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Inside State AGs' Arguments Defending The CFPB

By **Paul Singer, Beth Chun and Andrea deLorimier** (April 3, 2025, 12:42 PM EDT)

On Feb. 7, Elon Musk said "CFPB RIP" in a post on X, seemingly bringing to fruition promises from him and other members of the Trump administration of eliminating or significantly scaling back the Consumer Financial Protection Bureau.[1] While the future of the CFPB remains unclear, Democratic state attorneys general are making their opinions known.

Later in February, a coalition of all 23 Democratic attorneys general[2] **filed** nearly identical amicus briefs in the U.S. District Court for the District of Maryland and the U.S. District Court for the District of Columbia, warning against efforts by the Trump administration to defund and disband the CFPB.[3]

In the **underlying Maryland suit**, Mayor and City Council of Baltimore v. Vought, the city of Baltimore and the Economic Action Maryland Fund sought injunctive and declaratory relief against the CFPB under the Administrative Procedure Act[4] that would prevent the CFPB from defunding itself.[5] In that suit, the plaintiffs alleged that they rely on the CFPB's services and would be irreparably harmed if it were to be eliminated.

Similarly, in the **D.C. action**, National Treasury Employees Union v. Vought, the union plaintiff sought declaratory and injunctive relief against the acting director of the CFPB on behalf of its members — which include CFPB employees — alleging that acting CFPB Director Russell Vought violated the separation of powers doctrine by "thwart[ing] Congress's decision to create the CFPB to protect American consumers." [6]

They also allege that Vought violated the Administrative Procedure Act and Congress' mandate by suspending the CFPB's statutorily mandated activities and effectively shutting it down.

In the amicus briefs, the coalition of state attorneys general, co-led by New Jersey Attorney General Matthew J. Platkin and New York Attorney General Letitia James, write to support the plaintiffs' motions for preliminary injunction to prevent irreparable harm to the states and their residents if the CFPB were dismantled.[7] State attorneys general regularly — as they are here — use amicus briefs to assert their positions on key policy and legal issues, including where they do not have standing to sue themselves.

Below we explain the states' arguments as set forth in the brief filed in the Maryland action, although the arguments in the two briefs are nearly identical.

The States' Amicus Briefs

Background of CFPB and Attorney General Collaboration

The states' briefs begin with a description of the Dodd-Frank Act's Consumer Financial Protection Act, [8] the creation of the CFPB, and the relationship between the CFPB and the states. For example, the states regularly refer their citizens to the CFPB's statutorily mandated consumer complaint system and use it to review and monitor trends.[9]



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Moreover, the states routinely coordinate with the CFPB to jointly examine regulated large state banks and nonbank financial entities.[10] According to the briefs, the states and the CFPB have also worked together, often in large multistate coalitions, on a variety of deceptive practices cases in a range of financial industries, with the CFPB having helped the states to secure consumer redress, such as billions in debt relief.[11]

The Absence of CFPB Services

The states argue that the administration's efforts to eliminate the CFPB will irreparably harm the states and consumers by preventing them from utilizing the CFPB's robust complaint reporting system to raise issues of fraud or deception and by prohibiting them from utilizing the CFPB's robust fraud data.[12]

The states also assert that they will also be irreparably harmed by the absence of the statutorily mandated Civil Penalty Fund,[13] a Congress-directed fund into which the CFPB may require defendants in CFPB actions to deposit monetary redress for victim compensation in other matters.[14] Per the states, removing the CFPB leaves the fund in limbo, with outstanding distributions from joint state cases pending, given that the CFPB is the only entity authorized to distribute victim compensation from the fund.[15]

No Federal Regulator for Large Banks

The states also assert that, given the CFPB's dormancy, no federal regulator is currently examining large banks for compliance with consumer protection laws.

While attorneys general are empowered by the Consumer Financial Protection Act to enforce the act's regulations and other consumer protection laws against state and national banks, only the CFPB currently has the authority to enforce the rules of the Consumer Financial Protection Act against national banks.[16]

The states argue that this dynamic will give large banks "carte blanche to loosen their regulatory compliance and profit accordingly,"[17] while state-chartered banks, on the other hand, will be disadvantaged because they remain subject to state enforcement of consumer protection laws.

Increased Burden on the States

Lastly, the briefs explain that eliminating the CFPB will "have concrete and far-reaching implications" [18] for the states and their citizens, given that the states and the CFPB formerly shared complaints and trend data, collaborated on supervisory examinations, benefited from joint training efforts, and partnered on investigations and litigation.

In the absence of the CFPB, the states will be "unexpectedly stretched"[19] in their consumer protection enforcement efforts and will be required to "divert resources from other crucial law-enforcement efforts." [20] For example, as the states explain in the briefs, the CFPB and the states are currently partnering on active litigation[21] — and the elimination of the CFPB will require the states to suddenly "assume sole responsibility."

However, note that since the states' amicus briefs were filed, the CFPB has purported to continue supporting state attorneys general. Specifically, in *CFPB v. StratFS LLC*, formerly known as Strategic Financial Solutions LLC,[22] wherein the CFPB has partnered with seven states, the CFPB told the U.S. District Court for the Western District of New York it will **continue appearing** with those states, and that it agrees with and adopts the current position of the states.

In this litigation, which involves allegations of an illegal debt-relief enterprise, the CFPB did not timely file a post-hearing briefing or respond to the defendants' cross-motion.[23] In a letter to the court, the CFPB acknowledged that leadership transitions and varying directives under the new administration impeded their ability to reply.

This has served as the nexus for a request to the court to deny the CFPB's continued participation in the proceedings claiming the bureau had abandoned its position. Despite the uncertain status of the

CFPB, the plaintiff states will continue to pursue the matter.

The Courts' Decisions

In the Maryland action, U.S. District Judge Matthew J. Maddox on March 14 **denied** the city of Baltimore's request to temporarily halt the Trump administration's effort to defund the CFPB.[24] The judge determined that the plaintiffs had failed to show that CFPB leaders made a "final agency action" (as that term is understood under the APA) to effectively dismantle the CFPB by sending its funding back to the Federal Reserve or the Treasury Department.[25]

Judge Maddox added:

For the Court to intervene and entangle itself in the Bureau's administrative processes before the agency has made any final decision about the disposition of its operating and reserve funds — and without clear indication that an unlawful and injurious decision will be made imminently — would exceed the bounds of the Court's proper role and jurisdiction.[26]

On March 28, the judge in the D.C. action, on the other hand, **granted** the union plaintiff's request for preliminary injunction, finding that the plaintiff's claims were based on final, reviewable agency action. [27] U.S. District Judge Amy Berman Jackson noted that the CFPB had already halted all work, including statutorily mandated work.[28] The court further explained that, as the CFPB and Vought "are chomping at the bit to wrap things up, it will take nothing less than a court order to maintain the status quo pending the resolution of this case." [29]

A Call for State Action

The amicus briefs and the courts' decisions come in the wake of the outgoing CFPB's call for state action in its January report, "Strengthening State-Level Consumer Protections: Promoting Consumer Protection Federalism." [30] In that report, the CFPB attempted to counter looming changes in federal consumer protection under the Trump administration by providing a road map for states and private plaintiffs to take up the Biden administration's key priorities.

Specifically, the CFPB recommended that states expand their enforcement powers by banning abusive practices (in addition to unfair and deceptive practices), removing investigative impediments (such as the requirement to seek a court's approval prior to issuing a subpoena), adding private rights of action to state statutes on unfair or deceptive acts or practices, tackling junk fees, and establishing state civil penalty funds that would mirror the CFPB's.

While the CFPB's ultimate fate post-injunction remains unknown, the attorney general briefs make clear that the states are preparing to fill in any current or future gaps caused by the CFPB's inactivity, including by reallocating their already-limited resources and managing an increased consumer protection docket. We also expect states to increase staffing or request funds to do so, and to identify opportunities to partner with other agencies like the Federal Trade Commission in addressing financial harms.

With this backdrop, we have already seen some states start to take up the mantle. This year, many states have proposed bills tackling disclosure of consumer fees during the legislative session, and Massachusetts Attorney General Andrea Joy Campbell recently released new regulations on so-called junk fees. [31]

Moreover, despite the concerns raised by the states in the briefs, it is important to remember that long before the CFPB existed, state AGs had strong partnerships with each other and other federal enforcers in protecting consumers from financial service fraud.

For example, in 2008, 42 states settled in a multistate agreement with Countrywide Financial over allegations the mortgage banker misrepresented loan terms, payments and ability to pay, obtaining billions in consumer mortgage relief and injunctive terms that included loan modifications and enhanced home retention practices. [32] That same year, 44 states and the District of Columbia settled with MoneyGram [33] regarding allegations of fraud-induced transfers by third-party scammers, obtaining relief such as enhanced training, blocking certain transfers and a \$1.2 million consumer education program.

So while the Democratic AGs may not let go of the CFPB without a fight, one should expect that even without the CFPB or a significantly reduced CFPB, the states will find a way to fill the gap left with their enforcement authority.

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[1] See <https://x.com/elonmusk/status/1887979940269666769> (Feb. 7, 2025).

[2] The coalition includes the attorneys general of Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, Wisconsin, and the District of Columbia.

[3] See Mayor and City Council of Baltimore et al. v. Consumer Protection Fin. Bureau, No. 25-cv-00458 (D.M.D. Feb. 19, 2025) (the "Maryland Brief"), <https://ag.ny.gov/sites/default/files/amicus-curiae/mayor-and-city-council-of-baltimore-v-consumer-financial-protection-bureau-amicus-brief-2025.pdf>; National Treasury Employees Union et al. v. Vought, No. 25-cv-00381 (D.D.C. Feb. 21, 2025) (the "D.C. Brief"), <https://ag.ny.gov/sites/default/files/amicus-curiae/national-treasury-employees-union-v-russel-vought-amicus-brief-2025.pdf>.

[4] 5 U.S.C. § 706(2)(A), (C).

[5] See generally Maryland Brief.

[6] See generally D.C. Brief.

[7] See, e.g., Maryland Brief at 1; D.C. Brief at 1.

[8] Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111-203, 124 Stat. 1376, 1955-2113 (2010).

[9] Maryland Brief at 2-6.

[10] Id.

[11] Id. at 6-7 (citing, e.g., Grewal v. Navient Corp., No. ESX-C-172-2020 (N.J. Sup. Ct.) (obtaining 1.85 billion in student debt relief and restitution); Consumer Protection Fin. Bureau v. ITT Educ. Servs., Inc., No. 14-cv-00292 (S.D. Ind.) (obtaining \$500 million in debt forgiveness)).

[12] Id. at 7-8.

[13] 12 U.S.C. § 5497(d)(2).

[14] Maryland Brief at 9-10.

[15] See id.

[16] See 12 U.S.C. §§ 5531, 5552(a)(2)(A).

[17] Maryland Brief at 11.

[18] Id. at 12.

[19] Id.

[20] Id. at 15.

[21] See generally *Consumer Protection Fin. Bureau v. StratFS, LLC*, No. 24-cv-00040 (W.D.N.Y.).

[22] See id.

[23] See, e.g., id. at ECF 627; see also K. Perera, *Debt Relief Co. Entities Want CFPB Excluded From Appearing*, Law360 (March 5, 2025), <https://www.law360.com/articles/2306501/debt-relief-co-entities-want-cfpb-excluded-from-appearing>.

[24] See *Mayor and City Council of Baltimore et al. v. Consumer Protection Financial Bureau*, No. 25-cv-00458 (D.M.D March 14, 2025), <https://storage.courtlistener.com/recap/gov.uscourts.mdd.576276/gov.uscourts.mdd.576276.45.0.pdf>.

[25] Id. at 23.

[26] Id. at 34.

[27] *National Treasury Employees Union et al. v. Vought*, No. 25-cv-00381 (D.D.C. March 28, 2025), <https://www.aba.com/-/media/documents/extranet/banking-docket/03282025-nteu-v-vought-decision-pi-decision.pdf?rev=3a7b96a1e4964986b93f6cfefd637afa> at 45.

[28] See, e.g., id. at 47.

[29] Id. at 100.

[30] *Strengthening State-Level Consumer Protections*, Consumer Financial Protection Bureau (Jan. 2025), https://files.consumerfinance.gov/f/documents/cfpb_strengthening-state-level-consumer-protections_2025-01.pdf.

[31] 940 CMR 38.00-38.09; see also AG Campbell Releases "Junk Fee" Regulations To Help Consumers Avoid Unnecessary Costs, Michigan Office of the Attorney General (Mar. 3, 2025), <https://www.mass.gov/news/ag-campbell-releases-junk-fee-regulations-to-help-consumers-avoid-unnecessary-costs>.

[32] *California v. Countryside Fin. Corp.*, No. LC088076, Superior Court of California – Riverside (Oct. 14, 2008), https://oag.ca.gov/system/files/attachments/press_releases/n1618_cw_judgment.pdf

[33] Attorney General Colberg Announces Settlement with MoneyGram, State of Alaska (July 2, 2008), <https://law.alaska.gov/press/releases/2008/070208-Moneygram.html>.