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LEGAL UPDATES

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Transparency Act
(CTA)

Professionals

SCOTT "SJ" R. JABLONSKI
WASHINGTON:
202.378.2300
SCOTT.JABLONSKI@
HUSCHBLACKWELL.COM

YUEFAN WANG
DENVER:
303.749.7200
YUEFAN.WANG@
HUSCHBLACKWELL.COM

MATTI MORTIMORE
MILWAUKEE:
414.273.2100
MATTI.MORTIMORE@
HUSCHBLACKWELL.COM

New Challenge to the Corporate Transparency Act: *Firestone v. Yellen*

On September 20, 2024, a U.S. District Judge for the District of Oregon rejected new challenges to the constitutionality of the Corporate Transparency Act (CTA) in *Firestone, et al. v. Janet Yellen, et al.* Case No. 3:24-cv-1034-SI (D. Ore.). Several individual plaintiffs argued for a preliminary injunction against enforcement of the CTA, contending, similarly to the plaintiffs in *National Small Business United, et al. v. Yellen, et al.*, that the CTA's requirement that U.S. businesses report their beneficial owners to the Financial Crimes Enforcement Network (FinCEN) exceeded the boundaries of the U.S. Constitution. Unlike in *National Small Business United*, the court in *Firestone* sided with the government.

The District of Oregon rejected plaintiffs' request for a preliminary injunction, finding that they failed to demonstrate a likelihood of success on the merits, irreparable injury, or that the balance of hardships tipped in their favor.

Below is a summary of plaintiffs' challenges to the CTA, including the court's reasoning in rejecting those challenges. For more information on the CTA, please see our Guide to the Corporate Transparency Act.

Summary of challenges and the court's reasoning

- 1. Congressional authority:** Plaintiffs argued that the CTA exceeded Congress's legislative authority, contending that the CTA improperly regulates entities without a sufficient connection to interstate commerce. However, the court found that the CTA was well within Congress's powers under both the Commerce Clause and the Necessary and Proper Clause. The court noted that the CTA targets entities that significantly impact interstate and foreign commerce, particularly in relation to financial crimes such as money laundering and the financing of terrorism. The court emphasized that the CTA's reporting requirements are rationally related to Congress's powers over

national security, foreign affairs, and taxation, validating the statute's constitutionality.

2. **First Amendment claims:** Plaintiffs claimed the CTA violated their First Amendment rights by compelling speech and interfering with associational freedoms. They argued the required disclosures deter individuals from associating with certain businesses. However, the court rejected these claims, explaining that the CTA does not mandate public dissemination of any ideological message. Furthermore, the plaintiffs failed to demonstrate how the CTA's requirements would deter association, as they provided no evidence that individuals would be discouraged from company ownership due to the reporting obligations.
3. **Fourth Amendment claims:** Plaintiffs asserted that the CTA's reporting requirements amounted to an unreasonable search and seizure. The court disagreed, drawing parallels to other accepted reporting obligations such as tax filings and banking regulations. The court reasoned that the CTA's disclosures are limited in scope and serve critical governmental interests in combating financial crime, thereby satisfying Fourth Amendment standards.
4. **Fifth Amendment claims:** Plaintiffs argued that the CTA violated their privilege against self-incrimination by potentially requiring disclosures that could incriminate them under federal law. The court found this argument speculative, noting that the Fifth Amendment privilege only applies when there is a real and appreciable danger of self-incrimination. The plaintiffs did not demonstrate such a risk, nor did they identify any legal proceedings posing a genuine threat of self-incrimination.
5. **Vagueness challenge:** Plaintiffs contended that the CTA was unconstitutionally vague by failing to provide clear guidance on compliance. The court disagreed, stating that the statute offers sufficient clarity regarding reporting requirements. The court further noted that the plaintiffs' own acknowledgment of their obligations under the CTA undermined their vagueness claim. Additionally, the court highlighted the statute's willfulness requirement, which mitigates concerns about vagueness by ensuring penalties are only imposed for intentional violations.
6. **Eighth Amendment claims:** Plaintiffs argued that the penalties under the CTA were excessive and constituted cruel and unusual punishment. The court rejected this claim, emphasizing that the penalties are proportionate and only apply to willful violations. The court applied the principle of proportionality, finding that the penalties bear a reasonable relationship to the gravity of the offense, aligning with Eighth Amendment standards.
7. **Ninth Amendment claims:** Plaintiffs claimed that the CTA infringed upon privacy rights under the Ninth Amendment. The court concluded that the Ninth Amendment does not confer substantive rights beyond existing legal protections.

8. Tenth Amendment claims: Plaintiffs claimed that the CTA violates states' rights under the Tenth Amendment. However, the court reaffirmed that if Congress acts within its enumerated powers, as it believes Congress did with the CTA, then there is no violation of the Tenth Amendment.

The ruling in *Firestone* is in contrast to the ruling of the Northern District of Alabama in *National Small Business United, et al. v. Yellen et al.* earlier this year. The U.S. District Judge in that case invalidated the CTA under the Foreign Affairs Powers, the Commerce Clause, and Congress's taxing power under the Necessary and Proper Clause, enjoining the CTA's registration requirements for the particular plaintiffs in that case. That case is currently on appeal to the Eleventh Circuit Court of Appeals. As of the date of this post, the plaintiffs in *Firestone* have not yet appealed to the Ninth Circuit; if they do, it could potentially set up a circuit split with the Eleventh Circuit, which may require intervention by the Supreme Court to determine the ultimate fate of the CTA.

Contact us

Husch Blackwell is ready to help with all of your CTA needs, including assessing whether you are subject to the CTA or qualify for an exemption, as well as identifying your beneficial owners and preparing a report. We will continue to provide updates as the law progresses. Contact our CTA team for more information.