

Banking and Finance Law Daily Wrap Up, BANK SECRECY ACT—11th Cir.: Federal government appeals summary judgment finding CTA facially invalid, (Apr. 19, 2024)

Banking and Finance Law Daily Wrap Up

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By Justin Marcus Smith, J.D.

The federal government, in emphasizing its need to combat financial crime, urged that the Corporate Transparency Act was not about regulating the mere act of state incorporation.

The federal government has appealed a summary judgment of the Northern District of Alabama federal district court that facially invalidated the Corporate Transparency Act (CTA) on grounds of unconstitutionality. On appeal to the United States Court of Appeals for the Eleventh Circuit, the government emphasized its need to combat financial crime as a valid exercise of its power under the Commerce Clause. The government asked the Eleventh Circuit to reverse the district court award of summary judgment that held the CTA facially invalid ([Nat'l Small Bus. United v. U.S. Dep't of the Treasury](#), April 15, 2024).

Background. A district court in Huntsville, Alabama granted summary judgment to the National Small Business Association (NSBA) and Issac Winkle, an individual NSBA member, in their joint suit for relief from the reporting requirements of the CTA (see [Banking and Finance Law Daily](#), March 4, 2024).

The CTA was a portion of the 2021 National Defense Authorization Act. At issue in this case was the CTA reporting provision. It mandated that reporting companies, including most limited liability companies established in any state, as well as some foreign companies, provide certain identifying information about their beneficial owners. Information to be provided included 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. The final rule contemplated stiff \$500 per day civil penalties and possible federal imprisonment for failure to comply with the CTA reporting requirement.

Isaac Winkles, the owner of two small businesses, and the NSBA sued the Treasury department, Treasury secretary Janet Yellen, and acting FinCEN director Himamauli Das in a direct challenge to the final rule and the CTA itself. Specifically, they complained that the CTA disclosure requirement exceeded congressional authority under Article I of the Constitution. They also said it violated the First, Fourth, Fifth, Ninth, and Tenth Amendments.

On cross-motions for summary judgment, the district court granted summary judgment to Winkles and the NSBA. The district court found the CTA facially invalid. Specific to constitutional questions, the district court rejected all three of the federal government's arguments that the CTA was a proper exercise of federal power over foreign affairs, its power under the Commerce Clause, and its power to tax. The district court reasoning emphasized that corporate entities are a matter of state law outside the purview of Congress.

Federal concern. The federal government's appellant brief emphasized that financial crime is a significant problem that involves a "significant gap in the government's ability to detect and prosecute" because state law generally does not require business entities to report information about their beneficial owners. Citing a congressional report, the government said this detection gap enables bad actors to conceal their ownership of business entities and then use "anonymous corporations" to engage in various financial crimes, including money laundering, financing of terrorism, and serious tax fraud. The government said criminals routinely exploit this prosecutorial detection gap. It said Congress enacted the Anti-Money Laundering Act of 2020, with the CTA and the CTA reporting requirement among its provisions, with the specific purpose of closing the detection gap.

Valid exercise. The government brief argued the Constitution granted Congress the power to regulate commerce with all appropriate legislation to “foster, protect, control and restrain” it under the Necessary and Proper Clause. The government argued the CTA permissibly effectuates prohibitions on financial crime as a “particularly appropriate means for accomplishing Congress’s legitimate ends.” It noted corporate-ownership records often do not even exist at the state level.

The government brief extensively cited congressional intent that reported information will be used for law enforcement and related activities. Accordingly, the government said the CTA “effectuates concededly legitimate prohibitions on harmful forms of economic activity” and “bears no resemblance” to enactments the Supreme Court held to exceed Congress authority under the Commerce Clause. It said the CTA regulates a class of for-profit entities “whose defining feature is their authority and propensity to conduct commercial transactions.

The government said the district court misunderstood governing precedent and the CTA itself. The first putative error was that the district court perceived the CTA as regulating the mere isolated act of filing incorporation papers with the states. The second putative error was that the district court ignored the “elected Branches’ shared judgment” that the CTA plays a “critical role” in the federal government’s efforts to combat financial crime. The government argued further that the district court had expressly acknowledged the statute would “easily... pass constitutional muster” were it limited to entities engaging in commercial activity. However, the government said it was unclear how such a revised statute would meaningfully differ from the CTA.

The government brief concluded it was “eminently reasonable for Congress to determine that the CTA remained ‘needed’ to facilitate the detection and prosecution of financial crime.”

The case is [No. 24-10736](#).

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Companies: National Small Business United d/b/a National Small Business Association

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