Supreme Court Rejects Bright-Line Preemption Standard Under the National Bank Act

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Cantero v. Bank of Am., N. A., 144 S. Ct. 1290 (May 30, 2024)

In *Cantero v. Bank of America*, the U.S. Supreme Court held that state laws are preempted by the National Bank Act only under certain conditions. Federal preemption occurs when the state laws discriminate against national banks compared with state banks or prevent or significantly interfere with a national bank's exercise of its federally granted powers, under the standard provided by the Supreme Court's earlier decision in *Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner*, 517 U.S. 25 (1996).

Cantero arose from a New York law that requires banks that maintain escrow accounts in connection with mortgage loans to pay borrowers interest on the account at a rate of at least 2% per year. Bank of America declined to pay interest on the escrow accounts it holds for borrowers, asserting that the New York law is preempted by the National Bank Act. More specifically, Bank of America argued that because the federal Real Estate Settlement Procedures Act of 1974 authorizes national banks to maintain escrow accounts, but does not require the banks to pay interest, the New York law is inconsistent with federal law.

The United States District Court for the Eastern District of New York entered judgment in the borrowers' favor, holding that the New York law was not preempted by federal law because a bank could comply with both laws. The Second Circuit reversed, holding that federal law preempts any state law that purports to exercise control over a federally chartered bank's exercise of power granted to it by federal law.

In a unanimous opinion, the Supreme Court vacated the Second Circuit's opinion and remanded the case for further proceedings. The Court held that the standard for preemption of state laws, as

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applied to national banks, is set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Writing for the Supreme Court, Justice Kavanaugh noted that, under the Dodd-Frank Act, "the National Bank Act preempts a state law 'only if' the state law (i) discriminates against national banks as compared to state banks; or (ii) 'prevents or significantly interferes with the exercise by the national bank of its powers,' as determined 'in accordance with the legal standard for preemption in the [prior] decision of the Supreme Court of the United States.'" *See Barnett Bank of Marion Cnty., N. A. v. Nelson, Fla. Ins. Comm'r*, 517 U.S. 25 (1996).

The Supreme Court did not expand upon when a state law prevents or significantly interferes with a national bank's exercise of its powers beyond reviewing the precedents described in *Barnett Bank* . Thus, the Court left for the lower courts to clarifythe preemption standard. The Supreme Court acknowledged the parties' desire for a clearer preemption line but concluded that Congress's decision to incorporate the standard from *Barnett Bank* in the Dodd-Frank Act ruled out a clear standard in favor of a nuanced comparative analysis.

Key Takeaways

- Courts evaluating preemption of state laws as applied to national banks must apply the balancing test first set forth in *Barnett Bank*.
- Courts must decide whether state laws prevent or significantly interfere with a national bank's exercise of its powers.
- There is likely to be significant litigation over the scope of preemption, given the Supreme Court's decision not to provide further guidance about the *Barnett Bank*

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