers, interstate commerce powers, or taxing powers.

After the trial court’s decision, FinCEN released a notice stating it will comply with the court’s order and not enforce the CTA against the plaintiffs, including all of the members of NSBA as of March 1, 2024, pending resolution of the appeal. Importantly, it stated it will still continue to enforce the CTA against all other individuals and entities.

This case is on appeal now in the Eleventh Circuit, which heard arguments in September 2024. Given the recency of the hearing and the expected wait time for an appellate court to issue its decision, it is unlikely that we will know the Eleventh Circuit’s ruling by the end of this year.

## **OTHER CASES**

Most cases challenging the CTA’s constitutionality have not advanced as far as National Small Business Association. Of the thirteen other cases challenging the CTA, only two other cases have been decided, both plaintiffs’ rejecting constitutionality challenges: *Firestone et al. v. Yellen et al.*, Docket No. 3:24-cv-01034 (D. Or. Jun 26, 2024) and *Comm. Ass’ns. Inst., et al., v. Yellen, et al.*, No. 1:24-CV-1597 (E.D. Va. Oct. 24, 2024).

In *Firestone*, seven plaintiffs challenged the constitutionality of the CTA on a facial and as-applied basis and requested preliminary injunctive relief. The U.S. District Court for the District of Oregon denied the preliminary injunction, finding that the plaintiffs’ facial challenge was unripe and that the plaintiffs did not have standing to make a facial challenge. The plaintiffs’ as-applied challenges were also denied because they failed to establish that their claims had a likelihood of success or would result in a likelihood of irreparable harm. Notably, the court only denied the preliminary

injunction and did not dismiss the case entirely. This means that the plaintiffs may later attempt to seek other remedies if they continue to litigate.

In *Community Associations Institute*, plaintiffs urged the U.S. District Court for the Eastern District of Virginia to follow the U.S. District Court for the Northern District of Alabama *NSBA* holdings. However, the court not only rejected the plaintiffs' claims that the CTA overstepped the Congress's Commerce Clause powers, but it also rejected plaintiffs' challenges under the First and Fourth Amendments. The court held that the CTA does not compel speech in violation of the First Amendment and that the CTA's reporting requirements falls within the category of reasonable reporting requirements which are understood to be constitutional. Like *Firestone*, the court only denied the preliminary injunction. The case is now being appealed.

## WHAT DOES THIS MEAN FOR YOU?

Even though the Eleventh Circuit could uphold the trial court's decision and find the CTA to be unconstitutional, FinGen is still enforcing the regulations against everyone else. And even if the Eleventh Circuit were to invalidate the CTA facially, Congress may still amend the CTA in accordance with the trial court's decision to ensure it is constitutionally valid.

Congress may also pass laws to extend CTA filing deadlines. However, these bills have generally been delayed. For instance, H.R. 5119 passed the House in December 2023, but still has not been taken up to the Senate. More recently, H.R. 9278 was introduced in August 2024, but the House has not passed it. It is unclear if these proposed measures will be enacted before the January 1, 2025 deadline.

This means that reporting companies, other than the plaintiffs in the *NSBA* case, should comply with the CTA reporting obligations through the end of this year.

To navigate these rules and deadlines for reporting requirements, contact [BCLP's CTA team](#) with any questions. *Please note that BCLP does not provide advice as to the application of these laws to an entity unless we have been expressly engaged to provide such advice.*

## RELATED PRACTICE AREAS

- Corporate

## MEET THE TEAM



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