

# Judge Preska dismisses all of NYAG's claims in RD Legal Funding

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Friday, September 14, 2018

On September 12, Judge Preska entered an [order](#) and [judgment](#) dismissing all of the New York Attorney General's federal and state law claims against RD Legal Funding. The NYAG had filed the case jointly with the CFPB and [in a June 21 ruling](#), Judge Preska held that the CFPB's single-director-removable-only-for-cause structure is unconstitutional, struck the CFPA (Title X of Dodd-Frank) in its entirety, dismissed the CFPB from the case, and allowed the NYAG to proceed with its CFPA and state law claims.

Judge Preska had initially rejected RD Legal's argument that her dismissal of the CFPB from the case and striking of Dodd-Frank Title X necessitated her dismissal of the NYAG's CFPA claims against RD Legal. In [an August 23 order](#), Judge Preska ruled that she would enter a Rule 54(b) judgment against the CFPB so it could immediately appeal her constitutionality ruling to the Second Circuit. She also denied RD Legal's request that she certify the remainder of her June 21 ruling for interlocutory appeal but granted RD Legal's request to stay the district court proceedings pending the outcome of the CFPB's appeal. [The NYAG thereafter sought clarification of the effect of her August 23 ruling](#) on its federal and state law claims and the [CFPB filed a proposed Rule 54\(b\) judgment](#).

In her September 12 order and judgment, Judge Preska "amends" her June 21 order to provide as follows with respect to the NYAG's claims:

- Having determined that invalidating Title X in its entirety is the proper remedy for the constitutional violation resulting from the CFPB's for-cause removal

provision, there is no longer a statutory basis for the NYAG to bring its CFPB claims and therefore such claims are dismissed without prejudice for lack of federal jurisdiction

- There was no substantial federal question embedded in the NYAG's state law claims that provided federal question jurisdiction over the state law claims. (The NYAG had argued that its state law claims raised issues involving the federal Anti-Assignment Act.)
- The court will decline to exercise supplemental jurisdiction over the state law claims.
- The NYAG's state law claims are dismissed without prejudice.

Judge Preska also closed the case in her September 12 order and judgment. Since Judge Preska has now dismissed the district court case in its entirety, a Rule 54(b) judgment is no longer necessary for the CFPB to appeal her constitutionality ruling to the Second Circuit and both the CFPB and NYAG can appeal as of right. Alternatively, the NYAG can refile its CFPB and state law claims in New York state court (although a state court might stay the case pending the outcome of an appeal by the CFPB of the constitutionality issue.)

Judge Preska states in her September 12 order that the conclusions of law in the order "supersede and replace any legal conclusions to the contrary in the June 11, 2018 order." In her June 11 order, Judge Preska also concluded that under New York law, the transactions at issue were disguised loans. [As discussed in a prior blog post](#), we believe the court's logic was erroneous on the loan recharacterization question. It would seem that Judge Preska's ruling that the court did not have jurisdiction to hear the NYAG's state law claims means that she could not properly rule on the merits of such claims and her recharacterization of the transactions as loans is effectively nullified.

RD Legal [has sent a letter to Judge Preska](#) "to clarify a potential clerical error" in her September 12 order. It notes that she dismissed both the NYAG's federal and state law claims "without prejudice." RD Legal suggests that the court intended to dismiss the NYAG's federal claims "with prejudice."

The CFPB's constitutionality is also at issue in two other pending cases. A [petition for certiorari](#) was filed in the U.S. Supreme Court late last week by State National Bank of Big Spring which, together with two D.C. area non-profit organizations that also joined in the petition, had brought one of the first lawsuits challenging the CFPB's constitutionality. In April 2018, the Fifth Circuit agreed to hear [All American Check Cashing's interlocutory appeal](#) from the district court's ruling upholding the CFPB's constitutionality.

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