

# The Boundaries of the FTC's Section 13(b) Authority: 24 State AGs Weigh In

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February 3, 2020



## Section 13 (b)log



On January 30<sup>th</sup>, 24 State Attorneys General\*, led by Kwame Raoul (D) of Illinois, [submitted an amicus curiae brief](#) in support of the Federal Trade Commission's position in *FTC v. Credit Bureau Center LLC*.

These State AGs are in agreement with the FTC, which has argued that the district court's authority to grant a permanent injunction under Section 13(b) of the FTC Act includes the authority to require wrongdoers to return money that was illegally obtained. 19 Democrats, 4 Republicans, and 1 member of the New Progressive Party signed on to the brief, including State AGs from all of three states within the Seventh Circuit—Indiana, Illinois, and Wisconsin.

That is a pretty solid group, with a sprinkle of bi-partisan support, thanks to Republicans Lawrence Wasden (who has served as Idaho Attorney General since 2003), and newcomers Kevin Clarkson of Alaska, Curtis Hill of Indiana, and Jason Ravensborg of South Dakota.

Of course, the math tells you that there were 32 State Attorneys General (22 Republicans, 8 Democrats, and 2 Independents) who did not sign on, even though it is a near certainty that they all had the opportunity to do so. There could be any number of reasons for that, so it would be wrong to conclude that all 32 of these Attorneys General stand behind the petitioners and not the FTC, but it is likely that a large number of these Attorneys General considered the issue and purposefully decided against supporting the FTC or simply chose to remain on the sidelines.

The principal point raised in the brief is that "the FTC's ability to seek restitution under Section 13(b) benefits the amici States and their residents." The brief notes that "in 2018 alone, the FTC's Bureau of Consumer Protection issued more than \$122 million in refunds to consumers throughout the country" and asserted that their "own enforcement efforts are fortified by having a strong federal partner in the FTC."

In addition, the amici States argued that the impact of *Credit Bureau Center* is not limited to the

Seventh Circuit and encourages forum shopping, with “defendants in at least one enforcement action having already requested a transfer of their case into the Seventh Circuit to take advantage of its now favorable law.” The amici States further argued that if the *Credit Bureau Center* decision stands, they will have to shift resources to work that would have previously been done by the FTC and weaken the incentive for collaboration with the FTC. Finally, they asked the Supreme Court to grant the FTC’s petition for certiorari.

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\* Alaska (R), Colorado (D), Connecticut (D), Delaware (D), Hawaii (D), Idaho (R), Indiana (R), Illinois (D), Iowa (D), Maine (D), Maryland (D), Massachusetts (D), Michigan (D), Minnesota (D), Nevada (D), New Jersey (D), New Mexico (D), Oregon (D), South Dakota (R), Vermont (D), Virginia (D), Wisconsin (D), The District Of Columbia (D), and the Commonwealth Of Puerto Rico (New Progressive Party)

