

THE
NATIONAL LAW REVIEW

NY Attorney General Files Appeal With Second Circuit In RD Legal Funding Case

Monday, October 15, 2018

The New York Attorney General, on October 12, 2018, [filed a notice of an appeal](#) to the Second Circuit from Judge Preska's [dismissal on September 12, 2018 of all of the NYAG's federal and state law claims](#), and her subsequent September 18 order amending the September 12 order to provide that the NYAG's claims under Dodd-Frank Section 1042 [were dismissed "with prejudice."](#) (Section 1042 authorizes state attorneys general to initiate lawsuits based on UDAAP violations.)

On September 14, [the CFPB filed an appeal with the Second Circuit](#) from Judge Preska's June 21, 2018 decision, as amended by her September 12 order, in which she ruled that the CFPB's single-director-removable-only-for-cause structure is unconstitutional, struck the CFPA (Title X of Dodd-Frank) in its entirety, and dismissed the CFPB from the case. That was followed on September 25 by RD Legal Funding's [filing of a cross-appeal](#) with the Second Circuit from [Judge Preska's June 21 decision](#), as subsequently amended, in which Judge Preska had ruled that the NYAG had stated federal and state law claims against RD Legal Funding. (Although Judge Preska's various orders resulted in the dismissal of all of the CFPB's and NYAG's claims, RD Legal Funding may have filed the cross-appeal to preserve its ability to challenge Judge Preska's June 21 ruling that the NYAG had stated claims against RD Legal Funding should the Second Circuit conclude that the CFPB's structure is constitutional or that the structure is unconstitutional but that the proper remedy is to sever the Dodd-Frank for-cause removal provision rather than strike all of Title X.)

The Bureau's constitutionality is now before two circuits, the Second and Fifth Circuits. 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. Also, a [petition for certiorari](#) was recently filed in the U.S. Supreme Court 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.

Copyright © by Ballard Spahr LLP

Source URL: <https://www.natlawreview.com/article/ny-attorney-general-files-appeal-second-circuit-rd-legal-funding-case>

Ballard Spahr
LLP

Article By [Ballard Spahr LLP](#)
[Alan S. Kaplinsky](#)
[Consumer Finance Monitor](#)

[Corporate & Business Organizations](#)
[Financial Institutions & Banking](#)
[2nd Circuit \(incl. bankruptcy\)](#)
[All Federal](#)