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Don't pop the champagne; the CTA isn't dead ... yet.

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On Friday, March 1, 2024, U.S. District Court Judge Liles Burke ruled that the Corporate Transparency Act (CTA)¹ is unconstitutional because Congress exceeded its powers to regulate interstate commerce, oversee foreign affairs and national security, and impose taxes. See *Nat'l Small Business United d/b/a Nat'l Small Business Assoc. v. Janet Yellen*, 5:22-cv-01448 (LCB), Dkt. No. 51 (N.D. Ala. Mar. 1, 2024) (Memorandum Opinion) (the Opinion). See our prior alerts on the CTA [here](#).

The case was brought by the National Small Business Association (the NSBA), which represents over 65,000 businesses and entrepreneurs located in all 50 states, and Isaac Winkles, an NSBA member and owner of two small businesses, one of which has three employees and an annual turnover of \$20 million.² The NSBA and Winkles argued that the CTA's mandatory beneficial ownership disclosure requirements exceeded Congress' authority under Article I of the Constitution. The court agreed. Specifically, the court found that: (1) "the CTA is not authorized by Congress' foreign affairs powers because those powers do not extend to purely internal affairs, especially in the arena traditionally left to the States"³; (2) "[t]he plain text of the CTA does not regulate the channels and instrumentalities of commerce"⁴; and (3) the CTA exceeds Congress' taxing power because the CTA's civil penalties are not a tax and, in the court's view, the relationship between Congress' taxing power and the Treasury Department's access to the CTA's beneficial ownership database for tax administration purposes is not "sufficiently close."⁵

On the other hand, the court implied that a modified CTA could pass constitutional muster if Congress revises the CTA to: (1) only impose disclosure requirements on entities that are actually involved in interstate commerce;⁶ (2) include a "jurisdictional hook" identifying its nexus to interstate or foreign commerce;⁷ or (3) be limited to use for tax collection purposes thereby rendering the CTA "necessary and proper" and "rationally related" to Congress' taxing power.⁸

While businesses nation-wide may be cheering Friday's result, the court's injunction is explicitly limited to the plaintiffs in the case, though it is unclear if the injunction will apply to all individual members of the NSBA or only to the association and Mr. Winkles.⁹ It is also highly likely that the government will appeal to the Eleventh Circuit, and whether the Opinion will be stayed pending any such appeal remains to be seen. Furthermore, as the Opinion itself states, there are potential legislative fixes to the constitutional shortcomings that were found by the court. Until there is further clarity on these points, it would be prudent for entities subject to the CTA to continue to collect beneficial ownership and company applicant information and to file the required reports.

Don't pop the champagne; the CTA isn't dead ... yet. As proposed changes to the CTA continue to be considered by Congress and states consider their own versions of the law, we encourage our clients to stay up to date on the

status of beneficial ownership reporting and follow our client alerts on the subject. For any questions about this update, feel free to contact one of the listed authors of this client alert or our entire CTA team, collectively, at LSAMLT@lowenstein.com.

¹ 31 C.F.R. § 1010.380.

² See Opinion at 3-4.

³ Opinion at 25; see *also* Opinion at 20 (discussing “the Founders’ deliberate choice to leave general incorporation to the States,” which “has gone unchanged” since).

⁴ Opinion at 27; see *also* Opinion at 30 (distinguishing the CTA from the Bank Secrecy Act (BSA) because the BSA’s requirements are imposed upon banks, not bank customers, and because banks handle money and negotiable instruments that are actually moving in foreign and interstate commerce).

⁵ See Opinion at 50-52.

⁶ See Opinion at 32-33.

⁷ See Opinion at 45-47.

⁸ See Opinion at 49.

⁹ See *Nat’l Small Business United d/b/a Nat’l Small Business Assoc. v. Janet Yellen*, 5:22-cv-01448 (LCB), Dkt. No. 52 (N.D. Ala. Mar. 1, 2024) (Final Judgment) (“The Defendants, along with any other agency or employee acting on behalf of the United States, are PERMANENTLY ENJOINED from enforcing the Corporate Transparency Act against the Plaintiffs.”).