Transparency International U.S.
1100 13th St NW
Suite 800
Washington, DC 20005
info-us@transparency.org
us.transparency.org

Anticorruption Coalition Files Legal Brief Ahead of Court Ruling on Landmark Law

Brief from Transparency International U.S., the Foundation for Defense of Democracies, and Nate Sibley of the Hudson Institute counters federal judge's conclusions regarding U.S. national security

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Washington, D.C.—Transparency International U.S. (TI US), the Foundation for Defense of Democracies (FDD), and Nate Sibley, Director of the Kleptocracy Initiative and Fellow at the Hudson Institute filed an amicus curiae (or "friend of the court") brief in support of the U.S. Government in a case currently before the U.S. Court of Appeals for the Eleventh Circuit that questions the constitutionality of the Corporate Transparency Act ("CTA"), a law that will require certain U.S. businesses to confidentially name their true owners.

"The CTA is widely recognized as the most important update to our anti-money laundering laws in twenty years," said Scott Greytak, Director of Advocacy for Transparency International U.S. and counsel for the brief. "The outcome will directly impact the ability of the United States Government to fight terrorist organizations like Hamas and Hezbollah, effectively sanction corrupt regimes like Vladimir Putin's Russia, and stop the flow of deadly fentanyl into the United States.

"The stakes could not be higher for so many U.S. national security and foreign policy interests," added Greytak, "and this brief makes those connections crystal clear."

The CTA, which was passed in 2021 with strong bipartisan support as part of Congress's annual defense spending bill, requires many U.S. companies to report basic identifying information about the people who own or control the company (aka, the company's "beneficial owners") to the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"). Prior to the adoption and implementation of the CTA, criminals around the world, including terrorists, sanctions evaders, corrupt foreign officials, drug traffickers, and foreign nations

hostile to the United States were able to use anonymous companies to move, hide, and grow their dirty money in the United States.

"Just as the events of 9/11 compelled us to rethink our national security strategy, so should the rise of malign authoritarian regimes, the fentanyl crisis fueled by drug cartels, and other illicit actors that continue to operate with impunity through our opaque corporate and legal structures," said Elaine Dezenski, Senior Director and Head of the Center on Economic and Financial Power at the Foundation for Defense of Democracies. "Bad actors have co-opted and misused corporate mechanisms to launder ill-gotten gains and imperil our democratic system. We will not address these threats to the homeland without closing the loopholes that allow malign criminals and kleptocrats to act with impunity behind the secrecy of anonymous shell companies."

On March 1, 2024, Judge Liles C. Burke of the U.S. District Court for the Northern District of Alabama ruled that the CTA was unconstitutional and blocked its enforcement against the plaintiffs, including the National Small Business Association, an Ohio nonprofit organization with 65,000 business members. In reaching his decision, Judge Burke concluded that the CTA "exceeds the Constitution's limits on the legislative branch" and "lacks a sufficient nexus to any enumerated power" in the Constitution—including Congress's powers to oversee foreign affairs and national security. The U.S. Government appealed that decision to the Eleventh Circuit Court of Appeals, which is currently considering the case and expected to issue a ruling in the coming weeks.

"Our coalition's brief serves to highlight the absurdity of Judge Burke's conclusion that incorporating a company is a 'purely internal affair' by spotlighting dozens of examples of anonymous companies being used to undermine U.S. national security and foreign policy interests," added Greytak. "These include instances of sanctions evasion relating to Iran, Russia, and Venezuela, the Zheng drug trafficking operation's use of anonymous companies to ship fentanyl to 37 U.S. states, and allies of Vladmir Putin reliance on anonymous companies to grow their wealth, power, and influence."

Nate Sibley, Director of the Kleptocracy Initiative and Fellow at the Hudson Institute and signatory to the brief, emphasized how "drug cartels, terrorist organizations, and hostile state actors all rely on shell companies to conceal illicit financial networks. The bipartisan Corporate Transparency Act established a critical mechanism for ensuring that the U.S. financial system itself is not exploited for

money laundering and sanctions evasion by these adversaries. The legislation was rigorously debated in Congress with intensive input from stakeholders across the political spectrum. The result is a finely calibrated authority that addresses a serious national security threat without unduly empowering the executive or unfairly burdening businesses."

The case is *Yellen v. National Small Business United*.

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TI US is part of the world's largest coalition against corruption. In collaboration with national chapters in more than 100 countries, through research, policy development, and advocacy, we are leading the fight to turn our vision of a world free from corruption into reality.

Related Resources

- Read the amicus brief as filed with the U.S. Court of Appeals for the Eleventh Circuit;
- Read TI US's statement on the U.S. District Court for the Northern District of Alabama's decision in *National Small Business United v. Yellen*;
- Read a TI US factsheet on how anonymous companies undermine U.S. national security;
- Watch FDD's Elaine Dezenski testify before the U.S. Senate Caucus on International Narcotics Control about the use of anonymous companies in drug trafficking schemes.

Media Contact

Scott Greytak, Director of Advocacy, Transparency International U.S.
Email: sgreytak@transparency.org
Twitter: @TransparencyUSA