

NIESAR & VESTAL LLP

Law Alert

March 4, 2024

Federal Court Declares the Corporate Transparency Act Unconstitutional and Enjoins Enforcement Against Plaintiffs

As we noted in an earlier [Law Alert](#), we are currently in the process of sending all of our clients a letter and corresponding instructions explaining the federal Corporate Transparency Act (the “CTA”) and how to file beneficial ownership information (“BOI”) with FinCEN (the “BOI Report”).

On March 1, 2024, a U.S. District Court judge in Alabama [ruled](#) that the CTA is unconstitutional because it exceeds the Constitution’s limits on the legislative branch and fails the “necessary or proper” test. This ruling is currently creating a lot of confusion and uncertainty regarding the ongoing obligations of entities under the CTA.

The ruling was issued in a challenge brought by the National Small Business Association and one of its individual members against the Secretary of the Treasury. The Court’s order prevents the Treasury Department from enforcing the CTA against the plaintiffs. It is likely that the government will appeal this decision and that this litigation will continue to play out in the federal court system.

Because the Court’s injunction is limited to the plaintiffs in this case, as to other reporting companies who are not plaintiffs, it is not clear whether they should file a BOI Report. An important, and currently unresolved, issue is whether any agency of the federal government may enforce a statute that a Federal District Court has declared to be unconstitutional. Moreover, a similar lawsuit was filed in Ohio’s Northern District Court last December seeking a declaration that the CTA is unconstitutional and unenforceable against any citizen of the United States.

Reporting companies created or registered to do business in the United States in 2024 have 90 calendar days to file after receiving actual or public notice that their company’s creation or registration is effective. We believe that, unless FinCEN provides guidance to the contrary, these new businesses should file their BOI Reports within the indicated timeframe unless exempt.

As indicated in our earlier [Law Alert](#), the initial BOI Report for reporting companies that were formed on or prior to December 31, 2023, is required to be filed with FinCEN before January 1, 2025. Thus, it is each reporting company’s responsibility to decide if the entity wishes to wait until the end of 2024 in order to file an initial BOI Report in case there will be any further developments following this March 1, 2024 filing.

We will continue to monitor the implications of this litigation on the obligations of entities under the CTA and follow up with additional guidance, as appropriate. Ultimately, however, it is

the obligation of each entity to determine if and when to file a BOI Report.

If you have questions arising out of the afore-mentioned ruling and/or need assistance filing your BOI Report, please feel free to contact Carolina Aricu (caricu@nvlawllp.com), Gerald Niesar (gniesar@nvlawllp.com), or Oscar Escobar (oescobar@nvlawllp.com).

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