



January 27, 2026

RESPONSE FILED TO PETITION FOR REHEARING IN 10TH CIRCUIT DIDMCA STATE OPT OUT CASE

On January 21, the Defendants-Appellees filed their response to the petition for rehearing in *National Association of Industrial Bankers v. Weiser*,ⁱ arguing that *en banc* review is not warranted because (i) the Panel Opinion does not conflict with the Eighth Circuit's decision in *Jessup v. Pulaski Bank*,ⁱⁱ (ii) the Panel Opinion correctly applies Supreme Court precedent on express preemption and (iii) the Panel Opinion is a routine statutory interpretation, not a question of exceptional public importance. See our ALERT of [Dec. 18, 2025](#).

Defendants-Appellees asserted that the Panel Opinion distinguished *Jessup*, which interpreted a different statute passed nearly 20 years after the DIDMCA opt-out provision, on factual circumstances, statutory structure, and purpose. Further, the Eighth Circuit's adoption of *Chevron* deference and "the litany" of conflicting agency opinions merited distinguishing the Eighth Circuit's analysis. Applying Supreme Court express preemption precedent, the Panel Opinion appropriately focused on the plain language of the statute and found that the statute's purpose supported the panel's reading. Finally, the parties' disagreements over context, intent and implications, does not mean that an opinion involving "routine statutory interpretation" is "an issue of exceptional public importance."

The grant of a rehearing *en banc* by the 10th Circuit is not a foregone conclusion. The lower court's preliminary injunction remains in place while the *en banc* process proceeds. By asserting a Circuit split, the petitioners have positioned the case for a potential appeal to the U.S. Supreme Court in the event that the request for rehearing *en banc* is not granted.

We will continue to track and report on developments in this case and other actions related to DIDMCA, as well as other ongoing attacks on bank partnerships, as they arise.

✧ Mike Tomkies, Elizabeth Anstaett and Mercedes Ramsey

ⁱ Defendants-Appellants' Response to Petition For Rehearing En Banc, *Weiser v. American Fintech Council*, No. 24-1293 (filed Dec. 9, 2025); see 159 F.4th 694 (10th Cir. 2025).

ⁱⁱ 327 F.3d 682, 684 (8th Cir. 2003)

Darrell L. Dreher
ddreher@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

Susan L. Dreher
sdreher@dtlaw.com

3000 E. MAIN STREET
SUITE B #147
COLUMBUS, OHIO 43209
TELEPHONE: (614) 628-8000
WWW.DTLAW.COM

Michael C. Tomkies
mtomkies@dtlaw.com

Mercedes C. Ramsey
mramsey@dtlaw.com

Robin R. De Leo
robin@deher-la.com

To see previously sent ALERTS, visit our website at www.dtlaw.com

To decline future ALERTS, please contact us at ALERTS@DLTLAW.COM. This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.