

Three States Join Suit Challenging Dodd-Frank Financial Reform

September 21, 2012 - Oklahoma, Michigan and South Carolina have all joint a previously filed law suit challenging the constitutionality of the Dodd-Frank Financial Reform Act. The original suit claims that under Dodd-Frank, the law illegally consolidates power from all three branches of government and allows for little legislative or court supervision. While the states are joining the suit, they are making arguments on different grounds.

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The states specifically refused to challenge Dodd-Frank on the original grounds used in the law suit. The states' argument centers around the portion of the law that allows the Secretary of the Treasury to order the liquidation of companies not involved in the banking industry if they are "in danger" of default and if their failure would hurt the overall US economy.

The way that the law is structured, the Secretary of the Treasury can only be challenged on such a decision in federal court in Washington, DC. And the court is bound by law to rule on any such challenge within 24 hours. If the court misses the deadline, the Secretary's decision is automatically deemed to have court approval.

The states are claiming that this structure allows the Secretary of the Treasury to wipe out the rights of creditors. Again, under Dodd-Frank, creditors have no right to challenge a liquidation decision made using the law and no chance to testify or file claims in the liquidation. This stands in sharp contrast to corporate liquidations that are handled in Bankruptcy Court; where creditors do have right to file claims, provide testimony and to participate in the process.

Oklahoma Attorney General Scott Pruitt said that the law provides the government with "substantial power [that] is

fundamentally inconsistent with our constitutional framework and checks and balances."

The states are claiming that Dodd-Frank violates the constitutional separation of power, denies both companies and creditors their due process rights, and provides for virtually no court oversight. The case is likely to eventually wind up with the Supreme Court.

byJim Malmberg

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