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Appellate and Constitutional Law Update May 30, 2024

Supreme Court Announces Standard For Determining Whether Federal Law Preempts State Laws Regulating National Banks

***Cantero v. Bank of America, N.A.*, No. 22-529** – Decided May 30, 2024

Today, the Supreme Court held 9-0 that there is no categorical rule for determining whether federal law preempts state banking laws when applied to national banks, and instead adopted a test focused on whether the law interferes with a national bank's exercise of its powers.

"If the state law prevents or significantly interferes with the national bank's exercise of its powers, the law is preempted. If the state law does not prevent or significantly interfere with the national bank's exercise of its powers, the law is not preempted."

JUSTICE KAVANAUGH, WRITING FOR THE COURT

Background:

In 1863, Congress passed the National Bank Act, establishing national banks, which are mostly, but not exclusively, regulated by federal law. Over time, courts, regulators, and legislators have taken a broad view of the preemptive effects of the National Bank Act. In the Dodd-Frank Act, passed in 2010, Congress instructed courts how to decide when federal law preempts "state consumer financial laws": "only if" one of three specified conditions is met. 12 U.S.C. § 25b(b)(1). One condition is that a state law "prevents or significantly interferes with the exercise by the national bank of its powers." *Id.* § 25b(b)(1)(B).

A New York statute requires mortgage lenders to pay at least 2% interest rates on funds they hold in mortgage-escrow accounts. When Bank of America, a national bank chartered under the National Bank Act, declined to pay interest on funds held in escrow for customers with mortgages, some of those customers sued. Bank of America moved to dismiss, arguing that the National Bank Act preempts state escrow-interest laws, and the district court denied that motion. The Second Circuit granted Bank of America's petition for an interlocutory appeal and then reversed.

Issue:

Under what circumstances does the National Bank Act preempt state banking laws?

Court's Holding:

The National Bank Act preempts state banking laws when those laws significantly interfere with the exercise by a national bank of its powers. A court should make that significant-interference determination by examining the text and structure of the relevant state law and engaging in a "nuanced comparative analysis" of the Supreme Court's applicable opinions—not by attempting to apply a categorical rule that state banking laws are always or never preempted.

What It Means:

- The Supreme Court expressly rejected the competing categorical approaches advanced by the parties. The Court declined to adopt the bank's proposed rule, which would "preempt virtually all state laws that regulate national banks." It also rejected the plaintiffs' proposed preemption standard, which would "preempt virtually no non-discriminatory state laws."
- The Supreme Court did not decide whether federal law preempts state escrow-interest laws, instead remanding to the Second Circuit to make that determination after engaging in a "nuanced comparative analysis" of the laws undergirding the Supreme Court's applicable opinions with the text and structure of the state law at issue.
- Because the Supreme Court did not adopt any categorical approach, this decision will likely lead to further litigation over whether state banking laws apply to national banks.

Gibson Dunn Appellate Honors

The Court's opinion is available here.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the U.S. Supreme Court. Please feel free to contact the following practice group leaders:

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