

Banking and Finance Law Daily Wrap Up, BANK SECRECY ACT—N.D.Ala: Constitutionality of CTA reporting requirements questioned, (Mar. 4, 2024)

Banking and Finance Law Daily Wrap Up

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By Joe Cox, J.D.

An Alabama district court found that the reporting requirements in the Corporate Transparency Act exceeded express legislative powers and lacked a sufficient nexus to enumerated powers.

A district court in Huntsville, Alabama granted summary judgment to the National Small Business Association (NSBA) and an individual member in their suit for relief from the reporting requirements of the Corporate Transparency Act (CTA). The government defended the CTA by arguing its reporting requirements were aimed to prevent money laundering, tax evasion, and other financial crimes. The NSBA challenged the CTA, arguing that its requirement of providing identifying information for any beneficial owner of most corporate entities was not justified by the United States Constitution. The imposition of a federal reporting requirement against a matter of state law was found to be outside the purview of Congress. (*National Small Business United v. Yellen*, March 1, 2024, Burke L., U.S. District Judge).

CTA reporting provision. The CTA was a portion of the 2021 National Defense Authorization Act. At issue in this case was the reporting provision, which mandated that reporting companies established in any state or a foreign country had to provide certain identifying information regarding all beneficial owners of the entity to the Treasury's Financial Crimes Enforcement Network (FinCEN). The information to be provided was full legal name, date of birth, current address, and an identification number from a driver's license, ID card, or passport. FinCEN issued a final rule on Sept. 29, 2022, and the CTA went into effect on Jan. 1, 2024.

While the CTA is only 21 pages long, the trial court stated, "[T]he law packs a significant regulatory punch, requiring most entities incorporated under State law to disclose personal stakeholder information to the Treasury Department's criminal enforcement arm." The court also noted, "The CTA's disclosure requirements aren't toothless, either: knowing or willful violations carry serious civil and criminal penalties." For instance, willful provision of false or fraudulent beneficial ownership information or failure to report complete and updated information can be punished by a \$500 per day civil penalty, up to \$10,000 in fines, and up to two years in a federal prison.

Procedural posture and analysis. Six weeks after enactment of the final rule implementing the CTA, Isaac Winkles, an owner of two small businesses as a member of the NSBA joined with that entity to file this suit. The NSBA is an Ohio, non-profit corporation with over 65,000 members across all 50 states, seeking to protect the rights of small businesses. The suit named as defendants the Treasury department, Treasury secretary Janet Yellen, and acting FinCEN director Himamauli Das. The suit alleged that the disclosure requirements of the CTA exceeded Congress's Authority under Article I of the Constitution, and also violated the First, Fourth, Fifth, Ninth, and Tenth Amendments. The parties agreed to resolve the matter on motion practice without discovery, and so filed cross-motions for summary judgment in early 2023.

The court found that Isaac Winkles had established a concrete and particularized injury. The compelled disclosure of his private information was found to be concrete, imminent, and traceable to the government. The government opposed this angle by noting that Winkles had to provide much or all of this information already to complete tax returns and other federal documents.

The court did not follow this argument. The opinion further notes that Winkles had indicated that he intended to form future corporate entities in Alabama, and thus, his potential injury remained justiciable. Additionally, the

NSBA was found to have standing. Simply put, because Winkles had standing, and was a member of the NSBA, it too had standing.

Constitutional discussion. The government argued the Constitutional propriety of the CTA on three different bases: 1) foreign affairs powers, 2) the Commerce Clause, and 3) necessary and proper exercise of taxing power. The court rebutted all three arguments in finding the CTA invalid.

In discussing foreign affairs and national security power, the court took great care to emphasize that corporate entities are creatures of state law construction. Accordingly, the imposition of a federal reporting requirement against a matter of state law was found to be outside the purview of Congress. The court also denied the government's position that the CTA was necessary and proper to bring the United States into compliance with international anti-terrorism and money laundering standards. The court noted, "Compliance with international standards may be good policy, but it is not enough to make the CTA 'necessary' or 'proper.'"

In regard to the Commerce Clause the government argued that CTA fit within Congress's right to control 1) the channels of interstate and foreign commerce, 2) the instrumentalities of, and things and persons in, interstate and foreign commerce, and 3) activities that have a substantial effect on interstate and foreign commerce. Again, the court was not persuaded. The court at one point noted "how easily Congress could have written the CTA to pass constitutional muster" by limiting the requirements to entities engaged in commerce or prohibiting the use of interstate commerce for financial crimes.

Finally, the court was not persuaded by references to taxing power, as the information clearly was not actually obtained for taxing purposes, and thus its nexus was too broad for the court to infer it as a necessary and proper means of Congressional power.

The Court did not take up the issues of specific constitutional violations, instead stopping at finding the CTA unconstitutional as outside the scope of Congress' enumerated powers. Summary judgment was granted to Winkles and the NSBA and was denied to the government.

The case is [No: 5:22-cv-01448-LCB](#).

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Companies: National Small Business United d/b/a National Small Business Association; U.S. Department of the Treasury

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