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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

NATIONAL ASSOCIATION OF INDUSTRIAL BANKERS, et al.,

Plaintiffs,

v.

SEAN O'DAY, in his official capacity as Director of Oregon Department of Consumer and Business Services,

Defendant.

Case No. 6:26-cv-01201-AA

BRIEF OF AMICI CURIAE THE AMERICAN BANKERS ASSOCIATION, THE BANK POLICY INSTITUTE, THE CONSUMER BANKERS ASSOCIATION, AND 51 STATE BANKERS ASSOCIATIONS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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INTEREST OF AMICI CURIAE

The American Bankers Association (ABA), the Bank Policy Institute (BPI), the Consumer Bankers Association (CBA), and the 51 State Bankers Associations listed in the Appendix submit this amicus brief in support of plaintiffs' motion for preliminary injunction.[1]

Founded in 1875, the ABA serves as the primary national trade association for the U.S. financial services industry. It represents the nation's $25.1 trillion banking sector and its 2.1 million employees. ABA members provide banking services throughout all 50 states and the District of Columbia and include state banks and savings associations of every size.

The BPI is a nonpartisan organization focused on public policy, research, and advocacy on behalf of the nation's leading banks. The BPI conducts academic and policy research on regulatory and monetary issues, evaluates and comments on proposed regulations, and advocates for the financial services industry on matters involving cybersecurity, fraud, and information security. BPI members include universal banks and regional banks, many of which are state chartered.

The CBA, established in 1919, is the only national trade association devoted exclusively to retail banking. The organization is a prominent voice in Washington and across the banking industry, representing members that employ nearly two

[1] No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund the preparation or submission of this brief; and no person other than the amici, their members, or their counsel contributed money that was intended to fund preparing or submitting the brief. This brief accompanies a motion for leave to file an amicus brief.

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million Americans, provide approximately $3 trillion in consumer lending, and extend $270 billion in small business loans.

The 51 State Bankers Associations listed in the Appendix represent the interests of their members at the state and local level.

ABA, BPI, CBA, and the State Bankers Associations each have members that are state chartered, FDIC-insured depository institutions headquartered outside Oregon that extend loans to Oregon borrowers in accordance with the laws of the states in which those institutions are located. In making interstate loans, these institutions have long relied on the preemption of state law by Sections 521 through 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA), Pub. L. No. 96-221, 94 Stat. 132 (1980). Because the outcome of this litigation is likely to significantly affect such institutions' lending programs, ABA, BPI, and CBA submit this brief in support of the Court's consideration of Plaintiffs' Motion for Preliminary Injunction.

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress enacted DIDMCA Section 521 to ensure competitive parity between state-chartered banks and national banks by authorizing state banks to charge interest rates commensurate with their national counterparts, expressly preempting contrary state law. Congress recognized that, absent parity, state-chartered institutions would be placed at a severe competitive disadvantage during a period of rising inflation and increasing interest rates.

At the same time, Congress enacted Section 525 to preserve principles of federalism by permitting states to opt out of that preemption regime as to their own

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state-chartered institutions. But the opt-out was carefully limited: it applied only to loans “made in” the opting-out state and allowed states to reclaim authority over banks operating within their own borders. Nothing in DIDMCA authorized a state to project its interest-rate caps onto loans made by out-of-state state banks operating under the laws of their home states.

Oregon’s law exceeds that limited authority. Through Section 1, subsection 3 of House Bill 4116, Oregon purports to apply its interest-rate caps to loans made outside Oregon by out-of-state state banks whenever the borrower has a sufficient Oregon nexus, including by virtue of Oregon residency or by making payments through an Oregon financial institution. That borrower-focused theory cannot be squared with DIDMCA’s text, structure, or purpose.

Plaintiffs’ motion for preliminary injunction comes on the heels of *National Association of Industrial Bankers v. Weiser*, 737 F. Supp. 3d 1113 (D. Colo. 2024), in which a federal district court in Colorado preliminarily enjoined Colorado’s similar attempt to exercise an overbroad opt-out under Section 525. But Oregon’s law goes even further than the statute at issue in *Weiser* by purporting to apply Oregon’s interest-rate caps to loans made entirely outside Oregon—including to Oregon residents who are physically outside Oregon at the time of the transaction. *Weiser* is fully briefed for *en banc* argument on August 18, 2026 before the Tenth Circuit. *See*

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Nat'l Ass'n of Indus. Bankers v. Weiser, 171 F.4th 1203 (10th Cir. 2026) (granting petition for rehearing *en banc*).[2]

Amici curiae support Plaintiffs' motion for preliminary injunction and the arguments set forth therein. Amici write separately to expand on this legal argument and to emphasize two additional policy considerations that confirm Oregon's interpretation of Section 525 is inconsistent with DIDMCA's text, structure, and purpose.

First, DIDMCA's text and context foreclose Oregon's overbroad reading of Section 525. The plain language of Section 525 permits a state to opt out only as to loans "made in" that state—meaning loans made by banks in Oregon, not loans made elsewhere to borrowers with Oregon connections. Read in context—with DIDMCA as a whole, the antecedent language in the National Bank Act and related federal banking statutes on which Congress modeled it, and DIDMCA's legislative history—

[2] Amici have filed multiple briefs in support of the plaintiffs in *Weiser*. *See, e.g.*, Brief of Amici Curiae American Bankers Association, The Bank Policy Institute, and Consumer Bankers Association in Support of Plaintiffs-Appellees, *Weiser v. American Fintech Council*, No. 24-1293, Doc. 81, 2024 WL 4881889 (10th Cir. Nov. 22, 2024); Brief of Amici Curiae American Bankers Association, Bank Policy Institute, and 52 State Bankers Associations in Support of Petition for Rehearing En Banc by Plaintiffs-Appellees, *Weiser v. Am. Fintech Council*, No. 24-1293, Doc. 166, 2025 WL 3697201 (10th Cir. Dec. 16, 2025); Supplemental Brief of Amici Curiae American Bankers Association, Bank Policy Institute, America's Credit Unions, and 52 State Bankers Associations in Support of Plaintiffs-Appellees, *Weiser v. Am. Fintech Council*, No. 24-1293, Doc. 194, 2026 WL 1603354 (10th Cir. June 4, 2026); Brief of State Bankers Associations as Amici Curiae in Support of Plaintiffs-Appellees, No. 24-1293, *Weiser v. Am. Fintech Council*, Doc. 84, 2024 WL 4881890, at *3 (10th Cir. Nov. 22, 2024).

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Section 525 turns on the bank's location and loan-making functions, not the borrower's residence, whereabouts, or payment method.

Second, Oregon's interpretation of Section 525 would undermine the dual banking system by recreating the competitive disparities Congress enacted DIDMCA to eliminate. As expressly set forth in the preamble to Section 521, that section was adopted by Congress to ensure state-chartered banks could compete on equal footing with national banks, while Section 525 preserved each state's authority over the banks it charters. Oregon's interpretation would upend that balance by allowing Oregon to impose its interest-rate caps on banks chartered by *other* states based solely on a borrower's connection to Oregon—even while national banks remain free to charge higher rates to the same borrower. In doing so, Oregon would not only intrude on other states' regulatory authority, but also place state-chartered institutions at a structural disadvantage to federally chartered institutions. That disparity, especially if Oregon's opt-out were duplicated by more states, would place enormous pressure on state-chartered banks to convert to national banks, eroding the competitive dual banking system Congress sought to preserve.

Third, Oregon's interpretation is unlikely to benefit consumers and may instead harm the very borrowers Oregon claims to protect. DIDMCA's drafters did not enact Section 525 as a consumer-protection measure; they enacted it to preserve state authority over in-state, state-chartered banks. And even under Oregon's interpretation of Section 525, national banks could continue lending at their home states' rates under federal law, leaving consumers exposed to rates exceeding

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Oregon's interest rate cap. The practical effect would be to reduce competition from out-of-state state banks, restrict access to credit for higher-risk borrowers, and encourage lenders to substitute blunt pricing mechanisms—such as annual fees—to compensate for below-market interest rates. Far from protecting consumers, Oregon's approach would reduce credit availability and increase borrowing costs for Oregonians.

For these reasons, and for those set forth in Plaintiffs' motion, amici respectfully urge the Court to grant Plaintiffs' motion for a preliminary injunction and prevent Defendant Sean O'Day from enforcing Section 1, subsection 3 of Oregon House Bill 4116 pending resolution of this case on the merits. Preliminary relief is necessary to preserve the competitive balance Congress established in DIDMCA, prevent irreparable harm to out-of-state state banks operating lawfully under their home-state authority, and avoid the consumer harms that would result from Oregon's unprecedented expansion of Section 525.

ARGUMENT

I. DIDMCA's Text And Context Preclude Oregon's Overbroad Opt-Out.

"In order to prevent discrimination against" state banks, Congress passed DIDMCA to establish interest rate parity between federally chartered banks and state-chartered banks. DIDMCA § 521, 12 U.S.C. § 1831d(a). To that end, Section 521 authorizes state banks to charge the "greater" of (1) a statutory federal rate or (2) "the rate allowed by the laws of the State, territory, or district where the bank is located," and expressly preempts state law limitations. *Id.* DIDMCA Section 525 allows states to reject this offer of competitive equality by opting out of federal

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preemption "*with respect to loans made in such State*." DIDMCA § 525, 94 Stat. at 167, 12 U.S.C. § 1831d note (Effective Date) (emphasis added).

The statutory text and context surrounding DIDMCA demonstrate that this key opt-out language applies only to loans made by banks chartered by, or performing their key loan-making functions in, the opting-out state. That is, an out-of-state state-chartered bank is unaffected by a state's opt-out unless that out-of-state bank is chartered by or performs its key loan-making functions in the opting-out state.

Oregon's purported opt-out of Section 521 of DIDMCA vastly exceeds Congress's intended scope. Through Section 1, subsection 3 of Oregon House Bill 4116, Oregon improperly seeks to impose its interest-rate caps on loans that out-of-state state banks make in other states when the borrower has an Oregon nexus. This sweeping provision would even impose Oregon law on non-Oregon banks when the borrower is not in Oregon, so long as the borrower is an Oregon resident who makes a payment by debiting an account at an Oregon financial institution or by using a check drawn on a financial institution in Oregon. *Id.* 3(b).

DIDMCA's text, context, legislative history, and policy, along with related court rulings and regulatory guidance, all demonstrate that the state a loan is "made in" depends on where the bank is located and performs its loan-making functions. As the district court in *Weiser* recognized, where a loan is "made" for purposes of DIDMCA Section 525 does not depend on the location or residency of the borrower. *Weiser*, 737 F. Supp. 3d at 1131, *rev'd and remanded*, 159 F.4th 694 (10th Cir. 2025), *reh'g en banc granted*, *judgment vacated*, 171 F.4th 1203 (10th Cir. 2026).

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A. DIDMCA's plain text focuses on the lender who makes the loan, not the borrower who receives it.

The plain meaning of DIDMCA Section 525 is that a state may opt out of preemption with respect to state-chartered-bank loans only if the bank making that loan performs its key loan-making functions in the opting-out state—that is, for state banks that "make" loans in that state. Critically, Section 525 looks to where a "loan[]" is "made," not where the borrower is located, let alone the residency of the borrower. As the district court in *Weiser* correctly observed, "Congress's use of 'made' [in Section 525] puts the focus on the act of making a loan" and on "the lender" who performs that act: "In plain parlance, it is the lender who *makes* a loan; nobody thinks of themselves as 'making a loan' when they borrow money from a family member or put a charge on a credit card." 737 F. Supp. 3d at 1129.

Other provisions of DIDMCA confirm that the phrase "made in such State" focuses on where the bank's loan-making functions occur. Section 521 regulates the interest rates available to state banks and expressly links a "loan … made" by a bank to the state "where the bank is located." This reflects the commonplace understanding that a loan is "made" at the bank that makes it. In turn, Section 525 refers to the same "loans made" by the same state banks and allows the state where a loan is "made" to reject DIDMCA's offer of federal parity for that loan. Nothing in the statute indicates that the relevant "State" where a loan is "made" under Section 521—the state "where the bank is located"—differs from the relevant "State" under Section 525.

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The Tenth Circuit's vacated majority decision in *Weiser* held otherwise. But as Judge Rossman explained in her dissent, the majority's interpretation "drive[s] a wedge between Sections 521 and 525" and "undermines the competitive parity Congress intended and enables the very discrimination Section 521 sought to eliminate." 159 F.4th at 730–732 (Rossman, J., dissenting). And the full Tenth Circuit has vacated that panel decision and agreed to rehear the case en banc—with oral argument scheduled for August 18, 2026.[3]

B. Congress borrowed DIDMCA's language from the National Bank Act, which focuses on the location of the bank, not the borrower.

Congress aimed to establish interest rate parity for state banks by incorporating language from Section 85 of the National Bank Act (NBA) into DIDMCA Section 521. *See* 12 U.S.C. § 1831d; 12 U.S.C. § 85. Like DIDMCA, Section 85 provides that "[a]ny [national] *association* may take, receive, reserve, and charge on any *loan* … *made* … interest at the rate allowed by the laws of the State … where the bank is located" or the national discount rate. 12 U.S.C. § 85 (emphasis added).

In *Marquette Nat'l Bank v. First of Omaha Serv. Corp.*, the Supreme Court determined "where the bank is located" under NBA Section 85 by assessing where

[3] Oregon's purported opt-out goes even further than the Tenth Circuit's now-vacated majority decision in *Weiser* would permit. The Tenth Circuit held that "loans made in such State" refers to loans in which "either the lender *or* the borrower is located in the opt-out state." 159 F.4th at 713–714. Yet Oregon seeks to impose its interest caps not only when the borrower is located in Oregon but also if an Oregon resident who is physically located in New York makes a payment on the loan by debiting an account at a financial institution or trust company in Oregon, or by using a negotiable instrument drawn on a financial institution or trust company in Oregon. *See* Oregon House Bill 4116 §§ (1), (3).

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the loan was made, in addition to where the bank was chartered and headquartered. 439 U.S. 299, 310–13 (1978). To do so, Justice Brennan's opinion for the unanimous Court looked to where the bank's lending operations physically occurred, not where the customers lived or used their credit cards. *Id.* The Court noted that "the convenience of modern mail permits Minnesota residents holding Omaha Bank's Bank Americards to receive loans without visiting Nebraska," but stressed that "credit on the use of their cards is nevertheless … extended by Omaha Bank *in Nebraska*." *Id.* at 311–12 (emphasis added). Omaha Bank was thus "located" in Nebraska, so a "loan or discount made" by that "association" was subject to Nebraska's interest rate cap (or the national discount rate). *See* 12 U.S.C. § 85 (emphasis added).

By incorporating NBA Section 85's language into DIDMCA Section 521 verbatim just two years later, Congress adopted *Marquette*'s lender-focused approach—determining where banks make loans based on where a bank performs its key loan-making functions. The same principle applies in 2026, when banks lend via "the convenience of modern" technologies, such as the internet and mobile apps.

Oregon's competing interpretation—based on the location of the borrower—would saddle the banking system with the administrative difficulties that the Court in *Marquette* declined to read into the NBA. In *Marquette*, the court rejected an alternative interpretation of NBA Section 85 where "the location of the bank" depended on the "whereabouts of each credit-card transaction." *Marquette*, 439 U.S. at 312. Under this interpretation, "the meaning of the term 'located' would be so

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stretched as to throw into confusion the complex system of modern interstate banking." *Id.* The Court declined "to invite these difficulties." *Id.*

Oregon similarly seeks to "render[] so elastic the term" "made." Under Oregon's interpretation of Section 525 a state bank "could never be certain whether its contacts with residents of foreign States were sufficient to alter its location" for purposes of Oregon's opt out. *Id.* As Judge Rossman's dissenting opinion in *Weiser* correctly observed, it is difficult "to see how this patchwork approach—which abides a level of disuniformity Congress never intended—will be administrable in our world of interstate, online banking." *Weiser*, 159 F.4th at 740 (Rossman, J. dissenting).

C. Other federal banking statutes consistently use the words "make" or "made" to refer to loan-related actions taken by banks.

Provisions throughout Title 12 of the United States Code—which covers banks and banking and includes the Federal Deposit Insurance Act (FDIA)—consistently use "make" and "made" in the same way: a loan is "made" *by* a bank *to* a borrower. *See, e.g.*, 12 U.S.C. § 1828(o)(3) ("a loan *made by* an *insured depository institution*" (emphases added)); 12 U.S.C. § 1831b(a) ("No *insured depository institution* ... [or] *bank* which is not an insured depository institution, shall *make* any ... loan" (emphases added)); *see also* 12 U.S.C. § 3018(c) ("the Bank may guarantee … any loan made by any State or federally chartered lending institution to any borrower"); 12 U.S.C. § 4745(p)(1)(C)(i) ("a participating financial institution makes a loan to a borrower"); 12 U.S.C. §§ 1715z-13b(c)(1), 2202b(a), 2202d(b), 5704(e)(7)(A). Conversely, when Title 12 speaks to action by borrowers, it states that borrowers "receive" or "obtain"—but not "make"— loans. *See, e.g.*, 12 U.S.C. § 2279aa(7)(C) ("a

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loan ... by a cooperative lender to a *borrower* that has *received* ... a loan" (emphases added)); 12 U.S.C. § 4742(10)(A) ("depositing all required premium charges paid ... by each *borrower receiving* a loan" (emphasis added)); 12 U.S.C. § 5602(b)(1) ("protecting *borrowers* with respect to the *obtaining* of ... loans" (emphases added)).

The majority in the Tenth Circuit panel decision in *Weiser* rejected reliance on these extensive uses of "made" to refer to the act of a bank making a loan, citing two loan-related provisions that used the term "made" in conjunction with the intended borrower. *Weiser*, 159 F.4th at 718–719, *reh'g en banc granted*, *judgment vacated*, 171 F.4th 1203 (quoting 12 U.S.C. § 1757(5)(A)(x); 12 U.S.C. § 1828(o)(3)). But the cited language provides that the loans are "made *to*" borrowers. *See* 12 U.S.C. § 1757(5)(A)(x) ("no loan may be made to any member"); 12 U.S.C. § 1828(o)(3) ("the loan is made to ... commercial, residential, or industrial property"). This language reflects that the borrower is the *subject* of the active verb "make"—*i.e.*, the recipient of the loan—not the *maker* of the loan. As Judge Rossman's dissent emphasized, "[t]he majority does not identify any provision in Title XII where the word 'made' is used to describe a *borrower's* conduct in connection with the regulated activities." *See Weiser*, 159 F.4th at 734 (Rossman, J., dissenting) (emphasis added).

D. DIDMCA's history confirms its plain meaning.

DIDMCA's legislative context and history confirm Plaintiffs' reading of the text of Section 525.

In the 1970s, Congress enacted a series of interest-rate preemption statutes, from the Brock Bill to DIDMCA, to ensure that state banks could maintain parity with national banks in the face of record-high inflation and corresponding record-

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high interest rates. *See* Pub. L. No. 93-501, 88 Stat. 1557 (1974) (Brock Bill); Pub. L. No. 96-104, 93 Stat. 789 (1979) (Borrowers Relief Act). In these predecessor bills, Congress increased the maximum federal interest rate at which national banks could make certain business and agricultural loans in the affected states, and it then offered parity to state-chartered banks in those same states. To avoid constitutional questions about the extent of federal power to regulate state banks, each DIDMCA predecessor statute allowed the affected states to decline the offer of parity in favor of retaining control over their own banks' interest-rate caps—and each predecessor statute used the same language for these opt-out provisions.

These predecessor bills addressed localized credit crises, not interstate consumer lending. Congress temporarily raised interest-rate caps in a few states to help banks lending to farms and other businesses there, and the opt-out provisions in these statutes were correspondingly limited to banks operating in those states. The Borrowers Relief Act, for example, effectively authorized only banks in Arkansas to lend at increased rates. *See* Pub. L. No. 96-104 § 301. Its opt-out provision terminating access to those rates for "loans made in such State," *id.* § 107(2), therefore, could refer only to loans made by Arkansas banks. Congress could not have intended the phrase "loans made in such state" to refer to loans that were merely received in Arkansas (but made by banks operating elsewhere), because the Borrowers Relief Act covered no other states in the first place.

DIDMCA Section 521 made the offer of parity that began with the Brock Bill and Borrower's Relief Act permanent—using the same language—and extended it to

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encompass consumer loans in all 50 states. That offer was subject to each state's choice, through Section 525—also using the same language as the precursor laws—to reject preemption and prevent their own state banks from accessing those rates. The purpose of those opt-out provisions was not to broadly advance consumer protection goals—the earlier statutes did not even cover consumer loans—or to allow states to subvert congressional intent, but to address the specific constitutional concerns arising from preempting states' interest-rate restrictions on their own state banks. DIDMCA Section 525 had the same purpose. These statutes are necessarily focused on banks making loans, not on borrowers receiving those loans. The consistent use of "made" rather than "received" or "obtained" throughout these statutes aligns with the statutes' purpose.

E. Congress used the same phrasing in another interest-rate parity statute to refer to the state where a bank performs its loan-making functions.

Further evidence that Congress understood that it is a bank's actions that determine where a loan is "made" comes from the virtually identical phrasing as in Section 525—"loans made in any State"—in another interest-rate preemption statute, the Gramm-Leach-Bliley Act (GLBA), Pub. L. 106-102, 113 Stat. 1338 (1999). As the Eighth Circuit held, that language in the GLBA turns on the bank's location, not the borrower's. *See Jessup v. Pulaski Bank*, 327 F.3d 682, 684 (8th Cir. 2003).

The GLBA allowed Arkansas banks to make loans at the same interest rates as any out-of-state bank with a branch office in Arkansas. 12 U.S.C. § 1831u(f); *see Jessup*, 327 F.3d at684. The statute's scoping provision states that it does not "supersed[e] or affect[]" preemption under NBA Section 85 or DIDMCA or "the

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authority of any insured depository institution to take, receive, reserve, and charge interest on any *loan made in* any State other than" Arkansas. 12 U.S.C. § 1831u(f)(2) (emphasis added). In *Jessup*, the Eighth Circuit held that a loan is "'made' in" the state where the bank performs its loan-making functions and not "where the borrower resides." *Jessup*, 327 F.3d at 684–85 (quoting OCC Opinion Letter (Aug. 2001)).

Oregon's interpretation of the words "made in" in DIDMCA is inconsistent with the Eighth Circuit's interpretation of the same words for purposes of the GLBA, despite the reference to DIDMCA *in* the GLBA. This Court should not create that divergence, particularly where Oregon can offer no persuasive textual basis for giving the same phrase different meanings in neighboring federal banking statutes.

II. Oregon's Overbroad Interpretation Of DIDMCA's Opt-Out Provision Would Undermine The Dual Banking System Nationwide.

Congress enacted DIDMCA to preserve competitive parity between state-chartered and national banks within the Nation's longstanding dual banking system. Oregon's interpretation of Section 525 upends that balance by extending its opt-out regime beyond Oregon-chartered institutions, thereby intruding on other states' authority and reintroducing the competitive disparities DIDMCA was designed to eliminate.

For over 160 years, the United States has maintained a dual banking system, comprised of parallel federal and state banking systems. *Cantero v. Bank of Am., N.A.*, 602 U.S. 205, 209–10 (2024). National banks, which hold federal charters, submit primarily to federal oversight, *id.*, and are largely insulated from state regulations via preemption. *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 12 (2007)

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(permitting state regulation of national banks only "where doing so does not prevent or significantly interfere with the national bank's or the national bank regulator's exercise of its powers"). Conversely, the parallel system of state banks, which hold state charters, submit to additional state oversight and regulation. *Cantero*, 602 U.S. at 209–10.

These complementary and competing regulatory systems promote a healthy and dynamic banking industry in the United States. Proponents of state banking systems maintain that the diversity of standards across states empowers states to "serve as laboratories for innovation and change" in bank powers and structures and even consumer protection measures. *See* Office of the Comptroller of the Currency (OCC), *National Banks and The Dual Banking System*, at 10 (Sept. 2003), https://perma.cc/W7B8-MG9W.[4] On the other hand, the uniform national standards of the national banking system provide nationwide efficiencies and consistency. *Id.*

[4] As demonstrated by numerous amicus briefs filed in the *Weiser* litigation, state and federal regulators alike support maintaining a robust dual banking system and have recognized that DIDMCA promotes that system. *See, e.g.*, Brief of Federal Deposit Insurance Corporation as Amicus Curiae in Support of Appellees, *Weiser v. American Fintech Council,* No. 24-1293*,* 2026 WL 1603356, Doc. 197 at *2–6 (10th Cir. June 4, 2026) (arguing that DIDMCA "sought to keep the national lending market resilient and the dual banking system competitive" and "[a]llowing an opt-out to apply based solely on the borrower's location also would contravene the fundamental benefits Congress intended Section 521 to afford to state-chartered banks located in states that have not elected to opt out of that section's protections"); Amicus Brief of the States of Utah and 20 Other States in Support of Appellees, *Weiser v. American Fintech Council*, No. 24-1293, 2026 WL 1603358, Doc. 205 at *2–*11 (10th Cir. June 4, 2026) (arguing that "DIDMCA's enactment history within the dual-banking system does matter and confirms that 'loans made in such State' does NOT encompass the borrower's state"); and Brief of Amicus Curiae the Office of the Comptroller of the Currency in Support of Plaintiffs-Appellees, *Weiser v. American Fintech Council*, No. 24-1293, Doc. 203, 2026 WL 1603378 at *9–15 (10th Cir. June 4, 2026) (arguing that

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Despite ostensibly curtailing the individual authority of states to set their own interest rate caps, DIDMCA and its precursors were animated by a desire to preserve the integrity of this dual banking system. In the 1970s, when Congress was considering DIDMCA and its precursors, the dual banking system received "almost universal veneration." *See* Kenneth E. Scott, *The Dual Banking System: A Model of Competition in Regulation*, 30 Stan. L. Rev. 1 (1977) (hereinafter *Scott*); *see also* Brock Bill, Pub. L. No. 93-501; Borrowers Relief Act, Pub. L. No. 96-104. When faced with legislative proposals affecting the banking industry, congressmen and witnesses alike proclaimed their fidelity to the dual banking system. *Scott* at 1.

During this time, inflation pushed national interest rates beyond the usury caps of some states, such as Arkansas, driving a competitive wedge between state banks and their national counterparts. *Greenwood Tr. Co. v. Massachusetts,* 971 F.2d 818, 826 (1st Cir. 1992). Because state banks were constrained by the interest-rate cap of their charter states, it became increasingly infeasible for state banks to make loans. *Id.* National banks were better positioned to address this high inflation; under Section 85 of the National Bank Act, a bank may charge interest at the rate allowed by the state "where the bank is located" *or* 1% higher than the federal discount rate, "whichever [is] greater." 12 U.S.C. § 85. Legislators recognized that this choice gave "advantages to national banks over their State competitors," because the federal rate is routinely adjusted to exceed the inflation rate, whereas state banks were

rejecting Colorado's broad interpretation of Section 525 "ensures that state banks receive the full benefits of federal law, thereby enhancing parity between state banks and OCC-chartered banks and strengthening the dual banking system").

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historically limited by their state's caps. *See State Usury Ceilings: Hearings Before the Subcomm. on Fin. Insts. Supervision, Regulation & Ins. of the H. Comm. on Banking, Fin. & Urban Affs.,* 96th Cong. 150–51 (Apr. 3 & 5, 1979) (hereinafter *State Usury Ceilings*). To bill sponsors, the circumstances demanded congressional intervention. *Usury Lending Limits*, *Hearing on S. 1988 Before the Comm. On Banking, Hous., & Urb. Affs.,* 96th Cong., 1st Sess. (1979) (hereinafter *Usury Lending Limits Report*), https://perma.cc/Z9TP-ZT4P. (testimony of B. J. Lambert, Jr.) at 5 ("This legislation is badly needed … to preserve our dual system of State and national banks.").

DIDMCA sought to level the playing field by authorizing state-chartered banks to charge interest at any rate up to the higher of the rate permitted by the laws of the state in which they are located or the alternative federal rate—and to charge such rate to borrowers in any state, just as national banks had done for decades. *See Greenwood Tr.*, 971 F.2d at 827. Congress expressly enacted DIDMCA and its precursors "[i]n order to prevent discrimination against State-chartered insured banks … with respect to interest rates." DIDMCA § 521, 12 U.S.C. § 1831d(a); *see also* Brock Bill, Pub. L. No. 93-501 § 202 (identical except no reference to including "insured savings banks and insured mutual savings banks, or insured branches of foreign banks," in "State-chartered insured banks," as in DIDMCA § 521); *Problems Encountered Under State Usury Laws*, *Hearing on S. 3817 Before the Subcomm. on Fin. Insts. of the Comm. on Banking, Hous. & Urb. Affs.* 93rd Cong. 20 (July 31, 1974) at 20 (testimony of Grady Perry, Jr., Federal Home Loan Bank Board). Bill sponsors

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and legislators described DIDMCA and its precursors as having the overarching purpose of "equaliz[ing] competition between State and national banks," and "putting all financial institutions on equal footing," *Usury Lending Limits Report* at 19, 36 (statement of Sen. Pryor); *see also* S. 1988, 96th Cong. (1979); S. Rep. No. 96-640 (1980) (Conf. Rep.). Section 521 thus established interest rate parity between state and national banks and expressly preempted state laws to the contrary.

Out of concern that these laws might unconstitutionally override states' authority to regulate the banks that they charter, Congress included a mechanism by which states could opt out of DIDMCA. As the Arkansas State Banking Commissioner emphasized, "[e]ach State is given a chance to decide whether or not it desires to receive the benefits which this legislation will confer. The various State legislatures are given the ability to curtail the operations of this legislation with respect to their own particular States and situations." *Usury Lending Limits Report* at 5 (testimony of B. J. Lambert, Jr.). Sponsors of DIDMCA and its precursors included the opt-out provision to avoid uncertainty about the constitutionality of forcing states to allow their own chartered banks to make loans at a federal rate above their home state's limits. *See State Usury Ceilings* at 23 (testimony of Rep. Alexander) (noting that the opt-out provision "may be necessary in order to qualify for the constitutionality of a law of this type"), even though it was unlikely Arkansas would want to opt-out after requesting the law in the first place. *See also id.* (testimony of Rep. Hammerschmidt); *id.* at 23–24 (testimony of Rep. Bethune) (citing *Stephens Sec.*

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Bank v. Eppivic Corp., 411 F. Supp. 61, 62–63 (W.D. Ark. 1976), *aff'd mem.*, 553 F.2d 102 (8th Cir. 1977)).

However, permitting a state to opt-out with respect to loans based on the borrower's location in that state would contravene the fundamental benefits Congress intended Section 521 to afford to state-chartered banks located in states that have *not* elected to opt out of that section's protections. To resolve any tension between these aims, Section 525 limits a state's opt out to the state where the loan was "made." DIDMCA § 525, 94 Stat. at 167. In other words, a state can exercise its right to regulate its own chartered banks by opting those banks out of interest parity with national banks, but it could not overreach and opt out banks chartered by *other* states.

Oregon's overly broad interpretation of DIDMCA's opt-out provision contravenes these federalist principles. Not only does it opt Oregon-chartered banks out of interest rate parity with national banks, but it purports to exercise that opt-out right on behalf of banks chartered by other states. Section 1, subsection 3 of Oregon House Bill 4116 overreaches in two distinct ways. First, subsection 3 purports to apply to loans made by a non-Oregon chartered bank to a borrower located in Oregon. *See* Section 1, subsection 3(a). Second, subsection 3 purports to apply even if the borrower is located *outside of Oregon* so long as the borrower makes a payment on the loan by debiting an account at a financial institution or trust company in Oregon, or by using a negotiable instrument drawn on a financial institution or trust company in Oregon. *Id.* 3(b). That is, under Oregon's interpretation, a Section 525 opt-out would do more than simply restore the interest rate regime to the one that

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would apply in the absence of Section 521; it would effectively override other states' decisions *not* to opt-out of Section 521 for any banks that lend to Oregon borrowers.

Not only would Oregon's interpretation of Section 525 encroach on the authority of other states to regulate their own banks, but it would threaten those banks' ability to compete with national banks. Oregon's statute does not affect the rights of out-of-state national banks to apply the interest rate caps of their home states in loans made to Oregon residents. *See* 12 U.S.C. § 85 (allowing national banks to charge interest up to the higher rate between the state "where the bank is located" or "1 per centum in excess of the" national discount rate); *see also Marquette*, 439 U.S. at 308–310 (defining "where the bank is located" as "the State named in [the bank's] organization certificate"). Revoking interest rate parity would reimpose the precise competitive disadvantage for state banks that DIDMCA was enacted to remedy.

Applying Oregon's view of Section 525 would thus undermine the dual banking system. Oregon's overreach would put inordinate pressure on state-chartered banks that interact with Oregon residents to simply convert to national charters, chipping away at the regulatory diversity that the dual banking system promotes. State banks newly saddled with Oregon's interest rate cap are likely to seek regulatory consistency and the ability to effectively compete with their national counterparts. Federal law allows a state-chartered bank to convert to a national bank without encountering any major hurdles. *See* 12 U.S.C. § 35 (enabling banks with sufficient unimpaired capital to convert by a shareholder vote and approval by the Comptroller of Currency). Given the overbroad reach of Oregon's statutory amendment, this

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pressure would fall not only on Oregon-chartered banks, but banks chartered by other states—and, given Oregon's efforts to apply its interest laws even to people who are not in Oregon, even to those state-chartered banks operating exclusively in other states. Once a bank is federally chartered, it is no longer subject to state regulation, 12 U.S.C. § 484, and is shielded from state law that "prevent[s] or significantly interfere[s] with the … exercise of its powers," *see Watters, N.A.*, 550 U.S. at 12. Significant numbers of state banks converting to national banks would effectively revoke other states' regulatory authority over those banks, and diminish the dual banking system's vitality. If anything, Congress enacted DIDMCA to foreclose this result. *See* 125 Cong. Rec. 30655 (Nov. 1, 1979) ("We have 210 State banks in my State, and every one of them is going to be applying for a federal charter if something is not done. I personally think the dual [banking] system is a good thing, but we in Arkansas cannot keep it unless we get some relief on this thing.").

Section 525 permits a state to regulate the interest rates charged by the institutions it charters or that conduct core lending functions from inside its borders, but it does not authorize a state to impose its policy choices on banks chartered and operating elsewhere. Oregon's contrary interpretation threatens competitive parity, undermines state sovereignty within the dual banking system, and would incentivize further consolidation into the national banking system at the expense of the state banking framework Congress sought to preserve.

III. Oregon's Statutory Amendment Would Not Benefit Consumers.

The state of Oregon has praised House Bill 4116 for expanding the reach of Oregon's 36% interest rate cap, explaining that its DIDMCA opt-out "is intended to

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protect Oregonians from predatory lending practices." Or. Dep't of Consumer & Bus. Servs., Div. of Fin. Regul., *New Law Protects Consumers from Predatory High-Interest Loans* (June 4, 2026) (hereinafter DCBS Press Release), https://perma.cc/T8CL-S8WY. But DIDMCA's opt-out provision was not intended to protect consumers. Beyond that, even if one accepts that high interest rates harm consumers (rather than making credit available to consumers who, because of their credit risk profile, would otherwise not be able to get credit except from pawn shops, loan sharks, and the like), Oregon's DIDMCA opt-out will not "protect" consumers from higher-cost credit.

As an initial matter, DIDMCA Section 525 focused on preserving states' ability to regulate their own state-chartered institutions, not protecting consumers from "predatory" loans. Indeed, as discussed above, similar opt-out language was initially used in the precursor statutes in connection with business and agricultural—not consumer—loans. *See* Pub. L. No. 93-501 §§ 202; 206. As Judge Rossman made clear in her dissent in *Weiser*, "based on the stated statutory purpose, the provisions at issue are about regulating banks, not protecting borrowers." *Weiser*, 159 F.4th at 731 (Rossman, J., dissenting); *id.* at 733 ("parity, not consumer protection, is the focus of these statutes") (Rossman, J., dissenting).

Regardless, Oregon's overly broad interpretation of the opt-out would not prevent national banks from lending to Oregon consumers at interest rates exceeding the cap. Oregon relies on evidence of more than 31,000 loans totaling at least $61 million with interest rates that exceed Oregon's cap, which it attributes to state banks

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relying on DIDMCA interest rate parity. *See* DCBS Press Release. Under the expansion, Oregon assumes that "lenders can no longer take advantage of DIDMCA interest rate exportation to evade Oregon's interest rate caps." *Id.* But a DIDMCA opt-out cannot and would not eliminate this perceived loophole; national banks could still lend to Oregon consumers at rates exceeding the cap. *See* 12 U.S.C. § 85; *Marquette*, 439 U.S. at 313–14. The district court in *Weiser* recognized in its order preliminarily enjoining Colorado's overbroad opt-out that "consumers will have only marginally more protection from higher interest rates." *Weiser*, 737 F. Supp. 3d at 1134. This is because Colorado's DIDMCA opt out "will not be able to prevent national banks from making loans to Coloradans at above" Colorado's rate caps. *Id.* The same reasoning applies here.

Evidence suggests that interest rate caps harm the very people they are intended to help. Lenders charge higher interest rates to consumers with higher risk profiles to account for the risk of default. *See* Nam D. Pham, Ph.D. and Mary Donovan, *The Economic Benefits of Risk-Based Pricing for Historically Underserved Consumers in the United States*, at 3-4, 7, U.S. Chamber of Commerce Ctr. for Cap. Mkts. Competitiveness, (April 12, 2021) (hereinafter *The Economic Benefits*), https://perma.cc/5EUG-DPZC. Restricting the interest rates that can be applied to these high-risk borrowers does not simply protect these borrowers from undesirable interest rates. *Id.* Rather, eliminating this option drives lenders to determine that offering these types of loans would not be economical at all. *Id.* The result is a stark reduction in access to credit for higher-risk consumers. Studies of states that applied

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a 36% interest rate cap on certain consumer loans have shown that "credit to the riskiest borrowers contracts sharply." Rajashri Chakrabarti et al., *Less for You, More for Me: Credit Reallocation and Rationing Under Usury Limits*, Fed. Rsrv. Bank of N.Y. Staff Reps. No. 1173 at 3 (Dec. 2025), https://perma.cc/8944-DJSH; *see also* J. Brandon Bolen et al., *Credit for me but not for thee: The effects of the Illinois rate cap*, 197 Public Choice, 397, 398 (July 21, 2023), https://perma.cc/ST7A-VPMQ (finding that instituting a 36% interest rate cap in Illinois "decreased the number of loans to subprime borrowers in Illinois by 38 percent"). At the same time, "delinquencies among those borrowers do not improve." *Id.* DIDMCA's bill sponsors recognized the "overwhelming[]" evidence that state usury laws "[f]ail to accomplish their desired objectives" for this very reason: "low-income consumers are denied access to conventional credit when market rates exceed usury ceilings." *See Usury Lending Limits Report* at 20.

As a result, the impact of a DIDMCA opt-out on a state's overall lending environment can be stark. Shortly after DIDMCA was passed, seven states and Puerto Rico opted out of DIDMCA Section 521–523. *See, e.g.*, 1981 Colo. Sess. Laws, ch. 73, § 1; Iowa Laws of the 68th G.A. 1980 Session 68.2 Ch. 1156. (April 30, 1980). In the 1980s and 1990s, six of the seven states reversed their opt-outs. *See, e.g.*, 1994 Colo. Sess. Laws, ch. 272, § 12; Comm. Hearing on 1988 Neb. Laws, LB 913. Iowa was the only state not to eventually opt back in.

State banks may also adopt annual fees to mitigate losses from lending to riskier borrowers at below-market rates. The plaintiff in *Marquette* "claimed to be

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losing customers to Omaha Bank because, unlike the Nebraska bank, Marquette was forced by the low rate of interest permissible under Minnesota law to charge a $10 annual fee for the use of its credit cards." *Marquette*, 439 U.S. at 304. Applying across-the-board fees in place of a regimen of risk-based interest rates harms consumers. In a risk-based pricing system, where lenders have the option to adjust interest rates, consumers as a whole ultimately pay less. *The Economic Benefits*, at 20.

In practice, Oregon's amendment would neither eliminate higher-rate lending nor improve outcomes for consumers. It would instead restrict credit availability, reduce competition, and encourage less efficient pricing mechanisms that increase costs for Oregon borrowers—especially those with the fewest alternatives.

CONCLUSION

The Court should grant Plaintiffs' motion for a preliminary injunction.

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DATED this 28th day of July, 2026

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