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Federal Court Dismisses Second Lawsuit Challenging OCC Fintech Company Special Purpose National Bank Charter Proposal

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A D.C. federal district court [has dismissed the lawsuit](#) filed by the Conference of State Bank Supervisors (CSBS) in April 2017 challenging the OCC's authority to grant special purpose national bank (SPNB) charters to nondepository fintech companies.

The dismissal follows [the December 2017 dismissal](#) by a New York federal district court of a lawsuit filed by the New York Department of Financial Services (DFS) that also challenged the OCC's authority to grant SPNB charters. The D.C. court found that the CSBS had failed to establish any injury in fact necessary for Article III standing and that the case was not ripe for judicial review, which were the same grounds on which the New York court dismissed the DFS lawsuit.

In dismissing the CSBS lawsuit, the district court observed that all of the potential injuries identified by the CSBS in its complaint were contingent on whether the OCC charters a fintech company and that a chain of speculative events had to occur before a charter was issued, including the OCC's finalization of the procedures for applying for a SPNB charter and a decision by the OCC to grant a charter to a fintech company. As a result, the CSBS had failed to establish an injury in fact to a CSBS member under the test that a threatened injury was "certainly impending" or under the test that there was "substantial risk" that such injury would occur. (The court observed that "there was no doubt" if the OCC were to charter a fintech company, "then that national charter would preempt conflicting state laws" and would allow an impacted state to allege an injury in fact.")

With regard to ripeness, the court concluded that the CSBS's claims were neither constitutionally nor prudentially ripe. According to the court, the claims were not constitutionally ripe for the same reason that Article III standing was lacking—namely, the CSBS had not established an injury in fact.

The court also found that the claims were not prudentially ripe. In its view, because "the recent leadership changes at the OCC [make] it particularly speculative to guess whether the OCC will continue down paths considered by a previous Comptroller," the OCC's actions were not yet "sufficiently settled to be fit for review." The court further found that the legal issues presented by the dispute were unfit for review before the OCC had made a decision "to adopt and apply a regulatory scheme to a particular Fintech charter." According to the court, at that point "the agency action will become sufficiently settled and courts will have a more concrete setting to resolve the legal disputes."

Finally, the court found that the CSBS had failed to show that delay in obtaining a decision would cause it hardship, with the court observing that there would be "hardship to the OCC if each minor step towards a potential agency policy were litigated one-by-one as the policy becomes more settled."

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