

[Banking and Finance Law Daily Wrap Up, SUPREME COURT DOCKET—Recent decisions, cases, and petitions pending High Court review, \(Oct. 22, 2019\)](#)

Banking and Finance Law Daily Wrap Up

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

This *Banking and Finance Law Daily* feature presents a chart highlighting the decisions, arguments, briefs, and petitions on banking and finance issues before the current term of the U.S. Supreme Court.

Currently there are six significant financial services-related appeals pending before the Supreme Court. In the most recent, [Robinson v. Dept. of Education](#) (No. 19-512), a consumer is seeking Court review of whether the Fair Credit Reporting Act waives the federal government's sovereign immunity against consumer suits.

The Court held oral arguments in [Rotkiske v. Klemm](#) (No. 18-328) on Oct. 16, 2019. The appeal asks whether the Fair Debt Collection Practices Act statute of limitations includes a discovery rule.

The Court also has granted certiorari in [Seila Law LLC v. CFPB](#) (No. 19-7), in which a law firm is challenging the constitutionality of the Consumer Financial Protections Bureau's single-director organization. Another petition—[All American Check Cashing, Inc. v. CFPB](#) (No. 19-432)—raises the same issue, while [Collins v. Mnuchin](#) (No. 19-422) raises a similar challenge against the organization of the Federal Housing Finance Agency.

The remaining appeal, [AER Advisors Inc. v. Fidelity Brokerage Services, LLC](#) (No. 19-347), asks the Court to decide the scope of the Bank Secrecy Act's safe harbor from liability for filing a Suspicious Activity Report.

Sovereign immunity. In [Robinson](#), a consumer is claiming that student loans were fraudulently taken out in his name through a program administered by the Department of Education. Despite his dispute, the Education Department reported the delinquent loans to the credit reporting agencies. The consumer sued the Education Department, alleging that it had violated the Fair Credit Reporting Act by failing to investigate his dispute adequately and failing to review all of the material that was relevant to the dispute.

However, a U.S. district court judge determined that the FCRA does not waive the government's sovereign immunity from suit, and the U.S. Court of Appeals for the Fourth Circuit agreed (see [Banking and Finance Law Daily](#), March 7, 2019).

According to the Fourth Circuit, the FCRA's creation of a right of action against any "person" who violates the Act does not include the federal government, even though the relevant statutory definition of "person" includes "government or governmental subdivision or agency" (15 U.S.C. §1681a(b)). The general rule is that the federal government is not a person unless the statute in question says very clearly that it is, the Fourth Circuit said.

Other statutes, and even another section of the FCRA, make clear when the federal government is a person that is subject to liability, the Fourth Circuit observed. The FCRA sections on which the consumer rested his case did not.

Supreme Court docket. For details about this and other petitions and cases pending before the Supreme Court, please consult [this list](#) of selected banking and finance law cases awaiting action in the 2019 term. Issued opinions, granted petitions, pending petitions, and denied petitions are listed separately, along with a summary of the questions presented and the status of each case.

Attorneys: Quinn Breece Lobato (Lobato Law) for Anthony Robinson. Noel J. Francisco, Solicitor General, for Department of Education.

Companies: AER Advisors Inc.; All American Check Cashing, Inc.; Bank of Louisiana; Citizens Bank, N.A.;
Columbian Financial Corp.; Crown Asset Management, LLC; Fidelity Brokerage Services, LLC; Houslanger &
Assoc

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