

FACT SHEET: DECISION IN METLIFE V. FSOC, NO. 16-5188 (D.C. CIR. AUG. 1, 2017)

STANDING UP FOR TRANSPARENCY, ACCESS TO COURT RECORDS, AND THE PUBLIC'S RIGHT TO KNOW, THE D.C. CIRCUIT COURT UNANIMOUSLY REVERSED THE DISTRICT COURT AND ORDERED A PARTICULARIZED REVIEW OF ALL DOCUMENTS FILED UNDER SEAL, WHILE THE MERITS APPEAL REMAINS PENDING

WHY THE DECISION IS IMPORTANT. MetLife's lawsuit seeking to overturn is designation by the Financial Stability Oversight Council ("FSOC") as a systemically significant nonbank threatens to gut key provisions of the Dodd-Frank financial protection law. In addition to making designation of systemically significant nonbanks much more difficult, if not impossible, the lawsuit could also greatly limit the government's ability to regulate the shadow banking system, prevent future financial crashes, and avoid taxpayer bailouts. Having suffered so greatly from the last crash, the public's interest in this case could not be higher, yet the parties unilaterally and without any meaningful judicial or independent oversight filed more than two-thirds of the record under seal. This secrecy prevented the public from knowing the full basis for FSOC's designation and the district court's decision to reverse it. This lack of transparency creates a huge obstacle to public oversight and accountability for gigantic financial firms and governmental agencies alike. Better Markets intervened in the case to assert the public's right to know and its right of access to judicial records.

OVERVIEW OF THE COURT'S DECISION. The United States Court of Appeals for the District of Columbia issued its ruling on August 1, 2017, reversing the district court's decision to maintain a shroud of secrecy over most of the record in *MetLife v. FSOC*, the lawsuit challenging FSOC's designation of MetLife for enhanced supervision. The appellate court ordered the district court to carefully review all the documents under seal to ensure that the right balance is struck between any legitimate privacy interests the parties may have and the public's right of access to judicial records. The decision is a major victory for the American people and their right to know how our governmental bodies—both courts and agencies—are protecting the public interest.

BACKGROUND. Beginning in 2008, the nation experienced the worst financial crisis and economic crash since the Great Depression, costing over \$20 trillion in lost productivity, wiping out millions of jobs, sending over 15 million homes into foreclosure, and exacting untold damage to the prosperity and well-being of the American people. In response, Congress passed the Dodd-Frank Act, which created the FSOC, comprised of the heads of all the major financial regulators. Its unique and critically important job is to monitor the financial system and designate nonbank financial institutions for enhanced supervision if they pose a threat to the financial stability of the United States. FSOC has exercised its authority sparingly, designating only four companies in the span of seven years. It designated MetLife in December of 2014, following a 17-month period of exhaustive document review, analysis, and engagement with MetLife.

THE COURT CHALLENGE AND THE SEALED RECORD. MetLife promptly challenged its designation in U.S. district court. Most of the record was sealed, by agreement of the parties and with the approval of the court. That meant that over two-thirds of the joint appendix was under seal, representing over 1,900 pages of documents. The joint appendix is defined under the district court's rules as the key subset of the entire administrative record that the parties are relying on and want the court to consider. The parties' briefs also contained redactions, as well as 90 citations to sealed portions of the joint appendix. Among the items sealed was a study allegedly supporting MetLife's position, which counsel for MetLife focused

on heavily at oral argument. Better Markets filed a [motion to intervene](#) for the purpose of seeking to unseal the record, a record directly relevant to the issues presented in an historic case.

THE DISTRICT COURT'S RULINGS. On the merits, the district court ruled in favor of MetLife and rescinded the designation. FSOC appealed to the D.C. Circuit. With respect to the sealing, the district court granted Better Markets' motion to intervene but denied any relief aimed at opening up the record. The district court questioned whether the sealed documents were judicial records subject to the public's right of access, although it relied primarily on a provision in the Dodd-Frank Act requiring the FSOC—not the court—to maintain the confidentiality of documents submitted to it during the designation process. Like the FSOC, Better Markets also [appealed](#) to the D.C. Circuit.

THE D.C. CIRCUIT'S DECISION ON UNSEALING. The August 1st decision from the D.C. Circuit is an important victory. In unanimously reversing the district court, the panel made several critical rulings.

- First, it resoundingly affirmed the importance of the public's common law right of access to judicial records. In the words of the Court, "The right of public access is a fundamental element of the rule of law, important to maintaining the integrity and legitimacy of an independent Judicial Branch. Although the right is not absolute, there is a strong presumption in its favor, which courts must weigh against any competing interests."
- Second, it held that regardless of whether the district court actually cited them in its decision on the merits, the briefs and sealed portions of the record were intended to influence the court and were therefore "judicial records" subject to the right of access.
- Third, the Court rejected the argument that the Dodd-Frank Act categorically insulated the sealed portions of the record from the public's right of access, relying on the language and structure of the statute and distinguishing cases cited by the parties.
- Finally, the Court remanded the case to the district court and ordered it to conduct a careful balancing test, applying a series of factors to each document or group of documents to determine if they should remain under seal. And it required the district court to supply its reasoning, so that the public can know whether any legitimate privacy concerns of the parties have been properly weighed against the public's right of access.

STATE OF PLAY IN THE MERITS APPEAL. Meanwhile, the merits appeal remains at a critical juncture. It has been poised for a decision since last October, when the Court heard oral argument. Recently, MetLife has made repeated attempts to delay the case, arguing that President Trump's order requiring a general review of FSOC's designation procedures should play out before the Court rules. Better Markets staunchly opposed MetLife's maneuver by filing an [amicus brief](#) in opposition. And just last week, [Better Markets filed an amicus brief](#) urging the Court to disqualify the Department of Justice ("DOJ") from representing FSOC in the appeal, since it cannot vigorously defend FSOC's designation while simultaneously representing a President and a Treasury Secretary who are bent on derailing the case and weakening or eliminating FSOC's designation authority. As we have argued in our multiple filings, we believe the Court should reject any further attempts to delay the merits appeal, issue its decision as soon as possible to move toward full restoration of FSOC's designation authority, disqualify the DOJ for the remainder of the case, and appoint independent counsel to represent FSOC with unmitigated zeal.