

## [Banking and Finance Law Daily Wrap Up, TOP STORY—Attempts to intervene in suit affecting CFPB organization continue, \(Feb. 13, 2017\)](#)

Banking and Finance Law Daily Wrap Up

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By [Richard A. Roth, J.D.](#)

Two members of Congress, 17 attorneys general, and several consumer advocacy organizations are continuing their efforts to participate in a suit challenging the constitutionality of the Consumer Financial Protection Bureau's structure. Three separate motions have been filed asking the full U.S. Court of Appeals for the District of Columbia Circuit to decide whether the petitioners can intervene in *PHH Corp. v. CFPB*, in which the majority of a three-judge panel decided that separation of powers principles said the bureau could not exist as an independent agency with a single director who could be removed only for cause. The panel said the CFPB was to be treated as an executive agency whose director could be removed by the president at will (see [PHH Corp. v. CFPB, Banking and Finance Law Daily](#), Oct. 11, 2016).

Following the panel's adverse decision, the CFPB asked the full circuit to rehear the case. Three separate requests to intervene in the case on rehearing were filed—one by Sen. Sherrod Brown (D-Ohio) and Rep. Maxine Waters (D-Calif), one by the AGs of 16 states and the District of Columbia, and one by five advocacy groups plus Maeve Brown, chair of the bureau's Consumer Advisory Board. All three requests were denied without explanation by the three-judge panel that entered the original order (see [Banking and Finance Law Daily](#), Feb. 2, 2017).

**Arguments for intervention.** The two members of Congress base their [request to intervene](#) on the possibility that the Trump administration might fail adequately to present the arguments against the earlier ruling and in favor of the Dodd-Frank Act's provisions. According to the motion, PHH Corp. claims that only the U.S. Attorney General can file a petition for Supreme Court review. The result would allow the administration to insulate from effective review a decision that increases the administration's powers.

The AGs note in their [motion](#) that the Dodd-Frank Act gives them the authority to enforce provisions of the law, but only after consultation with the CFPB. The bureau also can intervene in any enforcement suit filed by a state. If the earlier decision stands, the CFPB's consultation and intervention will be influenced by the presidential administration that is in power, rather than being independent as the Dodd-Frank Act provided, and will infringe on the states' sovereign enforcement authority, the AGs argue.

They also repeat the concern that the Trump administration will not adequately support the Dodd-Frank Act and the bureau.

The [motion](#) of the advocacy organizations is based on the possibility that the administration might choose not to litigate what is described as "one of the most important separation-of-powers controversies in recent memory." The organizations express a concern that President Trump could, in reliance on the earlier decision, simply replace CFPB Director Richard Cordray with someone who would acquiesce in that decision. Intervention is needed to prevent this possibility, they argue. They also offer the possibility of holding the intervention motions in abeyance in case the government does fail to present the arguments against the decision adequately.

Companies: Americans for Financial Reform; Center for Responsible Lending; Leadership Conference on Civil and Human Rights; PHH Corporation; Self-Help Credit Union; United States Public Interest Research Group, Inc.

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