

No. 25-1201

IN THE
Supreme Court of the United States

NATIONAL SMALL BUSINESS UNITED, DBA
NATIONAL SMALL BUSINESS ASSOCIATION, *et al.*,

Petitioners,

v.

SCOTT BESSENT, SECRETARY
OF THE TREASURY, *et al.*,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

**MOTION FOR LEAVE TO FILE AND AMICUS
BRIEF OF COMMUNITY ASSOCIATIONS
INSTITUTE IN SUPPORT OF PETITIONERS**

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MOTION FOR LEAVE TO FILE AMICUS BRIEF

Pursuant to Supreme Court Rule 37.2(b), Amici Community Associations Institute (“CAI”) moves this Court for leave to file the attached Brief Amici Curiae in support of Petitioners. Notice of intent to file this brief was not provided to the parties pursuant to Supreme Court Rule 37.2(a), and accordingly leave of Court is required. Notwithstanding the failure to provide advance notice, leave should be granted because CAI’s brief presents a unique and important perspective on the practical impact of the Corporate Transparency Act (“CTA”) on community association that is not adequately addressed by the parties, and acceptance of the brief will assist the Court in fully understanding the consequences of its decision. In further support of this Motion, CAI states as follows:

1. Community Associations Institute is an international organization dedicated to providing information, education, resources, and advocacy for community association leaders, members, and professionals with the intent of promoting successful communities through effective, responsible governance and management. CAI’s more than 51,000 members include homeowners, board members, association managers, community management firms, and other professionals who provide services to community associations. CAI is the largest organization of its kind, serving more than 78 million homeowners who live in more than 373,000 community associations in the United States.

2. CAI and its members recognize that the sustained health of the community association form of ownership in the United States depends in large part upon the willingness of owners to continue to serve on volunteer boards to make their homes and communities better places to live. Community Associations were not given one of the twenty-three (23) exemptions under the Corporate Transparency Act.¹ CAI believes that this was an oversight. CAI respectfully submits that homeowner associations are not “hotbeds” of financial crimes or terrorist activity by anonymous players using shell corporations to disguise their activities, which is the stated purpose of the Corporate Transparency Act (“CTA”).

3. Leave to file a brief as amici curiae should be granted when “the amici have an ‘interest in the case,’ and it appears that their brief is ‘relevant’ and ‘desirable,’” such as when “it alerts the merits panel to possible implications of appeal.” *Neonatology Assocs., P.A. v. C.I.R.*, 293 F.3d 128, 133 (3rd Cir. 2002) (Alito J.) (quoting Fed. R. App. P. 29(a)(3)); *see also id.* at 132 (“The criterion of desirability set out in Rule 29(b)(2) is open-ended, but a broad reading is prudent.”).

4. CAI submits that their experience in representing and supporting community associations both in the United States and internationally and understanding the make and needs of the various community associations in the United States. CAI states that it can provide an important perspective concerning how the CTA will adversely impact

1. A small number may be exempt as 501(c)(4) organizations, however, that is the exception to the norm.

community associations without furthering the stated purpose of the CTA.

5. Pursuant to Supreme Court Rule 37.2 an amicus curiae brief filed before the Court's consideration of a petition for a writ of certiorari must be filed within 30 days after the case is placed on the docket. The Petition for a writ of certiorari was filed on April 15, 2026, and CAI's submission of this Motion and Brief on May 18, 2026, is timely.

6. As required by the Supreme Court Rule 37.2(b), CAI states that it did not provide timely notice of its intent to file at least ten days before the filing deadline. CAI did not provide such notice. This Court should nonetheless accept this brief for the following reasons: (a) both Petitioners and Respondents will have a full opportunity to respond to the arguments presented herein in their respective merits briefs and reply briefs; (b) no party will be prejudiced by acceptance of this brief, as the brief raises issues of broad public importance that the Court will need to consider regardless; and (c) CAI's perspective as the largest community association organization in the United States is uniquely relevant to assessing the CTA's impact on the millions of homeowners in community associations, a perspective that the parties themselves are not positioned to provide.

For these reasons, Amici respectfully request that the Court grant this Motion for Leave to File a Brief Amici Curiae and accept the attached brief for filing.

Respectfully submitted,

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QUESTIONS PRESENTED

1. Whether Congress exceeded its authority under the Commerce Clause by enacting the Corporate Transparency Act's beneficial ownership reporting requirements for entities created solely under state law, including nonprofit community associations whose activities are predominantly intrastate and non-commercial.

2. Whether the Corporate Transparency Act may constitutionally impose federal reporting obligations and criminal penalties on volunteer-run community associations that neither substantially affect interstate commerce nor operate as instrumentalities or channels of interstate commerce.

3. Whether the decision below improperly expands Congress's Commerce Clause authority by permitting federal regulation of entities based solely upon their creation through filings made under state law, without regard to whether the entities engage in interstate commerce.

TABLE OF CONTENTS

	<i>Page</i>
QUESTIONS PRESENTED	i
TABLE OF CONTENTS.....	ii
TABLE OF CITED AUTHORITIES	iv
IDENTITY AND INTEREST OF AMICUS CURIAE	1
SUMMARY OF ARGUMENT.....	6
ARGUMENT	7
I. COMMUNITY ASSOCIATIONS, CREATED THROUGH WHOLLY INTRASTATE ACTION, CONDUCT PRIMARILY INTRASTATE COMMERCE AND ARE THEREFORE BEYOND THE REACH OF THE COMMERCE CLAUSE AS IMPELMENTED THROUGH THE CTA.....	7
II. MANY CORE FUNCTIONS OF COMMUNITY ASSOCIATIONS ARE ENTIRELY NON-COMMERCIAL, THUS PLACING ACTIVITIES BEYOND THE REACH OF THE COMMERCE CLAUSE AND THE CTA	10

Table of Contents

	<i>Page</i>
III. THE DISTINCTION BETWEEN COMMUNITY ASSOCIATIONS AND SMALL BUSINESSES DEMON- STRATES WHY THIS COURT SHOULD GRANT NSBU'S PETITION FOR CERTIORARI.....	11
CONCLUSION	13

TABLE OF CITED AUTHORITIES

	<i>Page</i>
CASES	
<i>California Bankers Ass’n v. Shultz</i> , 416 U.S. 21 (1974)	9
<i>Gonzalez v. Raich</i> , 545 U.S. 1 (2005)	9, 11
<i>Maryland v. Wirtz</i> , 392 U.S. 183 (1968).....	11
<i>NFIB v. Sebelius</i> , 567 U.S. 519 (2012).....	7, 12
<i>United States v. Lopez</i> , 514 U.S. 549 (1995).....	7, 11
<i>United States v. Orito</i> , 413 U.S. 139 (1973).....	8
STATUTES & OTHER AUTHORITIES	
31 U.S.C. § 5336(a)(II)(A)(i)	12
Supreme Court Rule 37.6	1
The Federal Volunter Immunity Act of 1997, 42 U.S.C. § 139 (1997)	4

**IDENTITY AND INTEREST
OF AMICUS CURIAE¹**

The Community Associations Institute (“CAI”) is an international nonprofit research and education organization formed in 1973 by the Urban Land Institute, the National Association of Home Builders, and the United States Council of Mayors to provide the most effective guidance for the creation and operation of condominiums, cooperatives, and homeowner associations. CAI is dedicated to providing information, education, resources, and advocacy for community association leaders, members, and professionals with the intent of promoting successful communities through effective, responsible governance and management. CAI’s more than 51,000 members include homeowners, board members, association managers, community management firms, and other professionals who provide services to community associations. CAI is the largest organization of its kind, serving more than 78 million homeowners who live in more than 373,000 community associations in the United States. These residents constitute roughly 35.2% of the population of the United States.

Community associations are property developments in which a developer, or declarant, has willingly submitted an interest in real property to some form of community association regime. The regimes include, among others, condominiums, homeowner associations, and cooperatives.

1. In accordance with Supreme Court Rule 37.6 no party to this case authored or assisted in any way with the preparation of this brief. Similarly, no party to this case funded or made any monetary contribution intended to fund the preparation or submission of this brief.

The community association presents a unique form of ownership where responsibility for the submitted property is shared between the individual owner or member, on the one hand, and an association, trust, or corporation, on the other. To that end, many commentators have suggested that community associations make up and comprise the last bastion of affordable housing in the United States.

All community associations are governed by nonprofit organizations led initially by the developer or declarant and eventually by a group of volunteer homeowners elected by their fellow homeowners. Depending on the locality, community associations are formed as a nonprofit corporation, trust, or, less frequently, unincorporated associations. The primary role of community associations is to manage the common areas of the community, i.e. fix the roofs, maintain the lawns, shovel the snow, insure the buildings, etc. The elected board of volunteer homeowners take on or oversee these tasks free of charge. Volunteer board members of community associations cycle on and off their boards frequently, at least annually through the election process, and sometimes more frequently because of relocation, resignation, death and/or removal.

CAI submits this amicus brief on behalf of its members who recognize that the sustained health of the community association form of ownership in the United States depends in large part upon the willingness of owners to continue to serve on their associations' volunteer boards to make their homes and communities better places to live.²

2. CAI has also filed an amicus brief regarding the Corporate Transparency Act in *National Small Business United, et al. v. U.S. Department of the Treasury, et al.*, No. 24-10736, 11th Cir., as well as been party to an action in *Community Associations Institute, et al. v U.S. Department of the Treasury, et al.*, Case

Community associations were not given one of the twenty-three (23) exemptions under the Corporate Transparency Act (“CTA”).³ CAI believes that this was an oversight. CAI respectfully submits that community associations are not “hotbeds” of financial crimes or terrorist activity by anonymous players using shell corporations to disguise their activities, which is the stated purpose of the CTA. First, community associations are anything but anonymous. Their owners are on public record with local registries of deeds when they buy property in a community. Community associations also record the identities of their volunteer board members with the local registry or secretary of state’s office annually. Second, given that community association boards are made up of volunteer homeowners who ensure the lawns are cut, roofs are repaired, and the swimming pools are maintained in affordable housing across America, they are as far from a terrorist or financial threat as could be. They are the backbone of America, homeowners living in and volunteering to make their communities better.

Notwithstanding this, the Financial Crimes Enforcement Network (“FinCEN”) and the Department of the Treasury (collectively the “Government”) have specifically refused to grant community associations an exemption from reporting under the CTA. This could be because they recognize that residents in community associations make up 35.2% of the United States population and because an underlying goal of the Government may

No. 1:24-cv-1597, E.D. Va., as well as in the 5th Circuit Court of Appeals in this case.

3. A small number may be exempt as 501(c)(4) organizations, however, that is the exception to the norm.

well be to create as large of a facial recognition database as possible. However, CAI respectfully submits that requiring community associations and their volunteer homeowner leaders to comply with the beneficial ownership reporting requirements will effectively chill volunteer participation going forward and is contrary to other expressly stated legislative intents to promote volunteerism in nonprofit organizations.

The CTA contradicts Congress's prior express intent in encouraging and providing immunity for volunteers of nonprofit entities. The Federal Volunteer Immunity Act of 1997, 42 U.S.C. § 139 (1997), expressly provides immunity for negligent acts of volunteers within nonprofit entities. In enacting this legislation, Congress specifically found that "the willingness of volunteers to offer their services is deterred by the potential for individual liability... and the withdrawal of volunteers has had an adverse effect on organizations." Yet the CTA subjects volunteer homeowners to imprisonment and civil fines if they don't upload their driver's license to a government website the moment they begin their service, undermining prior legislation and prior stated legislative intent.

Volunteerism is the backbone of every community association. Board members are not paid for their service. CAI respectfully submits that volunteer homeowners will be less likely to serve in that capacity if they are required to file a beneficial ownership report with the Government, providing their sensitive personal information including their driver's license and photo identification and then to amend their filings each time their board brings on new board members or obtain new state issued driver's licenses. CAI further contends that existing volunteers

will resign their positions. This is especially true where failure to comply brings with it \$500.00 per day fines and the possibility of imprisonment.

The complexities of CTA could be especially punitive to community associations. Condominium and HOA boards typically range from five (5) to seven (7) individuals in number. Many of them are older in age and do not have access to technology. If a single board member out of five (5) or seven (7) fails to timely upload their driver's license to a government website, it subjects the remainder of the board members to imprisonment and fines.

It's horrifying to imagine that a homeowner could be subject to imprisonment in the United States of America because they purchased a home and volunteered to serve on the board of directors for their community association but failed to upload a photograph of their state issued driver's license to a federal database. Homeowners not only would be reluctant to volunteer in light of the potential Orwellian consequences imposed by the CTA, they will resign in droves.

CAI submits that the CTA will have a devastating and unintended consequence on community associations and their operations throughout the United States. CAI respectfully submits that the CTA exceeds the power of Congress to regulate activity that is governed entirely by the states in which the community associations are located. The CTA's application to community associations and their volunteer homeowners but not to business corporations that have more than \$5,000,000.00 in profits per year demonstrates the absurdity of its reach and the reality that it is not in furtherance of its stated purpose.

Moreover, as detailed herein, the CTA is constitutionally vague and its application to community associations is like attempting to fit a square peg into a round hole.

In keeping with CAI's long-standing interest in promoting understanding regarding the operation and governance of community associations, CAI urges this Court to grant the petition for certiorari filed by the National Small Business United, et al.

SUMMARY OF ARGUMENT

The CTA is an unprecedented expansion of federal authority into areas of state law. The CTA is reaching entities whose existence, governance and activities are local and non-commercial in nature by imposing federal reporting obligations and penalties upon them.

Condominium associations and homeowners associations are creatures of state law formed to manage local residential properties. The activities managed are residential and communal in nature. Unlike traditional commercial enterprises, community associations are not created to generate profits, participate in national markets, or engage in interstate commerce. Many of these entities are volunteer-run, and the CTA is now subjecting them to the same reporting regime and penalties as are imposed upon international businesses capable of money laundering, tax evasion, and other crimes.

The decision of the Court of Appeals of the Eleventh Circuit dramatically expands Congress's Commerce Clause authority by effectively eliminating the distinction between federal and state activity. While the court cites

that Congress may regulate virtually any entity created pursuant to state law which may engage in activities which affect interstate commerce, that reasoning is not aligned with *United States v. Lopez* and *NFIB v. Sebelius*, both of which reaffirm limits on Congress's commerce power.

This case presents important constitutional questions concerning the limits of Congress's Commerce Clause authority and the distinction between federal and local activity. Condominium associations and homeowners associations are community associations created under state law with the purpose of operating locally without any intent to engage in intrastate or commercial activity. Yet, CTA is subjecting them to federal reporting requirements and penalties because they have filed organizational documents under state law. CAI respectfully submits that the inclusion of nonprofit condominium associations and homeowners associations demonstrates the overreaching scope of the CTA, and thus this court should grant NSBU's Petition for Certiorari.

ARGUMENT

I. COMMUNITY ASSOCIATIONS, CREATED THROUGH WHOLLY INTRASTATE ACTION, CONDUCT PRIMARILY INTRASTATE COMMERCE AND ARE THEREFORE BEYOND THE REACH OF THE COMMERCE CLAUSE AS IMPLEMENTED THROUGH THE CTA.

Community associations are created in accordance with the laws of the states where they are located. These entities – whether homeowners' associations, condominiums or housing cooperatives – are formed by

myriad means, from filing charters with state agencies to recording founding documents in the land records division of local courts or even by creating private trusts or LLCs. But in each and every case, the creation of a community association is a wholly in-state function dictated entirely by state law.

In addition to their creation being local, community associations are formed with the core purpose of managing and maintaining land and facilities shared by the community's homeowners. This typically means hiring local landscape companies, maintenance workers or trash collectors. As such, the essence of a community association's activity is necessarily intrastate, with associations being but an occasional *de minimis* participant in any kind of interstate commerce.

The Government argues that the CTA validly regulates the channels and instrumentalities of commerce, broadly arguing that "common sense" indicates that "entities constituting CTA reporting companies frequently utilize the channels of interstate commerce." Indeed, it is well-settled that Congress has the power to regulate those who use the channels of interstate commerce "in order that those channels will not become the means of promoting or spreading evil, whether of a physical, moral or economic nature." *United States v. Orito*, 413 U.S. 139, 144 (1973). However, this argument could not be less applicable to community associations. Homeowners' associations and condominiums are necessarily local entities, with homes within any community located entirely within one state and one locality.

The CTA's reporting requirements are aimed at organizations created by the filing of documents with certain state offices, but with an underlying assumption that such entities must engage in interstate commerce. While this might be true of a chartered corporation selling products or services on a nationwide or regional level, it is decidedly untrue as to community associations. Not only are community associations created at an entirely in-state level, their core mandate of maintaining their property drives them to primarily intrastate commercial activity.⁴

In sum, to suggest that a homeowners association comprised of 25 homes in a local county – which is not uncommon – frequently “uses the channels of commerce [so that] Congress can impose conditions on that use” (as argued by the Government, citing *California Bankers Ass'n v. Shultz*, 416 U.S. 21 [1974])) belies the necessarily local and intrastate nature of community associations, both as to their formation and actual operation. As such, the CTA is unconstitutional in its application to such entities.

4. The Supreme Court has held that Congress, in regulating activities that substantially affect in-state commerce, can regulate non-economic, non-commercial or *de minimis* intrastate activity only if doing so is necessary to avoid undermining a comprehensive regulatory scheme that directly regulates interstate commerce. *Gonzalez v. Raich*, 545 U.S. 1, 171-9 (2005). The question here is whether the CTA's regulation of intrastate or non-commercial activities that affect interstate commerce is a necessary and proper means of doing so – and that answer is no with respect to community associations.

II. MANY CORE FUNCTIONS OF COMMUNITY ASSOCIATIONS ARE ENTIRELY NON-COMMERCIAL, THUS PLACING ACTIVITIES BEYOND THE REACH OF THE COMMERCE CLAUSE AND THE CTA.

Another core purpose of a community association is to promote a sense of “community” among the homeowners who live there, with governance carried out by member volunteers serving on committees to organize events ranging from “clean up the community” day to picnics or movie nights on the common area. In most community associations, these volunteers meet in the evenings -- after returning home from work -- to plan such events, usually in community clubhouses, under gazebos or even at local schools or people’s homes.

While some associations engage in local commerce to maintain their land, these other community-promoting activities are decidedly non-commercial, arguably placing associations entirely beyond the reach of the Commerce Clause. The CTA, by its terms, would force an association to comply with the requirements of a “reporting company” solely because the entity was formed by filing a document with a state agency. The CTA – which does not even mention the term “commerce” – cannot be used to drag an entity run by volunteers with non-commercial purposes under a federal reporting law. In other words, the Commerce Clause cannot be used as a basis to regulate non-commercial activity.

The Supreme Court has held that Congress, in regulating activities that substantially affect in-state commerce, can regulate non-economic, non-commercial or

de minimis intrastate activity only if doing so is necessary to avoid undermining a comprehensive regulatory scheme that directly regulates interstate commerce. *Gonzalez v. Raich*, 545 U.S. 1, 171-9 (2005). The question here is whether the CTA’s regulation of intrastate or non-commercial activities that affect interstate commerce is a necessary and proper means of doing so – and that answer is no with respect to community associations. In sum, the intrastate nature of the origin and operation of community associations, along with their largely non-commercial activities, places them outside the reach of the Commerce Clause, at least as it is implemented by the purported purposes and terms of the CTA.

III. THE DISTINCTION BETWEEN COMMUNITY ASSOCIATIONS AND SMALL BUSINESSES DEMONSTRATES WHY THIS COURT SHOULD GRANT NSBU’S PETITION FOR CERTIORARI

As NSBU argues in its Petition, the Eleventh Circuit’s Decision has erased the distinction between what is “National” and what is “local” as it relates to the commerce clause. *See United States v. Lopez*, 514 U.S. 549, 557 (1995) and *Maryland v. Wirtz*, 392 U.S. 183, 196 (1968).

While NSBU’s constituents are more likely to engage in interstate commerce than condominiums and HOA’s, the fact that they **all** come under the reach of the CTA demonstrates CTA’s flaw. The CTA applies to these entities regardless of whether they (1) use channels of interstate commerce, (2) are an instrumentality of interstate commerce, and/or (3) engage in activities that affect interstate commerce. *See Lopez* at 558-559.

The CTA regulates the creation of legal entities under state law, by the filing of a document under state law, 31 U.S.C. § 5336 (a)(II)(A)(i). Clearly, many of NSBU's constituents are likely to engage in commerce, whereas local condominium associations and homeowner associates will **not**. Yet both types of entities are equally subject to the pains and penalties of the CTA, merely because they filed a document with the state, under state law. That distinction shows that the CTA, as written, is not properly based upon congressional commerce power.

CTA's application to condominium associations and HOA's actually undermines the decision of the Eleventh Circuit. In the Decision the Court states that CTA regulates economic activity, because "after they have incorporated" corporations "exist primarily to use resources and engage in activities to increase profits." Again, while that may be true of many of NSBU's constituents, it is **not** true for condominium associations and HOA's, which demonstrates that the supposed commerce power, rooted in creation of entities, as opposed to the impact on commerce, is unconstitutional. In any event, the concept that entities, whether small businesses, condominiums, or homeowners associations **may** engage in future interstate commerce, is insufficient to invoke congressional commerce power. *See NFIB v. Sebelius*, 567 U.S. 519 (2012).

CAI respectfully submits that the inclusion of non-profit condominium associations and homeowner associations volunteers within its reach demonstrates why this Court should grant NSBU's petition for certiorari.

CONCLUSION

For the reasons set forth above, respectfully submits that this court should grant the NSBU's Request for Certiorari.

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