A FEDERAL COURT SITUATED IN ALABAMA ENJOINS ENFORCEMENT OF CORPORATE TRANSPARENCY ACT AGAINST PLAINTIFFS IN THAT ACTION: WHAT REPORTING COMPANIES NEED TO KNOW

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In a significant legal development, a U.S. District Court judge sitting in the Northern District of Alabama has ruled that the Corporate Transparency Act (CTA) is unconstitutional because, in his view, the enactment of the CTA exceeded the United States Constitution's limits on Congress' enumerated legislative powers. In a Final Order, the judge enjoined the U.S. Government from enforcing the CTA against the plaintiffs, although it can still be enforced against other businesses. The CTA was enacted on January 1, 2021, to combat money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption by directing the Financial Crimes Enforcement Network (FinCEN) to establish a nationwide database of adequate, accurate and current beneficial ownership for certain corporations and many different categories of legal entities formed under the laws of the states.

The lawsuit challenging the CTA was brought by the National Small Business Association (NSBA) and one of its members in November 2022. The plaintiffs sought a judgment declaring the CTA invalid and enjoining its implementation and the application of FinCEN's final beneficial ownership information reporting regime to the plaintiffs. On March 1, 2024, the District Court judge ruled in favor of the plaintiffs, declaring the CTA unconstitutional for exceeding the limits imposed by the United States Constitution on the authority of the legislative branch.

FinCEN today announced it will comply with the court's order *as to the plaintiffs* for as long as it remains in effect, and that FinCEN will not currently enforce the Corporate Transparency Act against the plaintiffs in that action; specifically, Isaac Winkles, reporting companies for which Isaac Winkles is the beneficial owner or applicant, the National Small Business Association, and members of the National Small Business Association (as of March 1, 2024). FinCEN has advised those individuals and entities are not required to report beneficial ownership information to FinCEN at this time.

Thus, with the exception of the plaintiffs described in the immediately preceding paragraph, the CTA remains applicable and enforceable against corporations and other legal entities subject to CTA reporting, and therefore such corporations and other legal entities should continue to comply with FinCEN's final beneficial ownership information reporting regime at this time.

The U.S. government is expected to appeal the decision to the U.S. Court of Appeals for the Eleventh Circuit, which includes the State of Florida. Additionally, similar lawsuits might emerge in other districts throughout the

United States, adding complexity to the legal landscape.

FinCEN has separately advised that fraudsters and hackers are viewing the forthcoming CTA compliance requirements as an opportunity to fraudulently induce people to provide personal data for use in facilitating fraudulent schemes of various sorts, and that FinCEN does not transmit unsolicited requests for beneficial ownership information or charge fees for compliance. Please contact us if you receive a communication from any person or entity professing to represent FinCEN, or which offers to file documents for you with FinCEN.

Our firm’s Corporate Transparency Act Task Force will closely monitor developments in this case as it unfolds and track any others development. Pending final resolution of the litigation, it's essential for businesses to adapt to potential changes in compliance requirements. Stay tuned for further updates on this evolving legal landscape.

If you have any questions about the CTA and/or any of the information contained herein, please contact our CTA Task Force at info@bergersingerman.com.

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