

[Banking and Finance Law Daily Wrap Up, BANK SECRECY ACT—11th Cir.: Trio of amicus curiae briefs defend constitutionality of Corporate Transparency Act, \(Apr. 24, 2024\)](#)

Banking and Finance Law Daily Wrap Up

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By Joe Cox, J.D.

The briefs were filed in support of the government's appeal of an Alabama trial court's ruling that the CTA was unconstitutional as exceeding the scope of legislative authority.

A trio of amicus curiae briefs have been filed with the Eleventh Circuit Court of Appeals in support of the Corporate Transparency Act (CTA). That Act, which requires disclosure of identifying information regarding the beneficial ownership of certain legal entities, including shell corporations, was recently found to be unconstitutional by an Alabama trial court. That court found that the Act exceeded Congress's power to legislate. That ruling was appealed by the Department of the Treasury. The three filed briefs urge reversal of the trial court's ruling and a finding that the Act is a valid exercise of legislative authority.

One [brief](#) was [filed](#) by a group of Democrat legislators, including Senators Sheldon Whitehouse (D-RI), Ron Wyden (D-Ore), Elizabeth Warren (D-Mass), and Jack Reed (D-RI). Also joining in that brief was Congresswoman Maxine Waters (D-Calif), who is the top ranking Democrat in the House Financial Services Committee. [Another brief](#) was filed by Transparency International U.S. and the Foundation for the Defense of Democracies. The [other brief](#) was filed by the Tax Law Center at NYU Law.

Democrat legislators. The brief prepared on behalf of the Democrat legislators, who were involved in drafting the Act, posits that the Act is a legitimate exercise of legislative authority, designed to combat anonymous shell corporations. Those shell corporations, the brief argues "often operate in multiple layers to hide their true owners and violations of key sanctions, money-laundering, and tax laws."

Accordingly, the legislators assert, the CTA is a crucial step to combat money laundering and the attendant law enforcement and national security risks. In fact, the brief notes, the Act is "a garden-variety, valid exercise of Congress's core Article I authorities." The brief then criticizes the trial court's opinion, which "rests on a cramped reading of Congress's Article I authority, contravenes decades of precedent, and... impermissibly second-guesses Congress's copious factual findings."

In a press release supporting the brief, the legislators note that the CTA "was the culmination of more than a decade of painstaking bipartisan congressional deliberation" and "was supported by a wide range of stakeholders, including national security experts, law enforcement, anti-corruption groups, human rights organizations, faith communities, financial institutions, real estate organizations, the U.S. Chamber of Commerce, labor unions, and the Trump Administration."

Transparency International, Foundation for Defense. The brief from the two non-profit entities in support of the CTA rests on the assertion that bringing transparency to the ownership of anonymous companies is a national security priority of the utmost significance. Their brief reiterates that anonymous corporations "play a central role" in a host of significant threats to American national security and foreign policy goals. The brief further emphasizes that the CTA is part of a global effort to better oppose money laundering and terrorist activities.

Much of the brief cites specific examples of how anonymous corporations have been used to fund illicit activity, dodge U.S. sanctions, and facilitate the illegal drug trade, among other acts. Ultimately, the non-profits conclude that the CTA was a valid exercise of Congress's foreign affairs power, and that the trial court's order should be reversed.

Tax Law Center at NYU Law. The Tax Law Center’s brief approaches the issue from the argument that the CTA was a valid exercise of Congress’s taxing powers. The brief notes that prior cases have indicated that the key issue with an exercise of taxing power is whether the action is “in aid of a revenue purpose.” Specifically, the Tax Law Center argues that the CTA facilitates revenue collection in three different ways, which validates the exercise of Congressional power.

The brief is critical of the trial court’s finding that the CTA exceeded Congressional power, asserting that neither the opposing parties nor the court “provided any basis for finding that the statute falls outside the taxing power.” Accordingly, the brief concludes that the CTA is congressionally legitimate and should be upheld.

Companies: Foundation for the Defense of Democracies; Tax Law Center at NYU Law; Transparency International U.S.

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