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INSIGHT · CORPORATE GOVERNANCE

Q1 2024 Legal Review: The Corporate Transparency Act Takes Effect — Beneficial Ownership and Constitutional Battles

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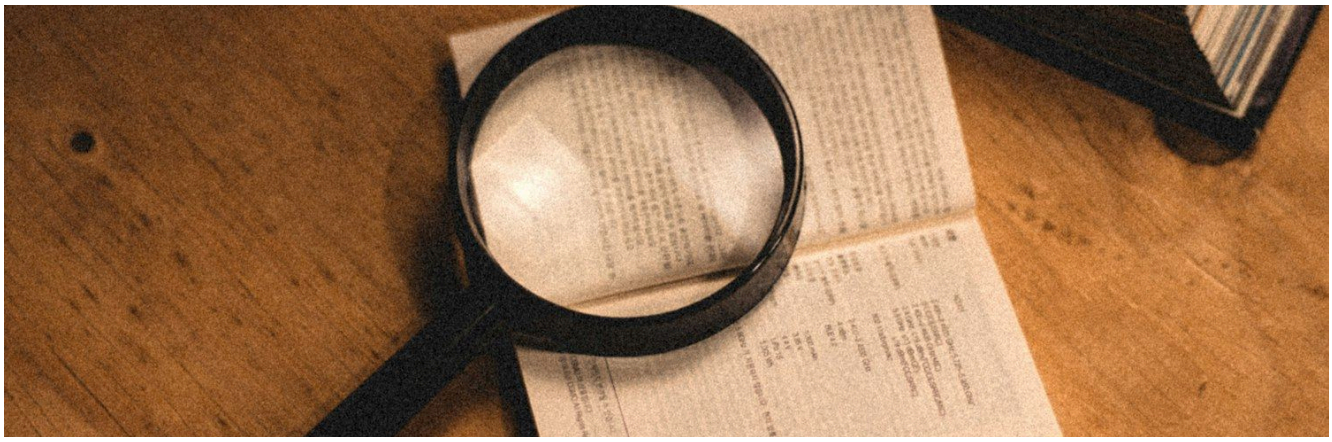

The Corporate Transparency Act (31 U.S.C. § 5336) requires non-exempt business entities to file Beneficial Ownership Information (BOI) reports with FinCEN.

On January 1, 2024, the Corporate Transparency Act (CTA), codified at 31 U.S.C. § 5336, officially went into effect, creating beneficial ownership reporting requirements for millions of small and mid-sized businesses. The first quarter of 2024 was marked by compliance preparations and a major constitutional ruling from the Northern District of Alabama in *National Small Business Association v. Yellen*.

I. FinCEN Beneficial Ownership Reporting Requirements

Enacted under the Anti-Money Laundering Act of 2020, the CTA aims to eliminate anonymous shell companies used for illicit finance. Under regulations promulgated by the Financial Crimes Enforcement Network (FinCEN; 31 CFR § 1010.380), every 'reporting company' formed or registered in the United States must file a Beneficial Ownership Information (BOI) report identifying:

- Every individual who directly or indirectly exercises 'substantial control' over the reporting company (such as senior officers or board members).
- Every individual who owns or controls at least 25% of the ownership interests of the entity.
- For entities formed after January 1, 2024, the 'company applicant' who filed the formation documents.

While the statute provides 23 specific exemptions (primarily for heavily regulated entities like banks, registered investment companies, and 'large operating companies' with over 20 full-time U.S. employees and $5 million in gross receipts), the vast majority of closely held LLCs and corporations are subject to the reporting mandate.

II. The Constitutional Ruling in NSBA v. Yellen

On March 1, 2024, Judge Liles C. Burke of the U.S. District Court for the Northern District of Alabama issued a declaratory judgment in *National Small Business Ass'n v. Yellen*, No. 5:22-cv-01448, holding the CTA unconstitutional. The court ruled that the Act exceeds Congress's enumerated powers under the Commerce Clause, the Necessary and Proper Clause, and the Taxing Power, as entity formation is an internal police power reserved to the individual states under the Tenth Amendment.

However, FinCEN promptly appealed to the Eleventh Circuit and announced that the ruling applied exclusively to the specific named plaintiffs in that action, leaving all other non-exempt reporting companies nationwide subject to enforcement and civil/criminal penalties (up to $500/day and 2 years imprisonment for willful violations).

III. Strategic Steps for Closely Held Entities & Corporate Counsel

Corporate attorneys and business owners must navigate ongoing CTA compliance with diligence:

- **Entity Inventory Audits:** Corporate groups and real estate holding companies must catalog all subsidiary LLCs and special purpose vehicles (SPVs) to evaluate reporting obligations.
- **Operating Agreement Amendments:** LLC operating agreements and shareholder agreements should be amended to require all members and beneficial owners to provide updated identifying information to the entity within 30 days of any change.
- **Monitoring Appellate Litigation:** Counsel must monitor ongoing appeals in the Eleventh, Fifth, and Ninth Circuits as conflicting rulings make Supreme Court review inevitable.

Practice	Corporate Governance
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