



April 2, 2026

10TH CIRCUIT GRANTS REHEARING IN DIDMCA OPT-OUT CASE

The U.S. Court of Appeals for the Tenth Circuit has granted plaintiffs' petition for rehearing *en banc* in *National Association of Industrial Bankers v. Weiser*.¹ See our ALERTS of [Dec. 18, 2025](#) and [Jan. 27, 2026](#). The court's November 10, 2025 judgment has been vacated.

In November, a panel of the Tenth Circuit ruled that a state's right to opt out under Section 525 of the federal Depository Institutions Deregulation and Monetary Control Act ("DIDMCA") applies broadly to loans made by federally insured state-chartered banks, including federally insured out-of-state banks, when a loan is "made in" an opt-out state, which is not to be determined solely by the activities of the lender but can include having the borrower reside in the opt-out state. See our ALERTS of [Nov. 11](#) and [Dec. 5, 2025](#). Plaintiffs filed a petition for rehearing *en banc* and Defendants did not object.

For the rehearing, the parties are to file supplemental briefs addressing the following questions and any other issues raised in the petition:

- (1) Does the phrase "loans made in such State" in Section 525 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA) refer to "an executed loan" and encompass "loans in which either the lender or the borrower is located in the opt-out state"?
- (2) How, if at all, should the reference in Section 521 of DIDMCA to "the State . . . where the bank is located" inform the meaning of "loans made in such State" in Section 525?
- (3) How, if at all, is DIDMCA's enactment history instructive to interpreting the phrase "loans made in such State"?
- (4) How, if at all, is the regulatory guidance instructive to interpreting the phrase "loans made in such State"?
- (5) Is the phrase "loans made in such State" ambiguous?
- (6) Does a presumption against preemption apply in this case?

Appellees' supplemental brief is to be filed within 30 days. Within 30 days of service of Appellees' supplemental brief, Appellants must file their supplemental response brief. The court also granted the

pending motions for leave to file amicus briefs.

The Tenth Circuit's *en banc* decision may play an important role in how other state legislatures respond to requests to adopt laws similar to that adopted in Colorado. For example, the Oregon legislature passed a DIDMCA opt-out bill which is currently awaiting the governor's signature. Rhode Island has a similar bill pending in its Senate Commerce Committee. 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*

¹ Order, No. 24-1293 (D.C. No. 1:24-CV-00812-DDD-KAS) (D. Colo.) (10th Cir. Apr. 2, 2026).

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