

How Bank Lobby's Suit Tests OCC's Crypto Charter Powers

By **Scott Coleman, Beau Hurtig and Alan Kaplinsky** (October 26, 2026)

The Independent Community Bankers of America has taken its long-running opposition to the Office of the Comptroller of the Currency's chartering of cryptocurrency companies to the courts.

On Oct. 2, the ICBA filed suit in the U.S. District Court for the District of Columbia against the OCC and Comptroller Jonathan Gould, challenging the OCC's authority to charter nondepository, nonfiduciary cryptocurrency companies as national trust banks.[1]

The complaint also challenges the OCC's March final rule concerning national bank chartering,[2] Interpretive Letter 1176 issued in January 2021[3] and the OCC's February 2021 conditional approval of Protego Holdings' national trust bank charter.[4]

The case, ICBA v. OCC, presents an important question that extends well beyond cryptocurrency: How far does the National Bank Act actually permit the OCC to go in creating limited-purpose national banks?

The OCC's National Trust Bank Initiative

The dispute centers on a provision of the National Bank Act that was added in 1978. Title 12 of the U.S. Code, Section 27(a), provides that a national bank is not illegally constituted merely because the comptroller has limited its operations to those of a "trust company and activities related thereto."

The OCC has interpreted that language broadly. In its March final rule, the OCC amended its regulations to replace references to a national trust bank being limited to "fiduciary activities" with language referring to "the operations of a trust company and activities related thereto."

The OCC explained that the amendment was intended to clarify what it viewed as long-standing authority to permit national trust banks to conduct nonfiduciary activities in addition to fiduciary activities. The OCC also took the position that the relevant statutory language is not limited to the fiduciary powers addressed in Section 92a of the National Bank Act.

The practical consequence has been substantial. The OCC has approved or conditionally approved 21 national trust bank charters during the second Trump administration, according to the ICBA complaint, "at least 13 of which are cryptocurrency companies."

The OCC's December 2025 announcement, for example, covered conditional approvals for First National Digital Currency Bank, Ripple National Trust Bank, BitGo Bank & Trust, Fidelity Digital Assets and Paxos Trust Co.



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ICBA's Core Legal Argument

The ICBA's challenge is more fundamental than an objection to any particular cryptocurrency company.

According to ICBA, the National Bank Act authorizes the OCC to charter only three categories of national banks: traditional depository banks engaged in the business of banking, bankers' banks and national trust banks exercising fiduciary powers.

The ICBA contends that the OCC has effectively created a fourth category — a national bank that neither accepts deposits nor exercises fiduciary powers but nevertheless can conduct extensive nonfiduciary financial activities.

The complaint argues that the 1978 amendment to Section 27(a) did not give the OCC new chartering authority. Rather, according to the ICBA, Congress enacted the provision to confirm that the OCC could limit a national bank's activities to those of a trust company without rendering the bank unlawfully constituted.

The ICBA relies heavily on the U.S. Court of Appeals for the Third Circuit's 1979 decision in *National State Bank of Elizabeth v. Smith*, which the ICBA reads as tying the "trust company" language in Section 27(a) to the fiduciary powers authorized under Section 92a.

The OCC seemingly sees the statute very differently. In the final rule, the OCC emphasized that Congress used "trust company" in Section 27(a), while using "fiduciary" elsewhere in the National Bank Act.

In the OCC's view, those terms should not simply be treated as synonymous. It also contends that the Third Circuit did not actually decide the broader statutory question the ICBA now presents. That statutory dispute is likely to be the centerpiece of the litigation.

Why Protego Is the Test Case

ICBA has not merely challenged the OCC's rulemaking; it also challenges the OCC's approval of Protego's national trust bank charter.

That makes the case particularly interesting.

According to the complaint, Protego's proposed business would include, in a nonfiduciary capacity, a cryptocurrency custody platform, trading platform, lending and borrowing platform, and issuer-services platform. Only certain ancillary services would be performed in a fiduciary capacity. The ICBA argues that those activities look much more like the activities of a financial institution than the traditional fiduciary activities of a trust company.

The complaint also alleges that Protego had previously failed to satisfy the OCC's requirements for opening its proposed national trust bank, resulting in expiration of an earlier conditional approval in 2023. The ICBA points to Protego's financial difficulties, layoffs, vendor litigation and other matters as reasons why the OCC should have given greater consideration to the risks associated with the proposed charter. The OCC ultimately conditionally approved the new charter in February.

The ICBA claims that the OCC failed to adequately address the concerns raised during the application process, including concerns regarding capital, liquidity, risk management, consumer protection, separation of banking and commerce, and the ability to resolve an

uninsured national bank of significant size and complexity.

The Regulatory Arbitrage Argument

The ICBA represents traditional community banks that are subject to deposit-insurance assessments, Community Reinvestment Act obligations, capital and liquidity requirements, and numerous other federal requirements. A nondepository national trust bank does not face all of those requirements.

The ICBA alleges that two of its member banks, referred to as Member Banks A and B in court documents and each with less than \$2.5 billion in assets, spend more than \$1.5 million annually on regulatory requirements, including Federal Deposit Insurance Corp. assessments and Community Reinvestment Act compliance. It says those banks are being forced to compete with crypto trust banks that do not bear comparable costs.

The complaint further alleges that the two banks have already lost hundreds of thousands of dollars of business to cryptocurrency companies that received conditional national trust bank charters. This gives the litigation a broader dimension.

The ICBA is essentially arguing that the OCC has created a regulatory arbitrage opportunity: Cryptocurrency companies can obtain the advantages associated with a national bank charter, including substantial federal preemption, without accepting the regulatory obligations applicable to traditional insured banks.

The Consumer Protection Issue

The ICBA also makes a consumer protection argument that should attract attention: A company operating under a name containing "national bank" may be perceived by consumers as equivalent to a conventional federally insured bank, but national trust banks that do not accept deposits generally are not FDIC-insured.

The ICBA argues that consumers could therefore mistakenly assume that assets held by a crypto company operating under a national trust bank charter enjoy protections comparable to those associated with a conventional bank.

The complaint also points to the OCC's limited experience with receiverships of uninsured national banks. According to the ICBA, "the OCC has not managed an uninsured bank receivership in nearly one hundred years."

Whether these policy concerns ultimately affect the statutory question is another matter. But they could become important when the court considers the ICBA's arbitrary-and-capricious claims.

The Administrative Procedure Act Claims

The ICBA brings three APA claims.

First, it argues that the OCC's March 2026 final rule exceeds the agency's statutory authority under the National Bank Act and Section 92a. The ICBA also invokes the major questions doctrine, arguing that the OCC is claiming sweeping new authority from an old statute without a clear congressional authorization.

Second, the ICBA challenges Interpretive Letter 1176. It argues not only that the letter

exceeds the OCC's statutory authority, but also that the OCC improperly issued what the ICBA characterizes as a binding rule without notice-and-comment rulemaking.

Third, the ICBA challenges Protego's approval. It contends that the OCC lacked statutory authority to approve Protego as a national bank and that the approval was arbitrary and capricious because the OCC failed to adequately address significant concerns raised during the application process.

Genius Act Adds Another Interesting Dimension

The complaint also discusses the Genius Act.

The statute permits three categories of entities to become federally qualified payment stablecoin issuers, including uninsured national banks chartered by the OCC. But the ICBA notes that the statute does not regulate cryptocurrency activities generally and does not take effect until Jan. 18, 2027, or 120 days after final implementing regulations are promulgated, whichever is earlier.

The ICBA therefore argues that the GENIUS Act cannot retroactively cure what it contends are unlawful national trust bank charters already issued by the OCC. This could become particularly important as the OCC continues to develop the federal regulatory framework for stablecoins.

What the ICBA Wants

The ICBA is asking the court to declare the March 2026 final rule unlawful and vacate it; prohibit the OCC from using the rule to grant or conditionally approve additional charters; declare Interpretive Letter 1176 unlawful and vacate it; and declare and vacate Protego's conditional approval.

Notably, the ICBA has not asked the court in this complaint to vacate every national trust bank charter already granted to a cryptocurrency company. The immediate target is the legal framework itself and Protego's particular approval. The potential consequences, however, could be much broader.

A Potentially Important National Bank Act Case

This case should be watched closely by both traditional financial institutions and cryptocurrency companies.

At one level, it is another chapter in the continuing struggle between the banking industry and the crypto industry over the appropriate regulatory framework for digital assets. At a more fundamental level, however, it presents a classic administrative law question: Can a federal banking agency use an arguably ambiguous provision of a decades-old statute to establish an important new category of federally chartered financial institution?

The OCC has a strong textual argument of its own. Section 27(a) expressly refers to "the operations of a trust company and activities related thereto," and the OCC has emphasized that Congress chose that language rather than simply referring to "fiduciary activities." The agency also points to its historical practice of permitting national trust banks to conduct certain nonfiduciary activities, including custody and safekeeping.

The ICBA, however, has a potentially powerful response: The question is not whether a

national trust bank can perform some nonfiduciary activities incidental to its fiduciary business. The much more difficult question is whether the OCC can charter an institution whose principal business is nonfiduciary and that does not take deposits.

The case also presents an interesting administrative law question following the U.S. Supreme Court's 2024 ruling in *Loper Bright Enterprises v. Raimondo* and its 2022 ruling in *West Virginia v. Environmental Protection Agency*.

The court will have to decide for itself what Congress authorized in the National Bank Act rather than simply deferring to the OCC's interpretation. And if the court concludes that the OCC has claimed a power of substantial economic and political significance that Congress did not clearly confer, the ICBA's major questions argument could become important.

For now, the OCC's rapidly expanding crypto-charter initiative has encountered its first major judicial challenge. The result could determine whether the national trust bank becomes an important gateway for cryptocurrency companies into the federal banking system — or whether the OCC has pushed the National Bank Act beyond the limits Congress established.

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[1] <https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2026/10/ICBA-v.-OCC-as-filed-complaint-c.pdf>.

[2] <https://www.consumerfinancemonitor.com/2026/03/09/occ-issues-two-final-rules-to-reduce-regulatory-burden-on-community-banks-national-banks-and-federal-savings-associations-and-banks/>.

[3] <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-decisions/2021/int1176.pdf>.

[4] <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-19.html>.

[5] <https://www.consumerfinancemonitor.com/2024/06/28/supreme-court-overturms-chevron-deference-doctrine/>.

[6] <https://www.consumerfinancemonitor.com/2022/07/21/u-s-supreme-courts-invokes-major-questions-doctrine-to-invalidate-epa-regulation-what-are-the-potential-implications-for-the-consumer-finance-industry/>.