

# Publications

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## Court Challenge to Corporate Transparency Act Rebuffed – For Now

On September 20, 2024, U.S. District Judge Michael H. Simon for the District of Oregon issued an Opinion and Order in favor of defendants in the case. *Firestone, et al. v Janet Yellen, et al.*, Case No. 3:24-cv-1034 (D. Ore.) The Order upheld the constitutionality of the CTA and recognized Congress' power to regulate. It is currently unclear as to the implications of this ruling for the business community at large. This ruling may be persuasive in similar cases outside of Oregon, but is not precedential, meaning that other judicial forums may rule differently on the issues presented in this case.

After discussing the context and provisions of the CTA, the court addressed each of the plaintiffs' contentions within the legal framework of their burden to establish that a preliminary injunction should issue. First, discussing the likelihood of success on the merits, the court rejected the argument that Congress lacked authority to enact the CTA. The court recognized Congress' broad authority to adopt legislation under the Commerce Clause to effectuate prohibitions on financial crimes involving commercial entities. As well, Congress had authority under the Necessary and Proper Clause to protect national security. The CTA reflects a reasonable exercise of enumerated powers to prevent crimes that have the potential to impact national security interests.

Next, the court considered the plaintiffs' constitutional arguments under the First, Fourth, Fifth, Eighth, Ninth, and Tenth Amendments. In each instance, the court found that plaintiffs had not shown they are likely to succeed on the merits to warrant a preliminary injunction.

Finally, the court rejected plaintiff's arguments that they would suffer irreparable harm because there was no evidence submitted to support their assertions; the arguments offered only speculation of injury. And, the balance of equities was not shown to tip in plaintiffs' favor particularly where no evidence was presented to support the argument. "If this Court were to enjoin enforcement of the CTA it would interfere with Congress' judgment, supported by extensive factual findings, about how best to combat money laundering, the financing of terrorism, tax fraud, and other serious crimes that affect the national economy or national security." (Order at p. 27).

## Related People

- Philip G. Feigen
- Mark A. Olthoff

The Oregon court's conclusions are contrary to those of the Northern District of Alabama reached earlier this year in *National Small Business United, et al. v. Yellen, et al.*, Case No. 5:22-cv-01448, 2024 WL 8899372 (N. D. Ala. Mar. 1, 2024). There, the court held that the CTA did not pass muster under the Necessary and Proper Clause (referring to foreign affairs and national security), the Commerce Clause, nor Congress's taxing power under the Necessary and Proper Clause. The court extensively discussed Supreme Court precedent to reach the result that the CTA cannot be justified as a constitutional exercise of Congress's powers. Having found the CTA unconstitutional, the district court permanently enjoined any requirements for registration as well any potential penalties for noncompliance for the Plaintiffs only. The case is currently on appeal to the Eleventh Circuit Court of Appeals, Case No. 24-10736.

The CTA is a significant shift in the beneficial owner reporting regimes in the United States. Beginning January 1, 2024, tens of millions of U.S. business entities, and their beneficial owners, became subject to FinCEN's new rules.

Business owners and management should continue to monitor further developments in the ever-evolving CTA space and should continue to meet any impending filing deadlines under the CTA.

With this, and other Corporate Transparency Act new developments, occurring almost daily, now is the time to discuss the Corporate Transparency Act with your legal team for guidance.