

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BLACK ECONOMIC COUNCIL OF
MASSACHUSETTS, INC., AFRICAN
COMMUNITY ECONOMIC
DEVELOPMENT OF NEW ENGLAND,
INC., TRACYE WHITFIELD, MARIA
FERNANDES-DOMINIQUE, and RAQUEL
SEMEDO,

Plaintiffs,

v.

JANET YELLEN, in her official capacity as
the Secretary of the United States Department
of the Treasury, UNITED STATES
DEPARTMENT OF THE TREASURY, and
ANDREA GACKI, in her official capacity as
Director of the Financial Crimes Enforcement
Network,

Defendants.

Civil Action No. _____

COMPLAINT

The Black Economic Council of Massachusetts, Inc., and the African Community Economic Development of New England, Inc. (together, the “Organizational Plaintiffs”), and Tracye Whitfield, Maria Fernandes-Dominique, and Raquel Semedo (collectively, the “Individual Plaintiffs,” and, together with the Organizational Plaintiffs, the “Plaintiffs”), hereby bring this civil action for declaratory and injunctive relief against Janet Yellen, in her official capacity as the Secretary of the United States Department of the Treasury, the United States Department of the Treasury, and Andrea Gacki, in her official capacity as Director of the Financial Crimes Enforcement Network (“FinCEN”) (collectively, the “Defendants” or the

“federal government”), challenging the constitutionality, implementation, and enforcement of the Corporate Transparency Act (“CTA”), 31 U.S.C. § 5336. The Plaintiffs seek a permanent injunction, enjoining the Defendants and any other agency or employee acting on behalf of the Defendants from enforcing any provision of the CTA against any individual or entity.

INTRODUCTION

The CTA imposes illegal and overly burdensome reporting requirements on millions of small businesses and the individuals who own or control those businesses. “Beneficial owners” and “applicants” under the CTA are required to submit sensitive, private, and personal information to FinCEN,¹ far beyond any information that such individuals have to report to the States in which they are incorporated. In addition, any time that any portion of this sensitive, private, and personal information changes, the business must file an updated report within 30 days. FinCEN is authorized to collect, store, and share this beneficial ownership information with other government entities and financial institutions for years or even indefinitely. Failure to comply with these reporting requirements subjects business owners and applicants to civil fines of up to \$500 per day for each day the violation continues, criminal fines of up to \$10,000, and imprisonment for up to two years. The CTA’s reporting requirements, civil fines, criminal penalties, and terms of imprisonment represent an unprecedented and illegal intrusion into the sovereign powers of the States and the constitutional rights of millions of Americans. The CTA is unconstitutional for several reasons.

¹ “FinCEN is a bureau of the U.S. Department of the Treasury. The Director of FinCEN is appointed by the Secretary of the Treasury and reports to the Treasury Under Secretary for Terrorism and Financial Intelligence. FinCEN’s mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.” Financial Crimes Enforcement Network, “What We Do,” available at <https://fincen.gov/what-we-do> (last visited May 28, 2024).

First, the CTA constitutes a federal government overreach that usurps the sovereign powers left to the States to regulate business entity formation, in violation of Article I and the Ninth and Tenth Amendments to the U.S. Constitution. The CTA's reporting requirements go far above and beyond those required by the States, including Massachusetts, which have been responsible for the administration of business entity formation for centuries in the United States. Moreover, simple and routine life events trigger additional filing requirements and updates. For example, all of the following routine life events trigger the need to file an updated report: the owner of a small business changing his or her name in the process of a marriage; a decision-maker in the business moving to a new address; hiring new management or key employees; and taking on new investors who will own 25% or more of the business or have control over business operations. The CTA also requires the States to cooperate and provide information requested by FinCEN in order to facilitate FinCEN's creation and maintenance of a database containing millions of Americans' sensitive, private, and personal information. These sweeping reporting requirements impede, and conflict with, the orderly administration of business entity formation by the States. The federal government has impermissibly stepped into the States' lawful and designated role. In addition, the CTA regulates the conduct of businesses upon formation, before a single taxable dollar has been earned, and whether or not the business has engaged in interstate commerce.

Second, the CTA impermissibly intrudes on the right to privacy under the Fourth Amendment to the U.S. Constitution, by mandating the disclosure of the private, personal, sensitive, and identifying information of millions of Americans, without any guarantee that this highly private information will remain safe under lock and key. To the contrary, the CTA

specifically authorizes the disclosure of information to foreign governments, federal regulatory agencies, federal and State law enforcement agencies, and financial institutions.

Third, the CTA impermissibly intrudes on the right to be free from unreasonable searches and seizures, in violation of the Fourth Amendment to the U.S. Constitution, by collecting, storing, and sharing with law enforcement agencies the private, personal, sensitive, and identifying information of millions of Americans with no probable cause or reasonable suspicion to believe that any individual has committed a crime, is in the process of committing a crime, or will imminently commit a crime.

Fourth, the CTA violates the Fifth Amendment to the U.S. Constitution's protections against self-incrimination by forcing millions of Americans to self-disclose private, personal, sensitive, and identifying information that can later be requested and used by law enforcement agencies to prosecute those individuals.

Fifth, the CTA violates First Amendment rights to free speech and association because the mandated reports amount to compelled speech and compelled disclosure of individuals' personal associations.

Sixth, the CTA violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution because the terms and definitions contained in the CTA are vague and ambiguous, making it impossible for businesses to know how to comply, while also imposing civil and criminal penalties for non-compliance. For example, the definition of "beneficial owner" — "with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise – (i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity" — is vague, ambiguous, and has no uniform or proper understanding. *See* 31 U.S.C. §

5336(a)(3). In fact, within this definition, the terms “arrangement,” “understanding,” “relationship,” and “substantial control” are each vague and ambiguous. These CTA terms are also not readily analogous to terms used in State entity formation laws, which would at least provide some context for understanding them, and they are not terms of art otherwise used in business. Further, many small business owners, including those supported by the Organizational Plaintiffs, do not speak English, creating yet another barrier to understanding the vague and ambiguous terms of the CTA. For these reasons, the CTA deprives small business owners of their protected liberty and property interests without adequate notice and clarity of the requirements to avoid such a deprivation.

Seventh, for all of the reasons stated above, the CTA impermissibly intrudes on the rights retained by the people, as opposed to the federal government, in violation of the Ninth Amendment to the U.S. Constitution.

The CTA targets only small businesses — specifically those that have less than \$5 million in annual gross sales or receipts, and which employ 20 or fewer full-time employees. *See* 87 Fed. Reg. 59,498. It applies to more than 32 million existing small businesses, and it would apply to approximately 5 million new entities formed each year. *See* 87 Fed. Reg. 59,498. Other entities that have much greater resources and access to information about financial transactions and the path of money movements, such as banks, securities brokers and dealers, insurance companies, and public accounting firms, are all exempt under the CTA. *See* 31 U.S.C. § 5336(a)(11)(B).

Small businesses create two-thirds of new jobs and drive innovation and competitiveness,² and these businesses often provide crucial products and services to local

² “Small Businesses Generate 44 Percent of U.S. Economic Activity,” U.S. Small Business Administration, Office of Advocacy, Release No. 19-1 ADV, Jan. 30, 2019, available at <https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/>.

communities. The Individual Plaintiffs are Black-owned and women-owned small businesses, and the Organizational Plaintiffs are organizations that support the interests of small businesses, including by providing services that empower Black and Latinx entrepreneurs, many of whom are immigrants, low-income individuals, or non-English speakers. The unprecedented reporting requirements, civil fines, criminal penalties, and terms of imprisonment under the CTA threaten to eviscerate small business formation and operations and chill investment. Because of the CTA, the Plaintiffs have been forced to divert substantial resources toward compliance with the CTA's reporting requirements, in order to avoid severe fines, penalties, criminalization, and imprisonment. Small businesses like those run by the Individual Plaintiffs and supported by the Organizational Plaintiffs are crucial to the economy, and they must be protected from overly burdensome and illegal reporting requirements and criminalization that are the result of an unconstitutional law. This is particularly true where that law threatens to cripple these businesses and incarcerate their owners, many of whom are immigrants, low-income individuals, or non-English speakers.

Accordingly, the Plaintiffs seek declaratory and injunctive relief to prevent the enforcement of the CTA by the Defendants or their agents, which would not only be unconstitutional, but would significantly harm the Plaintiffs and other small businesses and non-commercial business entities.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over the claims in the Complaint, pursuant to 28 U.S.C. §§ 1331, 1346(a)(2), because the claims arise under the United States Constitution. Further, the Court has authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202.

2. Venue is proper under 28 U.S.C. § 1391(e)(1)(C) because the Defendants are agencies or officers of the United States, the Plaintiffs reside in this District, and no real property is involved in this action.

PARTIES

3. Plaintiff Black Economic Council of Massachusetts, Inc. (“BECMA”) is a non-profit organization whose mission is to drive economic equity and prosperity for Massachusetts to achieve inclusive growth that enables Black-owned businesses and Black communities to thrive. BECMA does so by convening important conversations that seek solutions to persistent racial and economic issues; advocating on behalf of its business members at the state and local level for policies that help grow and sustain the economy; and connecting its members to business opportunities in the public and private sectors.

4. BECMA is a membership-based organization for which small businesses and business owners complete and submit applications for review by BECMA leadership. Once a business is selected to become a member, that business signs a membership agreement with BECMA and is expected to pay dues. Membership also entitles members to access the password-protected portion of BECMA’s membership portal through login credentials specific to each member. Approximately 400 businesses are members of BECMA.

5. BECMA provides substantial business support services to its members, including conducting business assessments and providing regular training programs where BECMA hires experts to speak to its members on business-oriented topics such as procurement opportunities, available grants, policy initiatives and requirements, and information regarding legislation that may affect the business sector. BECMA also reaches its members through a biweekly newsletter

sent to its membership distribution list, partners, and other community members who subscribe, containing information about upcoming events, contracting opportunities, and programs.

6. BECMA's members include numerous small businesses that are subject to the unprecedented reporting requirements, civil fines, criminal penalties, and terms of imprisonment under the CTA for businesses with 20 or fewer employees and less than \$5 million in annual gross sales or receipts.

7. BECMA has limited resources and has been, and will continue to be, required to expend and divert resources to support its members in an attempt to minimize the risk that a significant number of business owners will face civil and criminal penalties. Specifically, because of the unconstitutional nature of the CTA, the associated federal government overreach, and the risk of further overcriminalization for people of color, BECMA has been forced to prioritize assisting members with CTA compliance. These efforts include or will include convening meetings, offering training programs, hiring experts, and re-budgeting funds that have already been allocated for a different purpose, which all results from the enactment of a flawed and unconstitutional law – the CTA.

8. BECMA maintains its principal place of business in Boston, Massachusetts.

9. Plaintiff African Community Economic Development of New England, Inc. (“ACEDONE”) is a non-profit organization whose mission is to assist African refugees and immigrants in becoming self-sufficient, such that they will thrive socially, professionally, and economically. ACEDONE uses a community-based approach to foster leadership and economic development, including supporting the creation and maintenance of small businesses owned by individuals that ACEDONE serves.

10. ACEDONE provides business support to more than 400 small businesses, the vast majority of which are owned or controlled by African immigrants or refugees, many of whom do not speak English. ACEDONE helps to break down the language barrier and helps businesses navigate the legal and regulatory requirements of forming, owning, and maintaining a business. ACEDONE assists businesses in filing the requisite incorporation and annual report documents. ACEDONE also conducts training programs on financial literacy, commercial leasing disputes, and grant applications. ACEDONE also offers technical assistance and one-on-one counseling to assist business owners in creating and implementing business development plans. ACEDONE reaches the business owners it serves through weekly meetings and by direct contact via telephone or email.

11. ACEDONE serves numerous small businesses that are subject to the unprecedented reporting requirements, civil fines, criminal penalties, and terms of imprisonment under the CTA for businesses with 20 or fewer employees and less than \$5 million in annual gross sales or receipts.

12. ACEDONE has limited resources and has been, and will continue to be, required to expend and divert resources to support these businesses in an attempt to minimize the risk that a significant number of business owners will face civil and criminal penalties. Specifically, because of the unconstitutional nature of the CTA, the associated federal government overreach, and the risk of further overcriminalization for people of color, immigrants, non-English speakers, and low-income individuals, ACEDONE has been forced to prioritize assisting business owners with CTA compliance over all other preexisting activities. These efforts include or will include convening meetings, doing one-on-one counseling for business owners, offering training

programs, and re-budgeting funds that have already been allocated for a different purpose, which all results from the enactment of a flawed and unconstitutional law – the CTA.

13. ACEDONE maintains its principal place of business in Boston, Massachusetts.

14. The CTA imposes direct burdens on the Organizational Plaintiffs, who use their own resources to offer their members and affiliates guidance and support in economic success and empowerment, which now have to include services designed to help their members and affiliates navigate complexities of the CTA that arise due to the law’s unconstitutional nature. But for the enactment and enforcement of the CTA, the Organizational Plaintiffs could continue to devote those resources elsewhere in support of their missions, as they have in the past, rather than being forced to refocus efforts on protecting businesses and their owners from severe civil and criminal penalties that arise because of the law’s flaws and legal infirmities. The burden on the Organizational Plaintiffs is further demonstrated by the lack of language access in FinCEN’s reporting process, making compliance even more burdensome and legally problematic for the non-English speakers who are members of the Organizational Plaintiffs.

15. Plaintiff Tracye Whitfield is a Black woman entrepreneur who resides in Springfield, Massachusetts. Whitfield is an owner of Jets Property Development LLC (“Jets Property”), a Massachusetts domestic limited liability company that operates a real estate development business. Jets Property is a for-profit business with fewer than 20 employees and less than \$5 million in annual gross receipts or sales, and its registration with the Massachusetts Secretary of the Commonwealth became effective on July 10, 2021. Whitfield, as an owner of Jets Property, is and will continue to be subject to the CTA’s reporting requirements and the threat of civil and criminal penalties for non-compliance.

16. Plaintiff Maria Fernandes-Dominique is a Black woman entrepreneur who resides in Boston, Massachusetts. Plaintiff Fernandes-Dominique is the sole shareholder of Culture Builders Cooperative, LLC (“Culture Builders”), a Massachusetts domestic limited liability company that operates a consulting and training business for grassroots and community-based organizations and leaders to advance and promote anti-racism programs to empower underrepresented groups. Culture Builders is a for-profit business with fewer than 20 employees and less than \$5 million in annual gross receipts or sales, and its registration with the Massachusetts Secretary of the Commonwealth became effective on January 10, 2024. Fernandes-Dominique, as the sole shareholder of Culture Builders, is and will continue to be subject to the CTA’s reporting requirements and the threat of civil and criminal penalties for non-compliance.

17. Plaintiff Raquel Semedo is a Black woman entrepreneur who resides in Boston, Massachusetts. Plaintiff Semedo is the sole shareholder of Lisboa Café & Mini-Market, LLC (“Lisboa Café”), a Massachusetts domestic limited liability company that operates a Portuguese and Cape Verdean bakery and convenience store. Lisboa Café is a for-profit business with fewer than 20 employees and less than \$5 million in annual gross receipts or sales, and its registration with the Massachusetts Secretary of the Commonwealth became effective on February 22, 2024. Plaintiff Semedo, as the sole shareholder of Lisboa Café, is and will continue to be subject to the CTA’s reporting requirements and the threat of civil and criminal penalties for non-compliance.

18. Defendant Yellen is the Secretary of the United States Treasury, and she is sued in her official capacity.

19. Defendant U.S. Department of the Treasury (“Treasury Department”) is a department within the federal executive branch, and it is responsible for overseeing FinCEN’s enforcement of the CTA.

20. Defendant Gacki is the Director of FinCEN, and she is sued in her official capacity.

FACTS

The CTA and its Reporting Requirements

21. On January 1, 2021, Congress passed the National Defense Authorization Act, which included the CTA.

22. 31 U.S.C. § 5336 contains the CTA’s defined terms, reporting requirements, exemptions, penalties, disclosure rules, and other provisions. The federal regulations for the CTA are at 31 C.F.R. §§ 1010.38 *et seq.*

23. The CTA requires “reporting companies” to provide personal information to FinCEN about their “beneficial owners” and “applicants.”

24. Under the CTA, a “reporting company” is “a corporation, limited liability company, or other similar entity that is – (i) created by the filing of a document with a secretary of state or similar office under the law of a State or Indian Tribe; or (ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe.” 31 U.S.C. § 5336(a)(11). The CTA’s reporting requirements apply to legal entities that have 20 or fewer employees and less than \$5 million in gross receipts or sales as reflected in the previous year’s federal tax returns. *See* 31 U.S.C. § 5336(a)(11)(B)(xxi).

25. Under the CTA, an entity’s “beneficial owner” is defined as “an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise – (i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity.” 31 U.S.C. § 5336(a)(3).

26. Under the CTA, an “applicant” is defined as “any individual who – (A) files an application to form a corporation, limited liability company, or other similar entity under the laws of a State or Indian Tribe; or (B) registers or files an application to register a corporation, limited liability company or other similar entity formed under the laws of a foreign country to do business in the United States by filing a document with the secretary of state or similar office under the laws of a State or Indian Tribe.” 31 U.S.C. § 5336(a)(2).

27. The CTA requires reporting companies to provide the following personal information for all beneficial owners and applicants: “(i) full legal name; (ii) date of birth; (iii) current, as of the date on which the report is delivered, residential or business street address; and (iv)(I) unique identifying number from an acceptable identification document; or (II) FinCEN identifier in accordance with requirements in paragraph (3).”³ 31 U.S.C. § 5336(b)(2)(A). The CTA itself describes the required personal beneficial ownership information as “sensitive.” 31 U.S.C. § 5336(h)(5)(A).

28. Under the CTA, an “acceptable identification document” is “(A) a nonexpired passport issued by the United States; (B) a nonexpired identification document issued by a State, local government, or Indian Tribe to the individual acting for the purpose of identification of that individual; (C) a nonexpired driver’s license issued by a State; or (D) if the individual does not

³ A FinCEN identifier is a unique identifying number that FinCEN will issue to reporting individuals and entities upon request. *See* 31 U.S.C. § 5336(b)(3).

have a document described in subparagraph (A), (B), or (C), a nonexpired passport issued by a foreign government.” 31 U.S.C. § 5336(a)(1).

29. The CTA’s reporting requirements went into effect on January 1, 2024. *See* 88 Fed. Reg. 83,499.

30. Under the CTA, business entities formed prior to January 1, 2024 must file their initial report by January 1, 2025. *See* 87 Fed. Reg. 59,498.

31. Business entities formed on or after January 1, 2024 must file their initial report within 90 days after receiving actual or public notice that the entity’s creation or registration is effective. *See* 88 Fed. Reg. 83,499.

32. Business entities formed on or after January 1, 2025 must file their initial report within 30 days after receiving actual or public notice that the entity’s creation or registration is effective. *See id.*

33. Upon information and belief, businesses have stopped incorporating because they are afraid and confused about the CTA. The chilling effect is affecting businesses and business owners who are members of the Organizational Plaintiffs. The CTA’s chilling effect on business formation adversely impacts the Organizational Plaintiffs as entities dedicated to promoting small business growth.

34. While there are initial reporting deadlines that correspond to the date of formation, the CTA also requires reporting companies to file reports if the previously filed information changes. Thus, if any beneficial owner or applicant changes their legal name, residential or business address, or driver’s license, the CTA requires that they update their beneficial ownership information report within 30 days of that change. *See* 87 Fed. Reg. 59,498.

35. The CTA excludes 24 categories of entities from the definition of “reporting company,” meaning that business entities falling into one or more of those categories are not required to report or update beneficial owner or applicant information. *See* 31 U.S.C. § 5336(a)(11)(B). For example, securities issuers, governmental entities, banks, credit unions, money-transmitting businesses, securities brokers and dealers, investment companies and advisers, insurance companies, public accounting firms, and 501(c) tax-exempt businesses are all exempt from the CTA’s reporting requirements. *See id.*

36. The CTA also does not impose reporting requirements on businesses that: (1) employ more than 20 full-time employees; (2) have more than \$5 million in annual gross receipts or sales; and (3) have an “operating presence at a physical office within the United States.” 31 U.S.C. § 5336(a)(11)(B)(xxi). The law thus creates a unique burden for small businesses, such as those owned by and/or affiliated with the Plaintiffs, including many that are minority-owned, or owned by immigrants, low-income individuals, or non-English speakers.

37. The beneficial ownership information report form is available at <https://boiefiling.fincen.gov/fileboir>.

Penalties for Non-Compliance with the CTA

38. Under the CTA, it is unlawful to “willfully fail to report complete or updated beneficial ownership information to FinCEN.” 31 U.S.C. § 5336(h)(1)(B).

39. The CTA imposes unprecedented reporting requirements, civil fines, criminal penalties, and terms of imprisonment on beneficial owners and applicants, who are individuals, as opposed to punishing the businesses as entities. For example, a person who is found to willfully fail to report complete or updated information “shall be liable to the United States for a civil penalty of not more than \$500 for each day that the violation continues or has not been

remedied” and that person may be fined up to \$10,000 and imprisoned for up to two years, or both. 31 U.S.C. § 5336(h)(3)(A). The threat of criminalization and incarceration is particularly harmful to Black and Latinx business owners because Black and Latinx individuals are already disproportionately affected by overcriminalization.⁴

40. The Defendants’ enforcement of the CTA means that millions of Americans must guess at how to comply with its vague terms, disclose personal information of themselves and others, or pay thousands of dollars in civil and criminal fines and risk years in prison.⁵

Collection, Retention, and Disclosure of Beneficial Ownership Information

41. The CTA requires that FinCEN maintain beneficial ownership information for each reporting company for no less than five years after the time that the reporting company terminates.

42. Under the CTA, FinCEN is authorized to disclose beneficial ownership information to foreign governments, federal and State law enforcement agencies, federal regulatory agencies, and financial institutions. *See* 31 U.S.C. § 5336(c)(2)(B).

43. If the request for beneficial ownership information comes “from a State, local, or Tribal law enforcement agency,” FinCEN may disclose it “if a court of competent jurisdiction, including any officer of such a court, has authorized the law enforcement agency to seek the information in a criminal or civil investigation.” 31 U.S.C. § 5336(c)(2)(B)(i)(II).

⁴ While 58.9% of Americans are white, less than 30% of federal prisoners are white. *Compare* “Individuals in the Federal Bureau of Prisons,” U.S. Sentencing Commission, *available at* <https://www.ussc.gov/research/quick-facts/individuals-federal-bureau-prisons> (As of January 2023, there were 158,949 offenders incarcerated in the Federal Bureau of Prisons: 34.6% are Black; 31.8% are Latinx; and 29.5% are white) *with* “QuickFacts,” U.S. Census Bureau, *available at* <https://www.census.gov/quickfacts/fact/table/US/PST045221> (Based on 2023 population estimates, 13.6% of Americans are Black; 19.1% are Latinx; and 58.9% are white).

⁵ “How Your Corporation or LLC Can Send You to Prison,” Law Inc. (Dec. 2023), *available at* <https://www.lawinc.com/corporate-transparency-act-compliance>.

44. If the request for beneficial ownership information comes “from a Federal agency engaged in national security, intelligence, or law enforcement activity, for use in furtherance of such activity,” there is no requirement of court or court officer approval. These agencies are automatically entitled to the private, personal, sensitive, and identifying information of millions of Americans with no need to show any sort of cause or suspicion. 31 U.S.C. § 5336(c)(2)(B)(i)(I). This is an unprecedented breach and invasion of privacy.

45. This trove of sensitive information may also be disclosed to foreign entities. If the request for beneficial ownership comes “from a Federal agency on behalf of a law enforcement agency, prosecutor, or judge of another country, including a foreign central authority of competent authority (or like designation), under an international treaty, agreement, convention, or official request made by law enforcement, judicial, or prosecutorial authorities in trusted foreign countries when no treaty, agreement, or convention is available,” FinCEN also may disclose the information. 31 U.S.C. § 5336(c)(2)(B)(ii). No safeguards are codified for confidentiality or to preserve the integrity of the information – what a foreign entity does with the information is unknown and unchecked.

46. In sum, from the time of the initial beneficial ownership information report to a date five years after the reporting company terminates, FinCEN will have access to, and can broadly share, the private, personal, sensitive, and identifying information of millions of Americans.

47. The CTA also imposes a burden on the States with respect to the collection of beneficial owners’ and applicants’ private, personal, sensitive, and identifying information. Specifically, the CTA provides: “Relevant Federal, State, and Tribal agencies, as determined by the Secretary of the Treasury, shall, to the extent practicable, and consistent with applicable legal

protections, cooperate with and provide information requested by FinCEN for purposes of maintaining an accurate, complete, and highly useful database for beneficial ownership information.” 31 U.S.C. § 5336(d)(2).

48. The CTA states that funds will be made available to each “State and Indian Tribe,” if, “not later than 2 years after the effective date of [FinCEN’s regulations],” the State or Tribe: (1) notifies the business entities in their jurisdiction of their reporting obligations under the CTA; (2) provides the business entities in their jurisdiction “with a copy of the reporting company form created by the Secretary of the Treasury under this subsection or an internet link to that form”; and (3) “update[s] the websites, forms relating to incorporation, and physical premises of the office to notify filers of their requirements as reporting companies. . .” 31 U.S.C. § 5336(e)(2)(A).

Harm to Plaintiffs

49. According to FinCEN, the CTA applies to 32.6 million currently existing entities, and is projected to apply to an additional 5 million new entities formed each year from 2025 to 2034. *See National Small Business United v. Yellen*, 2024 WL 899372, at *2 (N.D. Ala. Mar. 1, 2024) (citing 87 Fed. Reg. 59,498).

50. These millions of business entities include those formed solely for intrastate commerce, those formed for non-commercial purposes, *e.g.*, to hold a family residence, those that seek 501(c) tax-exempt status but that have not yet received it, and those that are non-profits that do not intend to seek 501(c) tax-exempt status, *e.g.*, private social clubs or homeowners’ associations.

51. Many of the businesses ensnared by the CTA’s onerous reporting requirements are very small businesses — one-person or “mom-and-pop” businesses that are just starting out, such

as those owned by the Individual Plaintiffs and those supported by the Organizational Plaintiffs. These businesses are being forced to divert crucial time, money, and other resources toward understanding and attempting to comply with a vague, ambiguous, and complex unconstitutional statutory scheme, including, but limited to, needing to hire legal counsel for advice.

52. For example, the definition of “beneficial owner” is vague, ambiguous, and has no uniform or proper understanding. Under the CTA, a “beneficial owner” is, “with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise – (i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity.” 31 U.S.C. § 5336(a)(3). Here, the terms “arrangement,” “understanding,” “relationship,” and “substantial control” are each vague and ambiguous. These CTA terms are also not readily analogous to terms used in State entity formation laws, which would at least provide some context for understanding them. These terms are not easily ascertained or defined, and they are not a part of existing legal structures because the CTA is an unprecedented encroachment on State matters. They are not terms of art or otherwise used in business. Further, many small business owners, including those supported by the Organizational Plaintiffs, may not speak English as their first language, creating yet another barrier to understanding the vague and ambiguous terms of the CTA. Because the CTA’s terms and definitions are vague and ambiguous, it is impossible for businesses to know how to comply. Therefore, where the CTA imposes civil and criminal penalties for non-compliance, the CTA deprives the Plaintiffs of their protected liberty and property interests without adequate notice and clarity of the requirements to avoid such a deprivation.

53. This diversion of resources takes away from the ability of the business to succeed, since its owners must turn their attention away from business operations and toward compliance

with a vaguely-worded, overreaching law. The pressure on business owners to focus on CTA compliance rather than business operations is heightened because if their attempts to comply are unsuccessful, they will be subject to daily fines of up to \$500, criminal fines of up to \$10,000, and imprisonment for up to two years. The threat of incarceration is particularly alarming for Black and Latinx business owners, such as the Individual Plaintiffs, in light of the fact that Black and Latinx people are already disproportionately affected by overcriminalization.⁶

54. The CTA requires reporting companies to file reports about their beneficial owners and applicants, whether or not those individuals are suspected of a crime or other misconduct, even though the CTA's purported purpose is to specifically root out financial crimes. Therefore, the federal government does not have probable cause to conduct what amounts to a search of these individuals and a seizure of their sensitive, private, and personal information.

55. The CTA's requirements, and the definition of "beneficial owner" in particular, will chill investment in small businesses. Because individuals who own 25% or more of a reporting company must provide their beneficial ownership information, individuals who might otherwise invest in small businesses may not do so, in order to protect their personal information and privacy. The availability of investments is a vital tool and lifeline, and the absence of that investment materially harms small businesses' potential for creation and success.

56. The CTA also presents a risk that the beneficial ownership information provided to FinCEN will be disclosed broadly to others because FinCEN is authorized to collect and share beneficial ownership information with an unknown number of foreign governments, law enforcement agencies, regulatory entities, and financial institutions.

⁶ See U.S. Sentencing Commission and U.S. Census Bureau, *supra* note 4.

57. The expansive nature of the CTA, which is the result of federal government overreach, casts a dragnet to sweep in information from millions of small businesses with no individualized reason to believe there is any financial criminal activity afoot. This creates a situation of high vulnerability for businesses and business owners who now — because of an unconstitutional law — face an unnecessarily high risk of fraudulent attempts to obtain their personal identifying information or money. Despite the fact that the CTA has only been in force since January 1, 2024, FinCEN has already issued an alert to warn filers, stating that “FinCEN has learned of fraudulent attempts to solicit information from individuals and entities who may be subject to reporting requirements under the [CTA].” *See* “Beneficial Ownership Information,” FinCEN, *available at* <https://fincen.gov/boi>. According to FinCEN, these fraudulent scams may include:

- Correspondence requesting payment. There is NO fee to file BOI directly with FinCEN. FinCEN does NOT send correspondence requesting payment to file BOI. Do not send money in response to any mailing that claims to be from FinCEN or another government agency.
- Correspondence that asks the recipient to click on a URL or to scan a QR code. Those e-mails or letters are fraudulent. Do not click any suspicious links or attachments or scan any QR codes in emails, on websites, or in any unsolicited mailings.
- Correspondence that references a “Form 4022,” or an “Important Compliance Notice.” This correspondence is fraudulent. FinCEN does not have a “Form 4022.” Do not send BOI to anyone by completing these forms.
- Correspondence or other documents referencing a “US Business Regulations Dept.” This correspondence is fraudulent; there is no government entity by this name.

See id.

Related Cases

National Small Business United, et al. v. Yellen, et al.

58. On November 15, 2022, National Small Business United d/b/a National Small Business Association, and Isaac Winkles filed a lawsuit against Defendant Yellen, Defendant Treasury Department, and Himamauli Das, who was the Acting Director of FinCEN at the time. The plaintiffs filed the complaint in the U.S. District Court for the Northern District of Alabama, Case No. 22-CV-01448 (the “Alabama Lawsuit”).

59. The Alabama Lawsuit raised similar allegations as the Plaintiffs in this case, and challenged the constitutionality of the CTA under the First, Fourth, Fifth, Ninth, and Tenth Amendments to the U.S. Constitution.

60. On March 1, 2024, Judge Liles C. Burke in the Northern District of Alabama concluded on summary judgment that “the [CTA] is unconstitutional because it cannot be justified as an exercise of Congress’s enumerated powers.” *National Small Business United v. Yellen*, 2024 WL 899372, at *21 (N.D. Ala. Mar. 1, 2024). In the Court’s final judgment, Judge Burke declared the CTA unconstitutional and made the following order: “The Defendants, along with any other agency or employee acting on behalf of the United States, are **PERMANENTLY ENJOINED** from enforcing the [CTA] against the Plaintiffs.” *See* Exhibit 1 (emphasis in original).

61. While Judge Liles imposed a permanent injunction on FinCEN’s enforcement against the members of the National Small Business Association, Judge Liles did not impose any order or injunction on FinCEN with respect to any other business association or business owner. Therefore, currently, FinCEN is permitted to enforce every provision of the CTA against the

Plaintiffs here and any other reporting company not covered by the order entered in the Alabama Lawsuit.

62. Following the final judgment against the defendants in that case, FinCEN issued a notice on March 1, 2024, regarding its enforcement of the CTA, stating that Defendants are appealing the ruling and confirming that it would continue to enforce the CTA against any reporting company not covered by the district court's order:

While this litigation is ongoing, FinCEN will continue to implement the Corporate Transparency Act as required by Congress, while complying with the court's order. Other than the particular individuals and entities subject to the court's injunction, as specified below, reporting companies are still required to comply with the law and file beneficial ownership reports as provided in FinCEN's regulations.

FinCEN is complying with the court's order and will continue to comply with the court's order for as long as it remains in effect. As a result, the government is not currently enforcing the Corporate Transparency Act against the plaintiffs in that action: Isaac Winkles, reporting companies for which Isaac Winkles is the beneficial owner or applicant, the National Small Business Association, and members of the National Small Business Association (as of March 1, 2024). Those individuals and entities are not required to report beneficial ownership information to FinCEN at this time.

See "Beneficial Ownership Information," FinCEN, *available at* <https://fincen.gov/boi>.

63. On March 11, 2024, FinCEN updated the notice to "reflect that a Notice of Appeal has been filed regarding this case." *See* "Beneficial Ownership Information," FinCEN, *available at* <https://fincen.gov/boi>.

64. The Alabama Lawsuit is currently pending before the U.S. Court of Appeals for the Eleventh Circuit as Case No. 24-10736.

65. On April 15, 2024, the defendant-appellants filed their brief in the U.S. Court of Appeals for the Eleventh Circuit. On May 13, 2024, the plaintiff-appellees' filed their responsive brief. Pursuant to the court's scheduling order, the defendant-appellants' reply brief is due on

June 3, 2024. The court granted the defendant-appellants' motion to expedite oral argument in the case, and the court is scheduled to hear arguments during the week of September 16, 2024.

Gargasz v. Yellen, et al.

66. On December 29, 2023, Robert J. Gargasz Co. LPA and its owner, Robert J. Gargasz, filed a lawsuit against Defendant Yellen, Defendant Treasury Department, Richard K. Delmar, in his official capacity as Acting Inspector General of the Treasury Department, the Internal Revenue Service, FinCEN, Merrick B. Garland, in his official capacity as Attorney General of the United States, and Rebecca Chattin Lutzko, in her official capacity as U.S. Attorney for the Northern District of Ohio. The plaintiffs filed the complaint in the U.S. District Court for the Northern District of Ohio, Case No. 23-CV-02468 (the "Ohio Lawsuit").

67. The Ohio Lawsuit raises similar allegations as the Plaintiffs in this case, and challenges the CTA as unconstitutional for violating the rights relating to State sovereignty, privacy, freedom from government intrusion, free speech, federal government overreaching, as well as statutory rights under the Paperwork Reduction Act of 1980 and the Administrative Procedure Act ("APA").

68. On April 17, 2024, the judge issued an order staying proceedings in the Ohio Lawsuit, pending the outcome of the Eleventh Circuit appeal in the Alabama Lawsuit.

Boyle v. Yellen, et al.

69. On March 15, 2024, William Boyle filed a lawsuit against Defendant Yellen, Defendant Treasury Department, and Himamauli Das, in his official capacity as Acting Director of FinCEN. The plaintiff filed the complaint in the U.S. District Court for the District of Maine, Case No. 24-CV-00081 (the "Maine Lawsuit").

70. The Maine Lawsuit raises similar allegations as the Plaintiffs in this case, and they challenged the CTA as being unconstitutional, in violation of the Ninth and Tenth Amendments to the U.S. Constitution.

71. On May 10, 2024, the parties filed a joint motion to extend the defendants' responsive pleading deadline, pending the outcome of a court conference to determine a briefing schedule for the parties' anticipated cross-motions for summary judgment. On May 13, 2024, the court granted the parties' motion to extend.

72. On May 21, 2024, the court held a conference and raised the possibility of cross-motions for judgment on a stipulated record, as opposed to the parties' contemplated cross-motions for summary judgment. After the parties requested additional time to discuss how to move forward, the court ordered that the parties file a status report by June 4, 2024, indicating how they intend to proceed and proposing a schedule for that process. Pursuant to the court's order, the defendants' deadline to file a responsive pleading will be held in abeyance until the court addresses the parties' status report.

Small Business Association of Michigan, et al. v. Yellen, et al.

73. On March 26, 2024, the Small Business Association of Michigan, Chaldean American Chamber of Commerce, Steward Media Group, LLC, Power Connections Co., LLC, Derek Dickow, Semper Real Estate Advisors, LLC, and Timothy A. Eisenbraun filed a lawsuit against Janet Yellen, the U.S. Department of the Treasury, and Himamauli Das, in his official capacity as Acting Director of FinCEN. The plaintiffs filed the complaint in the U.S. District Court for the Western District of Michigan, Case No. 24-CV-00314 (the "Michigan Lawsuit").

74. The Michigan Lawsuit raises similar allegations as the Plaintiffs in this case, and challenged the CTA as unconstitutional for violating the rights relating to State sovereignty, unreasonable search and seizure, and due process.

75. The plaintiffs in the Michigan Lawsuit filed a motion for preliminary injunction on the same day as they filed the complaint.

76. On April 23, 2024, the court held a hearing on the motion for preliminary injunction, and, on April 26, 2024, the court issued an order denying the plaintiffs' motion for preliminary injunction.

77. The Plaintiffs are filing the instant case because they are not protected by the Alabama, Ohio, Maine, or Michigan lawsuits. Despite the constitutional challenges and infirmities, FinCEN has continued to implement the CTA. This lawsuit is the Plaintiffs' vehicle for protection and relief.

CAUSES OF ACTION

COUNT I

Violation of the Tenth Amendment to the U.S. Constitution – Exceeding Congressional Authority and Usurping States' Powers

78. The Plaintiffs re-allege and incorporate each and every allegation made in the preceding paragraphs as if fully set forth herein.

79. Pursuant to the Taxing and Spending Clause, Article 1, Section 8, Clause 1 of the U.S. Constitution, Congress has the power to “lay and collect taxes,” and the Sixteenth Amendment to the U.S. Constitution gives Congress the power to “lay and collect taxes on incomes,” specifically.

80. Pursuant to the Commerce Clause, Article 1, Section 8, Clause 3 of the U.S. Constitution, Congress has the power “to regulate commerce with foreign nations, among states, and with Indian tribes.”

81. The Tenth Amendment to the U.S. Constitution states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”

82. The sovereign power of the States includes the authority to charter, register, and regulate domestic corporate entities.

83. The powers given to the federal government through the U.S. Constitution do not authorize the federal government to intrude on the sovereign power of the States to charter, register, and regulate domestic corporate entities. There is no exception to this rule for Congress or the Treasury Department.

84. Through the CTA, Congress and the Defendants seek to “set a clear, Federal standard for incorporation practices.” 31 U.S.C. § 5336, note (5)(A).

85. This unprecedented federal standard imposes significant reporting requirements and severe civil and criminal penalties that far exceed the requirements imposed on business entities under State laws. For example, corporate entities formed under Massachusetts law are not required to provide dates of birth or personal identification numbers for what may be each beneficial owner or applicant under the CTA, nor are they required to make updates to such information disclosures each time there is a change in that information because reports are due annually under Massachusetts law. In addition, corporate entities formed under Massachusetts law are not subject to civil fines of \$500 per day or criminal punishment of up to \$10,000 in

finer. Under Massachusetts law, not reporting beneficial owner or applicant information does not trigger incarceration. Unlike the CTA, there is simply no threat or term of imprisonment.

86. The CTA, therefore, interferes with and intrudes on the sovereign power of the States to charter, register, and regulate corporate entities as it sees fit.

87. While Congress retains the authority to regulate interstate commerce and to impose income taxes on money earned by individuals through corporate entities, Congress does not have the authority to regulate business formation, which instead is the province of the state in which the business is formed, here Massachusetts for the Plaintiffs.

88. Notably, when a corporate entity is first formed, it has not provided any taxable income to individuals that would be subject to federal government taxation. Nor has it engaged in any “commerce with foreign nations, among states, [or] with Indian tribes.” U.S. Constitution, Art. 1, Sec. 8, Cl. 3.

89. Corporate entities subject to the CTA may, in fact, never engage in the types of commerce that Congress is authorized to regulate – foreign and interstate commerce and commerce with Indian tribes. For example, under Massachusetts law, every corporation “has the purpose of engaging in any lawful business unless a more limited purpose is set forth in its articles of organization.” M.G. L. c. 156D, § 3.01. Moreover, “a limited liability company may carry on any lawful business, trade, profession, purpose or activity.” M.G. L. c. 156C, § 6. As another example, the laws governing Delaware corporations and limited liability companies are the same, and Delaware is the incorporation state for more than 1.6 million businesses.⁷

Delaware law provides that a “corporation may be incorporated or organized under this chapter to conduct or promote any lawful business or purposes, except as may otherwise be provided by

⁷ See “Why Incorporate in Delaware? Benefits & Considerations,” Forbes, Feb. 15, 2024, *available at* <https://www.forbes.com/advisor/business/incorporating-in-delaware/>.

the Constitution or other law of this State.” 8 Del. Code § 101(b). Delaware law also provides that a “limited liability company may carry on any lawful business, purpose or activity, whether or not for profit.” 6 Del. Code § 18-1101.

90. Pursuant to these laws, millions of reporting companies engage in activities wholly unrelated to commerce, such as holding local property or creating a local neighborhood organization or a housing or condominium association for the benefit of residents to pool their funds solely to pay for joint expenses. Where these companies do not engage in commerce and do not implicate taxable income, the federal government is not permitted to regulate them under the guise of interstate commerce, but the CTA purports to allow exactly that. Instead, corporate entity formation is an entirely administrative act that should be left to the States, as it has been for centuries.

91. Congress’s power to regulate commerce under Article I of the U.S. Constitution “presuppose[s] the existence of commercial activity to be regulated.” *National Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 520 (2012). Because business entities may be registered and maintained without engaging in commerce, Congress’s attempt to regulate such businesses through the CTA constitutes federal government overreach, *i.e.*, enacting the CTA exceeded Congress’s authority to regulate commerce.

92. As it stands, the CTA imposes reporting requirements and civil and criminal penalties on millions of business entities without any meaningful inquiry or knowledge as to whether those entities actually engage in commerce.

93. The CTA also imposes an unprecedented burden on the States with respect to the collection of beneficial owners’ and applicants’ private, personal, sensitive, and identifying information. Specifically, the CTA provides: “Relevant Federal, State, and Tribal agencies, as

determined by the Secretary of the Treasury, shall, to the extent practicable, and consistent with applicable legal protections, cooperate with and provide information requested by FinCEN for purposes of maintaining an accurate, complete, and highly useful database for beneficial ownership information.” 31 U.S.C. § 5336(d)(2).

94. For the foregoing reasons, enacting the CTA exceeded Congress’s authority, therefore violating the Tenth Amendment to the U.S. Constitution.

COUNT II

Violation of the Fourth Amendment to the U.S. Constitution – Right of Privacy and Right to be Free from Unreasonable Searches and Seizures

95. The Plaintiffs re-allege and incorporate each and every allegation made in the preceding paragraphs as if fully set forth herein.

96. The Fourth Amendment to the U.S. Constitution states: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

97. Upon information and belief, no State requires individuals seeking to form a business entity to provide dates of birth or personal identification numbers for what would be each beneficial owner or applicant under the CTA. Such private, personal, sensitive, and identifying information is not necessary for the formation of a business entity, and individuals have a reasonable expectation of privacy in such information.

98. For example, under Massachusetts law, individuals seeking to form a business entity are not required to provide dates of birth or personal identification numbers for what would be each beneficial owner or applicant under the CTA, and reports to the State are due only

on an annual basis. Therefore, Massachusetts permits business owners to register business entities with a relative degree of privacy and on a reasonable, periodic basis.

99. Despite the States' judgment that dates of birth and personal identification numbers are not necessary for business formation, the CTA requires such information not only from the filer, but from each and every so-called beneficial owner and applicant. Further, the CTA requires reports not annually, but any time a change to any of the reported beneficial ownership information changed. Changing a name as a result of marriage, moving to a new home, and hiring a new management employee – all of which are typical occurrences – could each trigger a reporting requirement where violation is punishable by severe civil and criminal penalties.

100. The CTA was enacted to facilitate law enforcement activities, including efforts to combat “illicit activity, including money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption.” *See* H. R. 63958—1217, Title LXIV—Establishing Beneficial Ownership Information Reporting Requirements, *available at* https://www.fincen.gov/sites/default/files/shared/Corporate_Transparency_Act.pdf; 87 Fed. Reg. 59,498 (describing the purpose of enacting the CTA).

101. The CTA imposes criminal penalties on beneficial owners and applicants for failing to comply with reporting requirements – up to \$10,000 in fines and up to two years in prison.

102. The CTA itself describes the required personal beneficial ownership information as “sensitive.” 31 U.S.C. § 5336(h)(5)(A). Under the CTA, FinCEN mandates the reporting of this private, personal, sensitive, and identifying information, and FinCEN is then charged with

creating and maintaining a database of this information that is available to any number of other U.S. law enforcement and intelligence agencies, as well as foreign governments.

103. The CTA requires the reporting of beneficial ownership information for use in federal criminal law enforcement efforts without any court review or authorization under specific circumstances where the federal government has demonstrated probable cause, or even articulable suspicion, to believe a crime is imminent, in progress, or completed. Despite the broad requirements for information, and the lack of judicial review, the CTA also permits FinCEN to share Americans' private, personal, sensitive, and identifying information with an unknown number of foreign governments, federal agencies, federal regulatory agencies, and financial institutions.

104. Mandating the reporting of private, personal, sensitive, and identifying information for the federal government's use in criminal law enforcement efforts when the federal government has not so much as identified any articulable suspicion or probable cause to believe a crime was committed, and where severe criminal penalties could result, constitutes unreasonable search and seizure and invasion of privacy through compelled disclosures.

105. Mandating the reporting of private, personal, sensitive, and identifying information and allowing FinCEN to share that information broadly also violates constitutional prohibitions on unreasonable search and seizure and the invasion of individuals' privacy.

106. For the foregoing reasons, the CTA violates the Fourth Amendment to the U.S. Constitution, which protect individuals' privacy rights and their right to be free from unreasonable searches and seizures.

COUNT III

**Violation of the Fifth Amendment to the U.S. Constitution –
Right to be Free from Self-Incrimination**

107. The Plaintiffs re-allege and incorporate each and every allegation made in the preceding paragraphs as if fully set forth herein.

108. The Fifth Amendment to the U.S. Constitution states, in relevant part: “No person shall . . . be compelled in any criminal case to be a witness against himself.”

109. Mandating the self-reporting of private, personal, sensitive, and identifying information for the federal government’s use in criminal law enforcement efforts when the federal government has not so much as identified any articulable suspicion or probable cause to believe a crime was committed, and where severe criminal penalties are imposed, constitutes mandatory self-incrimination through compelled disclosures.

110. Mandating the self-reporting of private, personal, sensitive, and identifying information and allowing FinCEN to share that information broadly also violates constitutional prohibitions on self-incrimination.

111. For the foregoing reasons, the CTA violates the Fifth Amendment to the U.S. Constitution.

COUNT IV

**Violation of the First Amendment to the U.S. Constitution –
Freedom of Speech and Association**

112. The Plaintiffs re-allege and incorporate each and every allegation made in the preceding paragraphs as if fully set forth herein.

113. The First Amendment to the U.S. Constitution states: “Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble[.]”

114. The CTA requires beneficial owners and applicants to provide private, personal, sensitive, and identifying information above and beyond what States have determined, in their judgment, is not necessary for business formation.

115. Individuals and groups often seek to form business entities for non-commercial purposes, such as to create private social clubs or to hold family property. Whereas prior to the effective date of the CTA, these individuals and groups would not have to disclose their private, personal, sensitive, and identifying information to the government, they are now forced to disclose that information and their personal associations to the federal government under the CTA's requirements. The federal government is then authorized to further disclose that information to an unknown number of foreign governments, law enforcement agencies, regulatory entities, and financial institutions.

116. The threat of widespread disclosure of private, personal, sensitive, and identifying information will deter people from joining or leading such non-commercial business entities – for fear of becoming “beneficial owners” who must report under the CTA – and it will create a chilling effect on speech and association, which are protected as fundamental rights under the First Amendment to the U.S. Constitution.

117. Where a law implicates the First Amendment and requires compelled speech or disclosure, the government must satisfy the “exacting scrutiny” test. Under this test, the government must show that it has a sufficiently important governmental interest in the issue at stake, and that the law is narrowly tailored to serve that sufficiently important government interest. *See Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 608-09 (2021). “Narrow tailoring is crucial where First Amendment activity is chilled—even if indirectly—

‘because First Amendment freedoms need breathing space to survive.’” *Id.* (quoting *National Ass’n for Advancement of Colored People v. Button*, 371 U.S. 415, 433 (1963)).

118. Collecting the private, personal, sensitive, and identifying information of millions of Americans from small businesses and non-commercial business entities, requiring updates any time a single change to that information occurs, storing that information in a database for years even after a business terminates, and sharing that information with an unknown number of foreign governments, federal and State law enforcement agencies, federal regulatory agencies, and financial institutions is not narrowly tailored to the federal government’s interest in cracking down on financial crimes.

119. For the foregoing reasons, the CTA violates the First Amendment to the U.S. Constitution, which protects individuals’ right to free speech and association.

COUNT V

Violation of Fifth Amendment to the U.S. Constitution – Due Process Rights

120. The Plaintiffs re-allege and incorporate each and every allegation made in the preceding paragraphs as if fully set forth herein.

121. The Fifth Amendment to the U.S. Constitution states, in relevant part: “No person shall . . . be deprived of life, liberty, or property, without due process of law.”

122. The Individual Plaintiffs and the beneficial owners and applicants of the Organizational Plaintiffs’ members have a private, protected liberty interest in avoiding imprisonment for violating the CTA’s reporting requirements.

123. The Individual Plaintiffs and the beneficial owners and applicants of the Organizational Plaintiffs’ members have a private, protected property interest in the money that

they will be forced to pay in civil and criminal fines for violating the CTA's reporting requirements.

124. The CTA presents a grave risk that the Individual Plaintiffs and the beneficial owners and applicants of the Organizational Plaintiffs' members will be deprived of their protected liberty or property interests without due process of law because the CTA's statutory scheme and reporting requirements are vague and ambiguous, therefore not providing adequate notice.

125. The CTA's terms and definitions, and the corresponding FinCEN rules, are vague and ambiguous in that they do not provide the Individual Plaintiffs, the beneficial owners and applicants of the Organizational Plaintiffs' members, or other small businesses and non-commercial business entities with sufficiently specific information to understand what actions are required to avoid civil and criminal penalties. Specifically, the CTA and the FinCEN rules fail to adequately define "applicant," "beneficial owner," "relationship," "substantial control," and "understanding." These CTA terms are also not readily analogous to terms used in State entity formation laws, which would at least provide some context for understanding them.

126. The CTA's entire framework – including provisions for mandatory reporting, mandatory updating – is vague, ambiguous, and far more complex than State law requirements for entity formation, which leaves the Individual Plaintiffs, the Organizational Plaintiffs' members, and other small businesses and non-commercial business entities unsure of how to comply with the CTA's unprecedented requirements.

127. The Individual Plaintiffs, the beneficial owners and applicants of the Organizational Plaintiffs' members, and the beneficial owners and applicants of other small businesses and non-commercial business entities are being forced to guess at how to comply with

the CTA's vague, ambiguous, and complex requirements to avoid severe civil and criminal penalties, and those business entities are being forced to divert crucial time, money, and other resources toward attempting to understand the CTA's requirements, including, but not limited to, spending time and money to seek legal advice.

128. The substantial burdens imposed by the CTA are not necessary for the federal government to achieve its stated goal of decreasing the prevalence of financial crimes.

129. The federal government has no legitimate interest in collecting, storing, or sharing the private, personal, sensitive, and identifying information of millions of Americans from "mom-and-pop" shops, small businesses, and non-commercial business entities where there is no indication that any one of those Americans is going to commit a crime, is in the process of committing a crime, or has committed a crime.

130. Because the CTA has only been in effect since January 1, 2024, and the reporting deadlines for most business entities have not yet passed, there is little fiscal or administrative burden in ceasing any enforcement efforts.

131. By subjecting millions of Americans to severe civil and criminal penalties without adequate notice of the CTA's requirements – because its terms are so vague, ambiguous, and complex – the Defendants deprive Americans of liberty or property without due process of law.

132. For the foregoing reasons, the CTA violates the Fifth Amendment to the U.S. Constitution, which protects individuals from being deprived of liberty or property without due process of law.

COUNT VI

**Violation of the Ninth Amendment to the U.S. Constitution –
Rights Retained by the People**

133. The Plaintiffs re-allege and incorporate each and every allegation made in the preceding paragraphs as if fully set forth herein.

134. In contrast to the powers given to Congress, the Ninth Amendment to the U.S. Constitution states: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

135. For the reasons stated above, and because the powers given to the federal government through the U.S. Constitution do not authorize the federal government to intrude in areas of business formation to require Americans to regularly report private, personal, sensitive, and identifying information, the CTA exceeds Congressional authority, it impermissibly intrudes on privacy and due process rights, the right to be free from unreasonable searches and seizures, the right to be free from self-incrimination, and the rights to freedom of speech and association.

136. For the foregoing reasons, the CTA violates the Ninth Amendment to the U.S. Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare the CTA to be unconstitutional, in violation of Article I and the Ninth and Tenth Amendments to the U.S. Constitution due to Congress exceeding its authority and usurping the rights of the people and the States;

B. Declare the CTA to be unconstitutional, in violation of the Fourth, Fifth, and Ninth Amendments to the U.S. Constitution due to an unlawful invasion of privacy rights, including the right to be free of unreasonable seizure and the right against self-incrimination;

C. Declare the CTA to be unconstitutional, in violation of the First Amendment to the U.S. Constitution due to unreasonable burdens on free speech and freedom of association;

D. Declare the CTA to be unconstitutional, in violation of the Fifth Amendment to the U.S. Constitution due to an unlawful invasion of due process rights;

E. Issue a permanent injunction, enjoining Defendants and any other agency or employee acting on behalf of the United States from enforcing any provision of the CTA against any individual or entity;

F. Take any and all actions that are necessary and proper to remedy any violation by the Defendants, or any other agency or employee acting on behalf of the United States, deriving from any actual or attempted enforcement of the CTA;

G. Award Plaintiffs their attorneys' fees and costs; and

H. Award such other relief as the Court may deem just and proper.

Dated: May 29, 2024

Respectfully submitted,

BLACK ECONOMIC COUNCIL OF
MASSACHUSETTS, INC., AFRICAN
COMMUNITY ECONOMIC
DEVELOPMENT OF NEW ENGLAND,
INC., TRACYE WHITFIELD, MARIA
FERNANDES-DOMINIQUE, and
RAQUEL SEMEDO,

By their attorneys,

/s/ Michael A. Kippins

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Exhibit 1

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

NATIONAL SMALL BUSINESS)
UNITED, d/b/a the NATIONAL)
SMALL BUSINESS)
ASSOCIATION, et al.,)
)
Plaintiffs,)
)
v.)
)
JANET YELLEN, in her official)
capacity as Secretary of the)
Treasury, et al.,)
)
Defendants.)

Case No. 5:22-cv-1448-LCB

FINAL JUDGMENT

For the reasons articulated in its March 1, 2024, opinion on the parties’ cross-motions for summary judgment, (Doc. 51), the Court **FINDS** that the Plaintiffs are entitled to summary judgment as a matter of law, and **GRANTS** the Plaintiffs’ request for relief as follows:

- (1) The Court **ENTERS** this final declaratory judgment: as discussed in the Court’s opinion, the Corporate Transparency Act is unconstitutional because it exceeds the Constitution’s limits on Congress’ power. The

Court makes no ruling as to the constitutionality of the Act on any other grounds.

- (2) The Defendants, along with any other agency or employee acting on behalf of the United States, are **PERMANENTLY ENJOINED** from enforcing the Corporate Transparency Act against the Plaintiffs.
- (3) The Court will hear the parties' arguments concerning the allocation and amount of costs on a date to be determined.

DONE and **ORDERED** March 1, 2024.

A handwritten signature in black ink, appearing to read "Liles C. Burke", written over a horizontal line.

LILES C. BURKE
UNITED STATES DISTRICT JUDGE