



June 4, 2024

## SUPREME COURT REMANDS NATIONAL BANK ACT PREEMPTION CASE

The United States Supreme Court remanded *Cantero v. Bank of America* to the Second Circuit for a preemption analysis consistent with the *Barnett Bank* case as required by the Dodd Frank Act. The case involved National Bank Act preemption and a New York state law that requires lenders and holders to pay interest on residential mortgage escrow accounts. The unanimous decision summarized the facts leading up to the case, including a summary of the *Barnett Bank* case and the Dodd Frank Act's incorporation of the decision and the "prevents or significantly interferes" standard into federal statutory law.

The court pointed out that *Barnett Bank* did not establish a clear line to demarcate when a state law "significantly interferes" with a national bank's powers. The court explained that *Barnett Bank* looked at prior cases finding state laws preempted as well as cases finding state laws not preempted, some of which the decision summarized. The court noted that the lower court did not engage in a similar analysis.

The Supreme Court found that a court applying the *Barnett Bank* standard must make a practical assessment of the nature and degree of the interference caused by a state law. The court stated that in analyzing the New York interest-on-escrow law at issue, the Court of Appeals did not conduct that kind of nuanced comparative analysis required by *Barnett Bank*. The Court noted that under the Second Circuit's approach virtually all state laws would be preempted while under the plaintiffs approach virtually no state laws would be preempted. According to the Court neither approach is correct.

Because the Court of Appeals did not analyze preemption in a manner consistent with the Dodd-Frank Act and *Barnett Bank* the Court vacated the judgment of the Court of Appeals and remanded the case for further proceedings consistent with its opinion.

As the Court has indicated that a more detailed and nuanced analysis is required, it will be interesting to see if the Second Circuit reaches the same conclusion under this more nuanced approach. It will also be interesting to see how other courts considering preemption questions apply the analysis required by the Supreme Court.

We will continue to watch this and other national bank

preemption cases.

Please let us know if you have questions regarding the case or National Bank preemption.

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