UNCONSTITUTIONAL USURPATION OF POWER: AN EVALUATION OF THE CORPORATE TRANSPARENCY ACT'S POTENTIAL DEMISE UNDER *NATIONAL SMALL BUSINESS UNITED V. YELLEN*

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ABSTRACT

The longstanding role of the judiciary has been to say what the law is and not what it should be. Nowhere is this axiom more illustrative than in *National Small Business United v. Yellen*. The National Small Business Association (NSBA) is a non-profit corporation tasked with representing and protecting the rights of small business owners as they navigate government regulation. Through the Corporate Transparency Act (CTA), Congress imposed disclosure requirements on corporations, limited liability companies, and other entities registered under state law, requiring them to disclose personal stakeholder information to the Treasury Department's criminal enforcement branch. After exempting many large entities with millions in profits, these disclosure requirements primarily impacted small, family-owned businesses. Isaac Winkles was a small business owner who was impacted by the CTA's hefty disclosure requirements. Had owners like Isaac Winkles failed to provide all information regarding their business' beneficial ownership, they would personally face severe civil and criminal penalties. Deeming the CTA to be a clear overreach of Congress' authority under Article I of the Constitution, the NSBA and Isaac Winkles sued the Treasury Department. The United States District Court for the Northern District of Alabama (District Court) determined that the CTA, as originally enacted, exceeded the constitutional limits imposed on Congress and did not have a sufficient connection between the statute and any enumerated power

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of the legislative branch to be considered a necessary or proper use of such authority.

This Comment examines the District Court's decision to strike down the CTA as applied to NSBA and Isaac Winkles, understanding it to be an unconstitutional usurpation of federal power as outlined by the Constitution. By investigating the legislative history behind the CTA, this Comment seeks to lay a foundation for the various powers of Congress granted in Article I. With an analysis of Congress' Article I powers, this Comment then evaluates the District Court's judgment, finding it appropriate given core federalism principles and the policy impact on small business owners like Isaac Winkles. Specifically, in analyzing Congress' foreign affairs, Commerce Clause, Taxing Clause, and Necessary and Proper Clause powers, this Comment reveals the congressional overreach displayed in the CTA, directly leading to the District Court's holding. As noble as the CTA's purpose may be in regulating and combatting financial crimes, the judiciary's role should not permit Congress' noble pursuits to contravene the Constitution's limits. In taking the approach to say what the law is and not what it should be, this Comment argues that the District Court properly understood the CTA, as originally applied, to be an unconstitutional usurpation of power.

INTRODUCTION

In the acclaimed view of Chief Justice John Marshall, "It is emphatically the province and duty" of the judiciary to "say what the law is," not what it should be.[1] The powers awarded to the federal government, Congress in particular, are specifically granted in the Constitution.[2] However, within these enumerated powers, Congress may enact all laws "which shall be necessary and proper for carrying" out the powers it has been granted.[3] The Necessary and Proper Clause has troubled courts over time, especially cases involving the Commerce Clause.[4] This is because

1. Marbury v. Madison, 5 U.S. 137, 177 (1803).
2. McCulloch v. Maryland, 17 U.S. 316, 405 (1819).
3. U.S. CONST. art. I § 8, cl. 18.
4. *Compare* United States v. Comstock, 560 U.S. 126, 133 (2010) (stating that "the Necessary and Proper Clause grants Congress broad authority to enact federal legislation"), *with* Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 558–59 (2012) (limiting the scope of the Necessary and Proper and Commerce Clauses).

defining the borders of constitutional authority can be unclear; yet akin to Chief Justice Marshall's view, "[T]here can be no question that it is the responsibility of [the judiciary] to enforce the limits on federal power by striking down acts of Congress that transgress those limits."[5]

National Small Business United v. Yellen[6] is the latest example of the judiciary carrying out the Chief Justice's directive. Plaintiff National Small Business Association (NSBA) is a non-profit corporation registered in Ohio "that represents and protects the rights of small businesses across the United States."[7] As part of its mission, NSBA helps its members—like Plaintiff Isaac Winkles—"navigate government regulations" and advocates on behalf of "over 65,000 businesses and entrepreneurs located in all 50 states."[8] Isaac Winkles is the owner of a small business that had an annual turnover of less than twenty million dollars, employing three full-time employees.[9] Under the Corporate Transparency Act (CTA), Congress imposes requirements on "most entities incorporated under state law to disclose personal stakeholder information to the Treasury Department's criminal enforcement arm."[10] The CTA regulates corporations, limited liability companies, and other entities that are organized through filing documents with a secretary of state or foreign entities that are conducting business in the United States.[11]

However, after exempting twenty-four types of entities, including banks, insurance companies, and entities with more than twenty employees, five million dollars in gross receipts, and a physical office within the United States, the CTA primarily applies to small, family businesses, like Isaac Winkles'.[12] Prior to the Financial Crimes Enforcement Network's (FinCEN) latest interim rule, discussed below, the CTA required Winkles to disclose information related to any "beneficial owner," which is an individual who "exercises substantial control over the entity" or "owns or controls not less than 25 percent of the ownership interests of the entity."[13]

5. *Sebelius*, 567 U.S. at 538 (citing Marbury v. Madison, 5 U.S. 137, 175–76 (1803)).
6. *See generally* 721 F. Supp. 3d 1260 (N.D. Ala. 2024).
7. *Id.* at 1267.
8. *Id.*
9. *Id.*
10. *Id.* at 1266.
11. 31 U.S.C. § 5336(a)(11)(A).
12. 31 U.S.C. § 5336(a)(11)(B).
13. 31 U.S.C. § 5336(a)(3).

Therefore, Isaac Winkles had to provide to FinCEN information regarding all beneficial owners' full legal names, date of birth, current address, and identification numbers from a driver's license or passport.[14] If his business failed to make this disclosure, Isaac Winkles would personally face severe civil and criminal penalties.[15] Six weeks after the CTA went into effect, Isaac Winkles and NSBA sued the Treasury Department, alleging "that the CTA's mandatory disclosure requirements exceed Congress' authority under Article I of the Constitution."[16] Alternatively, the Government argued the CTA should be sustained under the Commerce, Taxing, and Necessary and Proper Clauses, along with Congress' foreign affairs power.[17] After determining that both Isaac Winkles and NSBA had Article III standing, the District Court for the Northern District of Alabama (District Court) sought to answer whether Congress has the constitutional power to regulate "entities and their stakeholders the moment they obtain a formal corporate status" under state law.[18] The District Court held that the CTA "exceeds the Constitution's limits" on Congress and "lacks a sufficient nexus to any enumerated power to be a necessary and proper means" of carrying out Congress' authority.[19]

Part I of this Comment examines the history surrounding the CTA and what Congress intended to achieve in enacting it. It also discusses the development of law affecting the Government's arguments that the CTA complies with Congress' enumerated foreign affairs, Commerce Clause, Taxing Clause, and Necessary and Proper Clause powers. In evaluating the landscape of each of these doctrines, Part I will lay a foundation for the District Court's holding in *National Small Business United*.

Part II of this Comment commends the reasoning the District Court utilized to reach its decision in *National Small Business United* and argues that the Eleventh Circuit should have affirmed the District Court's opinion to sustain federalism principles, reduce administrative burdens on small businesses, and restrain unconstitutional usurpations of power by Congress.

14. 31 U.S.C. § 5336(a)(1).
15. 31 U.S.C. § 5336(h)(3).
16. Nat'l Small Bus. United v. Yellen, 721 F. Supp. 3d 1260, 1267 (N.D. Ala. 2024).
17. *Id.* at 1269.
18. *Id.* at 1267.
19. *Id.*

I. HISTORY AND BACKGROUND

A. Corporate Transparency Act

Enacted in 2021 as part of the National Defense Authorization Act, the CTA aims to "prevent financial crimes like money laundering and tax evasion" by requiring affected entities to disclose certain information regarding their beneficial owners.[20] These disclosures have been a goal of Congress for years since the CTA shifts the burden of disclosing this information from financial institutions to reporting entities, thereby increasing compliance.[21] The CTA took effect on January 1, 2024[22] and imposes disclosure requirements for beneficial owners and applicants who are individuals that file an application to form an entity under state law.[23] However, due to the CTA's long list of exemptions, the administrative burden of disclosure, in practice, only falls on small businesses.[24] This information includes the beneficial owner or applicant's full legal name, date of birth, current address, and unique identifying number from a passport or driver's license.[25] Further, the entity is required to update this information with FinCEN any time it changes.[26] Willfully failing to report or update this information to FinCEN results in a civil penalty of $500 per day, and up to $10,000 in fines and two years in federal prison.[27] These

20. *Nat'l Small Bus. United*, 721 F. Supp. 3d at 1266.

21. *See* Robert Wilson Downes et al., *The Corporate Transparency Act – Preparing for the Federal Database of Beneficial Ownership Information*, A.B.A. (May 2021), https://www.americanbar.org/groups/business_law/resources/business-law-today/2021-may/the-corporate-transparency-act/#:~:text=The%20Corporate%20Transparency%20Act%20included%20in%20the%20NDAA%20expanded%20the,or%20Indian%20Tribe.%E2%80%9D%2031%20U.S.C [https://perma.cc/VL5P-5G4K].

22. 31 C.F.R. § 1010.380 (2025).

23. 31 U.S.C. § 5336(a)(2).

24. *See* U.S.C. § 5336(a)(11)(B) (listing exemptions from the CTA's disclosure requirements for banks, all public companies, public accounting firms, investment advisors, public utilities, tax-exempt organizations, and all large operating companies that (1) employ at least twenty full-time employees, (2) have at least $5,000,000 in gross receipts or sales, and (3) has an operating presence in a physical office in the United States); *see also* Samantha M. Alecozay, *The Small Business Killer: How FinCEN Enforcement of the CTA Could Destroy the Last Bastion of the American Dream*, 12 LINCOLN MEM'L U. L. REV. 1, 2 (2024) ("As of January 1, 2024, tens of millions of small businesses in the U.S. are currently subject to the statute's reporting requirements, as small businesses are the statute's main target.").

25. 31 U.S.C. § 5336(a)(1).

26. 31 U.S.C. § 5336(b)(1)(D).

27. 31 U.S.C. § 5336(h)(3).

penalties apply to individuals rather than reporting entities, meaning "millions of Americans must either disclose their personal information to FinCEN through State-registered entities, or risk years of prison time and thousands of dollars" in fines.[28] Notably, after two separate district courts issued preliminary orders preventing the government from enforcing the CTA against the plaintiffs; on March 26, 2025, FinCEN issued an interim final rule that exempts domestic reporting companies from reporting beneficial ownership information.[29] However, foreign companies and any foreign beneficial owners must still report the required information to FinCEN.[30] Thus, although the Trump administration's Treasury Department has taken the view that the CTA's reporting obligations will now only fall on foreign entities and owners, the CTA continues to be the law of the land as FinCEN seeks public comment, and it remains to be seen whether future administrations will reverse course, leaving plaintiffs like Isaac Winkles in limbo.[31] This Comment therefore addresses the CTA's originally enacted requirements imposed at the time of the *National Small Business United* District Court decision.

B. Foreign Affairs Power

The Framers sought to give the political branches a powerful voice over foreign policy, exemplified through Congress' enumerated power to declare war and fund its operations, ratify treaties, and regulate foreign commerce.[32] The Court has also recognized broad congressional authority over foreign affairs, including enacting legislation to regulate foreign affairs.[33] Initially,

28. Nat'l Small Bus. United v. Yellen, 721 F. Supp. 3d 1260, 1269 (N.D. Ala. 2024); *see also id.* (stating that the CTA "can be read only to penalize individual beneficial owners and applicants, not reporting entities.").

29. *See* Texas Top Cop Shop, Inc. v. Garland, 758 F. Supp. 3d 607, 661 (E.D. Tex. 2024); Smith v. U.S. Dep't of the Treasury, 761 F. Supp. 3d 952, 974 (E.D. Tex. 2025); Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension, 90 Fed. Reg. at 13688 (Mar. 26, 2025) (to be codified at 31 C.F.R. pt. 1010).

30. Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension, 90 Fed. Reg. 13688 (Mar. 26, 2025) (to be codified at 31 C.F.R. pt. 1010).

31. *See id.* at 13689.

32. *See* Gerald Felix Warburg, *Congressional Accountability in Shaping United States Foreign Policies 1970-2020* 2 (Ctr. for Effective Lawmaking, Working Paper, 2021).

33. *See* Perez v. Brownell, 356 U.S. 44, 57 (1958) ("Although there is in the Constitution no specific grant to Congress of power to enact legislation for the effective regulation of foreign affairs, there can be no doubt of the existence of this power in the law-making organ of the Nation.").

the Framers wanted to ensure that foreign affairs responsibilities were committed to the legislative and executive branches.[34] The Framers determined that the judiciary was not equipped to make foreign relations policies and that the political branches should be held accountable for decisions made in this area.[35] Thus, the judiciary has historically given great deference to the political branches' actions in the foreign affairs realm.[36]

However, this deference is not without limits.[37] In *United States v. Curtiss-Wright Exp. Corp.*, the Court differentiated between the federal government's power over internal and external affairs.[38] In matters of foreign affairs, federal power is broader, while matters of purely internal affairs are restricted by the authority explicitly enumerated in the Constitution, alongside those powers deemed necessary and proper to carry out explicit enumerated authority.[39] This is because "the federal power over external affairs in origin and essential character differ from that over internal affairs," where the exercise of power is more limited by constitutional constraints.[40] Nonetheless, the external affairs power is not left unchecked, even if it is broader than those enumerated powers over internal affairs.[41] Thus, many cases in this area, including *National Small Business United*, turn on whether Congress' foreign affairs powers justify adopting laws that regulate purely internal or state affairs, powers which

34. *See* Oetjen v. Cent. Leather Co., 246 U.S. 297, 302 (1918) (stating that the foreign affairs power is "committed by the Constitution to the executive and legislative—'the political'—departments of the government").

35. *See* Chicago & S. Air Lines v. Waterman S.S. Corp., 333 U.S. 103, 111 (determining that "the Judiciary has neither aptitude, facilities nor responsibility" for foreign affairs policies and that these policies must then "be undertaken only by those directly responsible to the people whose welfare they advance or imperil.").

36. *See* Lucas Curtis, *The Supreme Court as a Tool of Foreign Policy?: Why a Proposed Flexible Framework of Established Judicial Doctrine Better Satisfies Foreign Policy Concerns in Alien Tort Statute Litigation*, 104 MINN. L. REV. 1647, 1650 (2020) (stating that the Court has developed "doctrines giving significant deference to both the Legislative and Executive Branches in cases implicating foreign relations.").

37. *See* Jonathan I. Charney, *Judicial Deference in Foreign Relations*, 83 AM. J. INT'L L. 805, 806 (1989) (determining that judicial deference "may be unjustified in many cases").

38. *See* United States v. Curtiss-Wright Exp. Corp., 299 U.S. 304, 315–16 (1936).

39. *See id.* ("The broad statement that the federal government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect of our internal affairs.").

40. *Id.* at 319.

41. *See* Reid v. Covert, 354 U.S. 1, 16 (1957) ("[N]o agreement with a foreign nation can confer power on the Congress, or on any other branch of Government, which is free from the restraints of the Constitution.").

would otherwise not be in Congress' authority absent the foreign affairs and necessary and proper justifications.[42]

C. Commerce Clause

Perhaps one of Congress' broadest grants of power is given in Article I, Section 8, which says that "Congress shall have the power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."[43] In early Commerce Clause jurisprudence, Chief Justice John Marshall interpreted the Clause broadly, demonstrated in *Gibbons v. Ogden* in which the Court granted Congress sole authority to regulate interstate steamboat navigation, thereby limiting state interference.[44] This expansive view of the Commerce Clause continued into the 1900s during the *Lochner* era, a period in which the Court repeatedly struck down state laws that impeded Congress' authority to regulate commerce under the dormant Commerce Clause doctrine, which "bars states from burdening interstate commerce, even when Congress has not exercised" its authority to do so.[45]

However, this seemingly unfettered congressional power came to a halt in 1995, when the Court decided *United States v. Lopez*.[46] There, the Court invalidated a federal law prohibiting one from having a firearm within 1,000 feet of a school since it neither regulated an existing activity of commerce nor required that the possession of the firearm be connected to interstate commerce.[47] Just five years post-*Lopez*, the Court continued its refinement of the commerce power in *United States v. Morrison*, where the Court declared a provision of the Violence Against Women Act—which permitted victims to sue their assailants—unconstitutional as an overreach of the commerce power.[48] This pair of cases displays the Court's view that there

42. *See, e.g.*, Bond v. United States, 572 U.S. 844, 848 (2014) (determining whether congressional acts can reach purely local matters).

43. U.S. CONST. art. I, § 8, cl. 3.

44. Gibbons v. Ogden, 22 U.S. 1, 189–90 (1824) ("Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse.").

45. Robin Feldman, *Lochner Revenant: The Dormant Commerce Clause & Extraterritoriality*, 16 N.Y.U. J.L. & LIBERTY 209, 211 (2022).

46. United States v. Lopez, 514 U.S. 549 (1995).

47. *Id.* at 551.

48. United States v. Morrison, 529 U.S. 598, 601–02 (2000).

are "three broad categories of activity that Congress may regulate under its commerce power."[49] These categories include channels of interstate commerce; the instrumentalities of interstate commerce (i.e., persons or things in interstate commerce); and activities that have a substantial relation to or substantially affect interstate commerce.[50] However, the *Morrison* Court went a step further, concluding that Congress may not regulate noneconomic activities even if they have a substantial effect on interstate commerce in the aggregate.[51] Reaffirmed by the Court, "[s]imply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so."[52]

As to Congress' authority to regulate channels and instrumentalities of commerce, the Court has repeatedly held that the power is broad and settled.[53] The channels of commerce represent the interstate transportation routes through which goods and persons move.[54] Instrumentalities include the transportation vehicles and persons involved in the channels of commerce.[55]

The Necessary and Proper Clause further supplements Congress' Commerce Clause powers, extending them to "activities having a substantial relation to interstate commerce."[56] This means that even if an activity is local in nature or "purely intrastate in character," it may be subject to Congress' regulation "where the activity, combined with like conduct by

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49. *Id.* at 608.

50. *Id.* at 609.

51. *See id.* at 617 ("We accordingly reject the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce."); *see also id.* at 613 ("[T]hus far in our Nation's history our cases have upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature.").

52. *Id.* at 614.

53. *See, e.g.*, Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 256 (1964).

> The transportation of passengers in interstate commerce, it has long been settled, is within the regulatory power of Congress, under the commerce clause of the Constitution, and the authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question.

Id.

54. *See* United States v. Lankford, 196 F.3d 563, 571 (5th Cir. 1999).

55. *See* United States v. Lopez, 514 U.S. 549, 558 (1995); *see also* Perez v. United States, 402 U.S. 146, 150 (1971) (stating that instrumentalities of commerce could include "the destruction of an aircraft, or persons or things in commerce, as, for example, thefts from interstate shipments." (citation omitted)).

56. *Lopez*, 514 U.S. at 558–59.

others similarly situated, affects commerce among the States."[57] The Court in *Wickard v. Filburn* explained this broad power when it concluded that wheat grown on a family farm used for personal consumption could "have a substantial effect in defeating and obstructing [Congress'] purpose" in enacting certain legislation if not subject to regulation.[58] Thus, the Court introduced the substantial effects test for determining Congress' broad regulatory powers under the Commerce Clause in conjunction with the Necessary and Proper Clause.[59] The substantial effects doctrine has led to Congress inserting "jurisdictional pegs" to tie the legislation's target activities to the effects on interstate commerce.[60] The absence of such hooks connecting activities to the effects on interstate commerce has been held to invalidate certain legislation on the grounds that it exceeds congressional authority.[61] Further developments of the substantial effects doctrine have led the Court to defer to Congress where there exists a rational basis for Congress to believe that regulation of an intrastate activity is necessary to carry out the broader purpose of the legislation in question.[62]

Nonetheless, Congress' Commerce Clause power is not without boundaries.[63] Notably, the Commerce Clause only permits Congress to regulate activity, not inactivity.[64] In *National Federation of Independent*

57. Fry v. United States, 421 U.S. 542, 547 (1975).

58. Wickard v. Filburn, 317 U.S. 111, 128–29 (1942).

59. *See id.*

60. *See* James M. McGoldrick Jr., *The Commerce Clause, The Preposition, and the Rational Basis Test*, 14 U. MASS. L. REV. 182, 234 n.200 (2019) ("Jurisdictional peg is a common concept, not actually dealing with jurisdiction but with Congress' specifically tying a law to its commerce power.").

61. *See, e.g.*, United States v. Lopez, 514 U.S. 549, 561 (1995) (concluding that since the legislation in question that prohibited the possession of firearms within 1,000 feet of a school did not have a "jurisdictional element" tying it to the effects on interstate commerce, it is not valid under the Commerce Clause).

62. *See* Gonzales v. Raich, 545 U.S. 1, 22 (2005) (stating that "we have no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the" broader legislation in question).

63. *See* R. George Wright, *The Limits of the Interstate Commerce Power: How to Decide the Close Cases*, 93 S. CAL. L. REV. POSTSCRIPT 45, 68–69 (2019).

> [I]f a close Commerce Clause case evidently bears no detectable relationship to any fundamental constitutional or human right, or to the values crucially underlying such rights, the courts should normally accommodate instead the values and interests served by federalism, and hold the case to fall outside the scope of the Commerce Clause power.

Id.

64. *See* Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 520 (2012). "As expansive as this Court's cases construing the scope of the commerce power have been, they uniformly describe the power

Business v. Sebelius, the Court determined that Congress may not compel individuals into commerce "on the ground that their failure to do so affects interstate commerce," as "[c]onstruing the Commerce Clause to permit Congress to regulate individuals precisely *because* they are doing nothing would open a new and potentially vast domain to congressional authority."[65] Likewise, while Commerce Clause jurisprudence has permitted Congress to anticipate the effects on commerce that an economic activity would have, the Court has not permitted Congress to regulate those who are not already engaged in commerce.[66] Even if an individual is likely to be engaged in commerce in the future, "The Commerce Clause is not a general license to regulate an individual from cradle to grave, simply because he will predictably engage in particular transactions."[67]

D. Taxing Clause

The Taxing Clause of the Constitution authorizes Congress to "lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States."[68] The Framers included this power since under the Articles of Confederation, the limited federal government had no central taxing power, and thus no revenue to spend on necessary defense and other government functions.[69] After the Constitution's ratification, Alexander Hamilton and James Madison debated whether the power to tax must be tied to carrying out one of Congress' enumerated powers.[70] Ultimately, in *United States v.*

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as reaching 'activity,'" whereas the individual mandate in question "does not regulate existing commercial activity" but "instead compels individuals to *become* active in commerce by purchasing a product." *Id.*

65. *Id.* at 520–21.

66. *See id.* at 557 (noting a difference between "preexisting economic activity" and those activities that an individual is not currently engaged in, even if they could be in the future).

67. *Id.*

68. U.S. CONST. art. I, § 8, cl. 1.

69. *See* Neil S. Siegel & Steven J. Willis, *The Taxing Clause*, NAT'L CONST. CENTER, https://constitutioncenter.org/the-constitution/articles/article-i/clauses/751 [https://perma.cc/64BQ-KL9A] ("Arguably the most severe problem facing the young nation under the Articles was that the national government had no power to tax individuals directly; indeed, it had no effective way of raising money at all.").

70. *See id.* (stating that in Hamilton's view, "Congress possessed a robust power to tax (and spend) regardless of whether the tax (or expenditure) could plausibly be viewed as carrying out another enumerated power of Congress," whereas "Madison argued that Congress had no independent power to

Butler, the Court adopted the view that Congress has broad authority to tax, independent of any connection to another enumerated power.[71] Subsequent cases affirmed this broad scope of the taxing power, which remains good law.[72]

Historically, courts drew distinctions between direct and indirect taxes when assessing the constitutionality of taxes, due to the language set out in Article I, Section 2.[73] Likewise, Article I, Section 9 provides that "[n]o Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken."[74] The Court has long held that direct taxes are limited to taxes on real property, so all other taxes imposed by Congress may be implemented without apportionment among the states.[75] However, in *Pollock v. Farmers' Loan & Trust Co.*, the Court held that the federal income tax is a direct tax on property that must be apportioned and thus ruled it unconstitutional.[76] In response, the Sixteenth Amendment was ratified to overturn *Pollock* and provides that "Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States."[77]

Further, Taxing Clause jurisprudence evolved to differentiate between taxes and penalties, which the Court first addressed in *Bailey v. Drexel Furniture Co.*, known as the *Child Labor Tax Case*.[78] In that case, the Court "invalidated a provision of the Revenue Act of 1918 imposing an excise of ten percent on the net profits of all firms employing children under specified ages in various tasks, for longer than specified hours, or at night work."[79]

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tax and spend in pursuit of its conception of the general welfare.").

71. U.S. v. Butler, 297 U.S. 1, 65 (1936).

72. *See* Charles C. Steward Mach. Co. v. Davis, 301 U.S. 548, 581 (1937); *see also* Helvering v. Davis, 301 U.S. 619, 645 (1937).

73. U.S. CONST. art. I, § 2, cl. 3 ("[D]irect Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers").

74. U.S. CONST. art. I, § 9, cl. 4.

75. *See* Hylton v. United States, 3 U.S. 171, 184 (1796) (holding that a federal tax imposed on carriages was indirect and did not have to be apportioned); *see also* Veazie Bank v. Fenno, 75 U.S. 533, 544 (1869) (concluding that "direct taxes have been limited to taxes on land and appurtenances, and taxes on polls, or capitation taxes," so a federal tax on bank notes is an indirect tax).

76. Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 583 (1895).

77. U.S. CONST. amend. XVI.

78. *See generally* Bailey v. Drexel Furniture Co. (*Child Labor Tax Case*), 259 U.S. 20 (1922).

79. Barry Cushman, *NFIB v. Sebelius and the Transformation of the Taxing Power*, 89 NOTRE DAME L. REV. 133, 136 (2014).

The Court held that a tax is unconstitutional when "in the extension of the penalizing features of the so-called tax . . . it loses its character as such and becomes a mere penalty with the characteristics of regulation and punishment."[80] However, this differentiation between regulatory taxes, which appear as penalties, and revenue-raising taxes, like the income tax, was highlighted in the landmark case *National Federation of Independent Business v. Sebelius*.[81] There, the Court further established the broad authority of Congress' taxing power by upholding the individual mandate imposed by the Patient Protection and Affordable Care Act as a valid exercise of the taxing power.[82] The Affordable Care Act required individuals to purchase health insurance or pay a penalty, with some exceptions.[83] In affirming the individual mandate as an exercise within Congress' broad taxing authority, the majority determined the penalty was calculated like a tax, would raise revenue for the federal fisc, and it was irrelevant that the penalty was not labeled a tax.[84] Nonetheless, the Court declined to "decide the precise point at which" a penalty "becomes so punitive that the taxing power does not authorize it," leaving unanswered questions about further congressional exercises within the scope of its taxing power.[85]

E. Necessary and Proper Clause

Congress is constitutionally authorized "[t]o make all Laws which shall be necessary and proper for carrying into Execution" powers enlisted to it via the Constitution.[86] The Framers, in response to the shortcomings of the Articles of Confederation, included this provision to firmly establish Congress' implied powers to execute its express powers.[87] However, the limits of such authority has been the subject of immense interpretive

80. *Child Labor Tax Case*, 259 U.S. at 38.
81. *See generally* Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012).
82. *See id.* at 566 ("[T]he shared responsibility payment may for constitutional purposes be considered a tax, not a penalty").
83. See *id.* at 539 (describing that the individual mandate "requires most Americans to maintain 'minimum essential' health insurance coverage" and "those who do not comply with the mandate must make a '[s]hared responsibility payment' to the Federal Government.").
84. *See id.* ("The Act provides that the penalty will be paid to the Internal Revenue Service with an individual's taxes, and 'shall be assessed and collected in the same manner' as tax penalties.").
85. *Id.* at 573.
86. U.S. CONST. art. I, §8, cl. 18.
87. *See* THE FEDERALIST NO. 44 (James Madison).

debate.[88]

Historically, the Supreme Court interpreted the Necessary and Proper Clause to encompass all implied and incidental powers that were "conducive to" a "beneficial exercise" of a congressional enumerated power, rendering a broad interpretation of the Clause.[89] The Court determined that the word necessary did not require the legislation to be absolutely necessary to carry out an enumerated power.[90] Instead, the Court determined that as long as Congress was acting within the scope of one of its constitutional powers, the Necessary and Proper Clause permits Congress to invoke means that are "appropriate and plainly adapted to the permitted end."[91] Further, modern doctrine has relied on the historical foundation for a broad interpretation, permitting any congressional legislation that is "rationally related to the implementation of a constitutionally enumerated power."[92] The Court in *United States v. Comstock* upheld a federal law that implemented indefinite civil commitment of individuals in custody who were "sexually dangerous," despite a lack of an explicit power to do so.[93] The Court determined five factors that compelled their decision, which included: (1) the scope of the Necessary and Proper Clause, (2) the establishment of federal involvement in the area, (3) the plausible reasons for the statute's enactment when considering the government's interests for protecting the public, (4) the statute's accommodation of those interests, and (5) the legislation's narrow scope.[94] However, the Court in *National Federation of Independent Business v. Sebelius* concluded that the Necessary and Proper Clause must be used in conjunction with one of Congress' enumerated powers.[95] The Court reasoned that to uphold legislation under the Necessary and Proper

88. *See* William Baude, *Sharing the Necessary and Proper Clause*, 128 HARV. L. REV. F. 39, 39 (2014) (stating that the Necessary and Proper Clause has been "a source of great interpretive discretion").

89. McCulloch v. Maryland, 17 U.S. 316, 418 (1819).

90. *Id.* at 325 ("[I]f Congress could use no means but such as were absolutely indispensable to the existence of a granted power, the government would hardly exist").

91. United States v. Darby, 312 U.S. 100, 124 (1941).

92. United States v. Comstock, 560 U.S. 126, 134 (2010).

93. *Id.* at 129–30.

94. *See id.* at 149.

95. National Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 521 (2012) (stating the "[e]ach of this Court's prior cases upholding laws under [the Necessary and Proper] Clause involved exercises of authority derivative of, and in service to, a granted power," whereas the individual mandate in question was not a valid exercise of Congress' enumerated powers and therefore could not be justified under the Necessary and Proper Clause, although it was eventually upheld under the taxing power).

Clause, Congress' authority must be "narrow in scope" or "incidental to the exercise of" an enumerated power, thereby preventing the "substantial expansion of federal authority."[96]

II. CASE ANALYSIS

A. The District Court's Opinion in National Small Business United v. Yellen

At the outset of its analysis, the District Court stated that to have standing, a "claimant must present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling."[97] The District Court determined that Plaintiff Isaac Winkles had standing to challenge the disclosures required under the CTA since the CTA, as originally enacted, compelled him to disclose private information to FinCEN, an injury that can be traced to the Government.[98] While the Government argued that there was no injury since Isaac Winkles had already provided much of the information that FinCEN seeks through his tax returns, bank account forms, and passport applications, the District Court responded by drawing a distinction between mere disclosure and disclosure to FinCEN, the criminal enforcement arm of the Treasury, the latter of which satisfied the injury requirement.[99] This injury arose since Isaac Winkles anticipated forming additional Alabama entities in the future, and he would be faced with criminal penalties under the CTA if he did not comply with the disclosure requirements.[100] Additionally, the District Court said that the NSBA had associational standing since Isaac Winkles was a member of the NSBA and would suffer harm from noncompliance.[101]

96. *Id.* at 560.

97. Nat'l Small Bus. United v. Yellen, 721 F. Supp. 3d 1260, 1269–70 (2024) (quoting Davis v. Fed. Election Comm'n, 554 U.S. 724, 733 (2008)).

98. *Id.* at 1270.

99. *Id.*

100. *See id.* at 1271 ("Winkles has standing to challenge the CTA's applicant provisions because they present Winkles with a choice between compliance and felony prosecution."); *see also* Susan B. Anthony List v. Driehaus, 573 U.S. 149, 160 (2014) (concluding that where "the plaintiffs' fear of prosecution [is] not 'imaginary or wholly speculative,'" there exists standing to challenge the statute).

101. *See Nat'l Small Bus. United,* 721 F. Supp. 3d at 1271; *see also* Ga. Republican Party v. Sec. & Exch. Comm'n, 888 F.3d 1198, 1203 (11th Cir. 2018) ("An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right").

After the District Court's discussion of standing, it moved towards the analysis of the constitutionality of the CTA under the foreign affairs power, Commerce Clause, Necessary and Proper Clause, and Taxing Clause.[102] First, in discussing foreign affairs and national security powers, the District Court agreed with the Government that the judiciary "should defer to the political branches on matters of policy."[103] However, the District Court said that the "constitution limits the government to those powers specifically granted or those that are necessary and proper to carry out the specifically granted ones."[104] Since incorporation is a firmly established state power,[105] Congress' foreign affairs powers do not extend to regulating "creatures of state law."[106] Citing *Bond v. United States*, the District Court drew parallels to the CTA, showing that courts "have generally declined to read federal law as intruding on" responsibilities of the states "unless Congress has clearly indicated that the law should have such reach."[107] Moreover, the District Court explained that the CTA "cannot be justified as necessary and proper to carry out Congress' foreign affairs powers" because the Government merely alleged that regulating internal affairs of incorporation may be necessary to carry out Congress' foreign affairs powers "if foreign actors (or enough foreign actors) participate in those internal affairs to illicit ends."[108] However, the Necessary and Proper Clause may only be invoked if it "involve[s] exercises of authority derivative of, and in service to, a granted power."[109] Given that the states enjoy exclusive authority over incorporation, the District Court found that the Government lacked support for showing that the CTA was sufficiently connected to an enumerated power such that the disclosures were "a necessary and proper exercise of Congress' foreign affairs powers."[110] Likewise, the Government argued that the CTA was necessary to comply with international anti-money laundering

102. *Nat'l Small Bus. United*, 721 F. Supp. 3d at 1272–73.
103. *Id.* at 1273.
104. *Id.* at 1274 (quoting Afroyim v. Rusk, 387 U.S. 253, 257 (1967)).
105. *See, e.g.*, CTS Corp. v. Dynamics Corp. of Am., 481 U.S. 69, 89 (1987) ("No principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations").
106. *Nat'l Small Bus. United*, 721 F. Supp. 3d at 1274 (quoting Cort v. Ash, 422 U.S. 66, 84 (1975)).
107. *Id.* at 1275 (quoting Bond v. United States, 572 U.S. 844, 848 (2014)).
108. *Id.*
109. Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 560 (2012).
110. *Nat'l Small Bus. United*, 721 F. Supp. 3d at 1276.

standards, but the District Court responded that "[c]ompliance with international standards may be good policy, but it is not enough to make the CTA 'necessary' or 'proper.'"[111] Therefore, the District Court concluded "the CTA is not authorized by Congress' foreign affairs powers" since the "powers do not extend to purely internal affairs" like state incorporation nor can international standards "extend those powers, no matter how praiseworthy the policy goal."[112]

Following the District Court's analysis of the CTA's incompatibility with Congress' foreign affairs powers, the District Court shifted to analyzing the CTA's fate under the Commerce Clause, first assessing channels and instrumentalities of commerce.[113] To the District Court's dismay, the Government argued that entities subject to the CTA disclosures utilize the channels of interstate commerce, thereby invoking Congress' power to regulate.[114] However, the plain language of the CTA applies to "'reporting companies'" that are "'created by the filing of a document with a secretary of state or a similar office under the law of a State.'"[115] Notably, neither commerce nor references to channels of commerce are in the text of the CTA.[116] Further, the District Court concluded that the Government misread prior cases in arguing that the Commerce Clause permits regulation of an entire class based on the economic activity of a few in that class.[117] Instead, Congress could have written the CTA to pass muster if it included a jurisdictional hook, meaning the statute linked the affected entities to their engagement in commerce, or prohibited their use of interstate commerce for a given purpose, like laundering money in the CTA's case.[118] Including such a jurisdictional hook is typically "standard operating procedure for Commerce Clause legislation for good reason—it 'precludes any serious challenge to the constitutionality of [a] statute as beyond the Commerce

111. *Id.*
112. *Id.*
113. *Id.* at 1277.
114. *Id.*
115. *Id.* at 1278 (quoting 31 U.S.C. §5336(a)(11)).
116. *Id.*
117. *See id.* at 1280 ("The shared principle between *Shultz* and *American Power & Light Co.* is that Congress may 'regulate the channels and instrumentalities of commerce . . . to prohibit their use for harmful purposes, even if the targeted harm itself occurs outside the flow of commerce and is purely local in nature.'" (quoting United States v. Ballinger, 395 F.3d 1218, 1226 (11th. Cir. 2005))).
118. *See id.* ("Because the CTA doesn't regulate the channels and instrumentalities of commerce or prevent their use for a specific purpose, it cannot be justified as a valid regulation of those channels and instrumentalities.").

power, because it guarantees'" a satisfactory connection with interstate commerce.[119] While the Government argued that Congress meant to include a jurisdictional hook, it is the duty of the courts to interpret the law, not amend it.[120] Since the CTA lacks this nexus, it thereby failed under the channels and instrumentalities prongs of the Commerce Clause.[121]

Next, the District Court evaluated whether the CTA's beneficial ownership disclosures substantially affect interstate commerce in the aggregate such that the statute passes constitutional muster.[122] The District Court concluded they do not.[123] First, it explained that regulating possible future conduct is not in the purview of Commerce Clause powers.[124] Likewise, the District Court dismissed the possibility that merely creating the entity itself under state law is commercial activity that substantially affects interstate commerce; thus, the Government argued that the fact that many of the entities subject to the CTA do engage in interstate commercial activity is sufficient for Congress' regulation.[125] In other words, the District Court analyzed whether the Commerce Clause extends to permit congressional regulation of "non-commercial, intrastate activity" where certain entities, who are organized under state law, use the channels of commerce and their operations affect interstate commerce.[126] The District Court said it does not.[127] The Government argued that by regulating activities like using shell companies to commit tax evasion, hiding wealth, and money laundering, the CTA was a valid exercise of Congress' commerce power because these activities are "quintessentially

119. *Id.* at 1286 (quoting United States v. Goodwin, 141 F.3d 394, 400 (2d Cir. 1997)).

120. *See id.* at 1287 ("[T]he Court cannot amend the CTA to include a jurisdictional hook. Only Congress can do that." (citation omitted)).

121. *Id.*

122. *Id.* at 1280.

123. *Id.* at 1281 ("Yet even under this expansive doctrine, the Commerce Clause does not extend far enough to sanction the CTA.").

124. *See id.* at 1281 ("Even a near certainty of future conduct is insufficient–'[t]he Commerce Clause is not a general license to regulate an individual from cradle to grave, simply because he will predictably engage in particular transactions.'" (quoting Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 557 (2012))); *see also id.* (stating that "[t]he Supreme Court's commerce-clause jurisprudence has always 'involved preexisting economic activity'" not anticipated activity) (quoting Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 549 (2012)).

125. *Id.*

126. *Id.*

127. *Id.* ("The Supreme Court's Commerce Clause decisions all point to the same conclusion: No.").

economic."[128] The District Court agreed that if the language of the CTA regulated these activities or "require[d] entities to engage in those activities to be regulated," then the CTA would pass constitutional muster.[129] However, the plain language of the CTA does not, and the mere act of incorporation under state law is not sufficient to invoke the Commerce Clause.[130] Thus, since "the CTA does not regulate commerce on its face" or "contain a jurisdictional hook" that Congress knows how to include, "it falls outside Congress' power to regulate non-commercial, intrastate activity."[131]

Finally, the District Court determined the CTA's constitutionality under the Taxing Clause, concluding that while the required disclosures may be necessary, they are not proper, thereby falling outside congressional authority.[132] Using the functional approach under *National Federation of Independent Business*, the Court said that the CTA's civil penalties are not a tax since they "are not paid into the Treasury and have no income thresholds; the penalty amounts are fixed rather than variable; the penalties are not 'found in the Internal Revenue Code and enforced by the IRS'; and the penalties are imposed only on those who 'knowingly' or 'willingly' violate the law."[133] Nonetheless, the Government argued that the CTA disclosures allow the Treasury to obtain beneficial ownership information for "tax administration purposes," arguing that thus the CTA's requirements are "sufficiently 'incidental' to the taxing power."[134] However, merely giving tax enforcement officials access to information does not uphold the CTA's constitutionality under the Necessary and Proper and Taxing Clauses.[135]

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128. *See* Gonzales v. Raich, 545 U.S. 1, 25–26 (2005) (concluding that the Controlled Substances Act was a valid exercise of Commerce Clause power because growing any amount of marijuana was "quintessentially economic" activity thereby constitutional under the Commerce Clause).

129. *Nat'l Small Bus. United*, 721 F. Supp. 3d at 1283.

130. *Id.* ("[I]ncorporation is 'in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce.'" (quoting United States v. Lopez, 514 U.S. 549, 567 (1995))).

131. *Id.* at 1287.

132. *Id.* at 1287–88.

133. *Id.* at 1288 (quoting Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 564–66 (2012)).

134. *Id.* (quoting McCulloch v. Maryland, 17 U.S. 316, 418 (1819)).

135. *Id.* at 1289 ("It would be a 'substantial expansion of federal authority' to permit Congress to bring its taxing power to bear just by collecting 'useful' data and allowing tax-enforcement officials access to the data."); *see also id.* (stating that while the CTA's provisions may be "'necessary,' 'such an expansion of federal power is not a 'proper' means for making those [policy goals] effective'") (quoting Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 560 (2012)).

B. Why the District Court was Right on Law and Policy

On appeal, the Eleventh Circuit should have affirmed the judgment of the District Court to preserve federalism, uphold the separation of powers, and constrain congressional powers to those constitutionally permitted.

First, the District Court correctly displayed judicial restraint through limiting congressional power via the foreign affairs power, Commerce Clause, Taxing Clause, and Necessary and Proper Clause. Corporations are inherently creatures of state law, and any federal legislation encroaching on internal state affairs is subject to particular scrutiny.[136] While the Framers debated whether the power of incorporation should be granted to the federal government, they refrained since they feared "concentrations of economic power" within the federal government, thereby determining incorporation was best left to the states.[137] In light of the undeniable state authority over incorporation, the mandatory disclosures of the CTA cannot be upheld as necessary and proper since they are not "derivative of, and in service to" Congress' foreign affairs power.[138] While the CTA does not directly regulate incorporation, it does impose disclosures on entities that choose to incorporate, which invokes broad federal power over state internal affairs. This power should be limited, as it was not granted to Congress, and arguing that Congress' foreign affairs power can extend to purely local, internal affairs, violates the core principle of federalism.[139] Likewise, judges should not permit an extension of constitutional foreign affairs authority to comply with international standards.[140]

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136. *See* CTS Corp. v. Dynamics Corp. of Am., 481 U.S. 69, 89 (1987) (stating that there is "[n]o principle of corporation law and practice [that] is more firmly established than a State's authority to regulate domestic corporations"); *see also* U.S. CONST. amend. X.

137. Allen D. Boyer, *Federalism and Corporation Law: Drawing the Line in State Takeover Regulation,* 47 OHIO ST. L.J. 1037, 1041 (1986).

138. Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 560 (2012).

139. *See* Ernest Young, *Federalism as a Constitutional Principle,* 83 U. CIN. L. REV. 1057, 1064 (2015) ("Article I, Section 8 lists explicitly confers certain powers on Congress; the Tenth Amendment then makes clear that the enumerated powers are *it*; whatever powers the Constitution doesn't confer remain with the States.").

140. *See* Whittington v. Polk, 1 H. & J. 236, 244 (Md. Gen. 1802).

> To do right and justice according to the law, the judge must determine what the law is, which necessarily involves in it the right of examining the constitution, (which is the supreme or paramount law, and under which the legislatures derive the only authority they are invested with, of making laws,) and considering whether the act passed is made pursuant to the constitution, ...

Further, the District Court, in evaluating the CTA's fate under the Commerce Clause, properly concluded that the CTA's plain language applies merely to reporting companies, not commerce nor channels or instrumentalities of commerce since Congress failed to mention commerce or include a jurisdictional hook to connect the required disclosures to commerce. Thus, where Congress was silent in regulating the reporting entities under the Commerce Clause, the District Court properly assumed this was intentional, and the District Court correctly refrained from filling in the gaps of the statute.[141] Finally, the District Court was correct in determining the CTA's required disclosures could not be upheld as a taxing power since merely giving the information provided by the disclosures to tax enforcement officials would lead to a significant expansion of congressional power, an expansion that the Framers did not intend nor desire.[142]

Additionally, the District Court's decision upholds the principles of federalism and prevents unauthorized federal encroachment on state entities. Since corporate regulation is emphatically the role of state governments, "[b]y mandating federal oversight of corporate ownership, the CTA disrupts the balance of power foundational to the U.S. federalist system."[143] Furthermore, the District Court properly reinforced separation of powers in its unwillingness to read into the CTA a jurisdictional hook that would pass constitutional muster. It is beyond the scope of the courts "to rescue Congress from its drafting errors, and to provide for what [the courts] might think is the preferred result."[144] In our balanced system of separated powers, it is the role of the judiciary to interpret the law, not revise

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Id.

141. *See* Russello v. United States, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another . . . it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (quoting United States v. Wong Kim Bo, 472 F.2d 720, 722 (5th Cir. 1972))).

142. *See* Randy E. Barnett, *The Original Meaning of the Necessary and Proper Clause,* 6 U. PA. J. CONST. L. 183, 186 (2003) (concluding that the Founders did not intend for the Necessary and Proper Clause to permit extension of power beyond those specifically delegated).

143. Matthew Erskine, *Court Blocks Corporate Transparency Act: A Win For Federalism Or A Setback For Financial Oversight?*, FIN. ADVISOR MAG. (Dec. 5, 2024), https://www.fa-mag.com/news/court-blocks-corporate-transparency-act--a-win-for-federalism-or-a-setback-for-financial-oversight-80579.html [https://perma.cc/2S3D-P8AS].

144. Lamie v. United States Tr., 540 U.S. 526, 542 (2004) (quoting United States v. Granderson, 511 U.S. 39, 68 (1994)).

it.[145] The District Court understood this key premise and the Eleventh Circuit should have affirmed the District Court's decision to preserve the sanctity of our system's separation of powers.

Moreover, the Eleventh Circuit should have affirmed to protect Isaac Winkles and the other 65,000 small business owners belonging to the NSBA. While the District Court's judgment only applied to these parties, its decision sends a strong message that small businesses deserve to be protected from federal overreach, an argument that contributed to the Trump administration's decision to eventually exempt domestic entities from the CTA's enforcement measures.[146] Due to the CTA's twenty-three exemptions for businesses—such as accounting firms, banks, and charitable organizations, as well as its large operating company exception, which exempts corporations who employ more than twenty employees, have a physical office in the United States, and have more than $5,000,000 in gross receipts—the burden of compliance falls largely on small businesses.[147] With 99.9% of American businesses being small businesses, the compliance costs of the CTA are significant.[148] The CTA has "a greater negative impact on small business owners than larger corporations because they often lack the resources to navigate the intricacies of the requirements" of the CTA.[149] Further, with the civil and criminal penalties, a "[f]ailure to follow the rules, even by an honest mistake, can have dire financial consequences" on small business owners.[150]

Lastly, in its disclosure and compliance requirements, the CTA distracts small businesses from their core operational activities and instead places on them compliance costs, administrative burdens, and regulatory risk. First, in undergoing compliance costs, small businesses may have to hire attorneys or accountants to understand the CTA's complexities and obligations,

145. *See* Marbury v. Madison, 5 U.S. 137, 177 (1803).

146. *See* U.S. TREAS. DEPT., TREASURY DEPARTMENT ANNOUNCES SUSPENSION OF ENFORCEMENT OF CORPORATE TRANSPARENCY ACT AGAINST U.S. CITIZENS AND DOMESTIC REPORTING COMPANIES (2025), https://home.treasury.gov/news/press-releases/sb0038 [https://perma.cc/6PCX-UR5N].

147. 31 U.S.C. § 5336(a)(11)(B).

148. *Frequently Asked Questions About Small Business*, U.S. SMALL BUS. ADMIN. OFFICE OF ADVOC. (Mar. 7, 2023), https://advocacy.sba.gov/2023/03/07/frequently-asked-questions-about-small-business-2023/ [https://perma.cc/4E5G-4Y82].

149. Adrian Ochoa, *The Corporate Transparency Act & Its Impact on Small Businesses*, AZ CPA May/June 2024, https://www.bcattorneys.com/uploaded_files/ASCPA-MayJun2024_CTA.pdf [https://perma.cc/X5M7-766T].

150. *Id.*

posing administrative burdens and increased costs. Compliance includes conducting due diligence to identify beneficial ownership, continuing to monitor and update beneficial ownership and changes in ownership control, and reporting this information to FinCEN.[151] However, "Limited financial resources and personnel make it challenging for small businesses to allocate adequate resources to comply with" the CTA's requirements, and "[i]nvesting in compliance measures may strain operational budgets and limit funds available for" core operational activities.[152] Further, the time, energy, and resources needed to gather, update, monitor, and disclose the required information detracts from business operations and inhibits strategic growth.[153] Additionally, small business owners must grapple with the privacy concerns related to disclosing highly sensitive and personal information via the CTA's required disclosures.[154] In taking these policy justifications into account, the Eleventh Circuit should have affirmed the decision of the District Court to safeguard small businesses from harmful regulation that imposes detrimental compliance, regulatory, and legal risks.

CONCLUSION

Both constitutional and policy arguments support the District Court's judgment that the CTA, as originally applied to Isaac Winkles and the NSBA, is an unconstitutional usurpation of federal power. Inherent federalist principles enshrine the power of incorporation as the province of the states, not the federal government. Since the act of incorporation is purely an internal state affair and is not a responsibility nor a power granted to the federal government, Congress may not invoke its foreign affairs powers to regulate creatures of state law. Further, the plain language of the CTA applies to reporting companies, as defined, with exceptions, as those entities "created by the filing of a document with a secretary of state,"[155] importantly omitting any reference to commerce or its channels and

151. *See How the Corporate Transparency Act Affects Small Businesses: Compliance Challenges and Implications*, LAWFLEX (June 24, 2024), https://lawflex.com/how-the-corporate-transparency-act-affects-small-businesses-compliance-challenges-and-implications/#:~:text=Compliance%20Costs%20and%20Administrative%20Burdens,burdens%20and%20increase%20operating%20costs [https://perma.cc/8KER-F9QC].

152. *Id.*

153. *See id.*

154. *See id.*

155. 31 U.S.C. § 5336(a)(11).

instrumentalities. Without such jurisdictional hook to connect reporting companies to participating in interstate commerce, the judiciary should be inclined to determine that its absence was intentional, thereby concluding that Congress did not intend to use its commerce powers to regulate reporting companies. Likewise, the judiciary may not save legislation that regulates purely intrastate, non-economic activity, on the sole premise that many of the entities subject to the CTA do affect interstate commerce. On the face of these arguments, the District Court correctly ruled the CTA unconstitutional on grounds of Congress' foreign affairs power, Commerce Clause, Taxing Clause, and Necessary and Proper Clause powers. The Eleventh Circuit erred and should have affirmed the District Court's judgment for these reasons, as well as public policy and federalism implications to protect small businesses and curtail the federal overreach displayed in the CTA.

While the CTA has noble purposes in combating fraud, money laundering, and tax evasion, it has never been the role of the judiciary to contravene constitutional limitations in favor of Congress' policy desires, no matter how formidable. In fact, the role of the courts is to ensure that "the constitution, and not such ordinary act" governs since it "is emphatically the province and duty of the judicial department to say what the law is."[156] In applying this foundational judicial principle, the District Court properly ruled the CTA, as originally enacted, to constitute an unconstitutional usurpation of federal power, and the Eleventh Circuit should have affirmed to uphold its duty to say what the law is.

156. Marbury v. Madison, 5 U.S. 137, 177–78 (1803).