No. 21-15667

In the

United States Court of Appeals for the Ninth Circuit

WILLIAM KIVETT, BERNARD BRAVO, and LISA BRAVO
Plaintiffs–Appellees,

v.

FLAGSTAR BANK, FSB,
Defendant–Appellant.

On Appeal from the United States District Court
for the Northern District of California
No. 3:18-CV-05131
Hon. William H. Alsup, Judge

BRIEF OF THE BANK POLICY INSTITUTE, AMERICAN BANKERS ASSOCIATION, THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CONSUMER BANKERS ASSOCIATION, AND MORTGAGE BANKERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT'S PETITION FOR PANEL REHEARING OR REHEARING *EN BANC*

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the Bank Policy Institute ("BPI"), American Bankers Association ("ABA"), the Chamber of Commerce of the United States of America ("Chamber"), the Consumer Bankers Association ("CBA"), and the Mortgage Bankers Association ("MBA"; collectively, "*Amici*") state that they are not subsidiaries of any other corporation. *Amici* are nonprofit trade groups and have no shares or securities that are publicly traded.

TABLE OF CONTENTS

Page

STATEMENT OF INTEREST **1**

INTRODUCTION **3**

ARGUMENT **7**

I. REHEARING IS WARRANTED SO THE PARTIES CAN SUBMIT FULL BRIEFING ON THIS EXCEPTIONALLY IMPORTANT ISSUE **7**

II. REHEARING IS WARRANTED TO CORRECT THE PANEL'S HOLDING THAT CALIFORNIA'S PRICE CONTROL DOES NOT "SIGNIFICANTLY INTERFERE" WITH NATIONAL BANK POWERS **9**

A. The Panel's Decision Is Inconsistent With *Cantero* 9

B. The Panel's Decision Is Based On The Now-Rejected View That The TILA Amendment Overrode NBA Preemption For Escrow Accounts 20

CONCLUSION **21**

APPENDIX A **22**

TABLE OF AUTHORITIES

Page(s)

Cases

Bank of Am. v. *City & Cty. of S.F.*,
309 F.3d 551 (9th Cir. 2002) 22

Baptista v. *JPMorgan Chase Bank, N.A.*,
640 F.3d 1194 (11th Cir. 2011) 22

Barnett Bank of Marion Cnty., N.A. v. *Nelson*,
517 U.S. 25 (1996) ..... *passim*

California v. *U.S. Dep't of Health & Hum. Serv.*,
No. 19-15072 (9th Cir. Aug. 13, 2020) 8

Cantero v. *Bank of America, N.A.*,
602 U.S. 205 (2024) ..... *passim*

Cassirer v. *Thyssen-Bornemisza Collection Found.*,
No. 19-55616 (9th Cir. May 23, 2022) 8

Conti v. *Citizens Bank, N.A.*,
No. 22-01770 (1st Cir. June 20, 2024) 8

Deming v. *Merrill Lynch & Co.*,
528 F. App'x 775 (9th Cir. 2013) 22

Flagstar Bank, N.A. v. *Kivett*,
144 S. Ct. 2628 (2024) 4

Franklin Nat'l Bank of Franklin Square v. *New York*,
347 U.S. 373 (1954) ..... *passim*

hiQ Labs, Inc. v. *LinkedIn Corp.*,
No. 17-16783 (9th Cir. June 16, 2021) 8

Kivett v. *Flagstar Bank, FSB*,
2022 WL 1553266 (9th Cir. May 17, 2022) 3, 4, 8, 10

Kivett v. *Flagstar Bank, FSB*,
2024 WL 3901188 (9th Cir. Aug. 22, 2024) 4, 18

Loper Bright Enterp. v. *Raimondo*,
144 S. Ct. 2244 (2024) 19, 20

Lusnak v. *Bank of America, N.A.*,
883 F.3d 1185 (9th Cir. 2018) ..... *passim*

Martinez v. *Wells Fargo Home Mortg., Inc.*,
598 F.3d 549 (9th Cir. 2010) 22

Metrobank v. *Foster*,
193 F. Supp. 2d 1156 (S.D. Iowa 2002) 22

Monroe Retail, Inc. v. *RBS Citizens, N.A.*,
589 F.3d 274 (6th Cir. 2009) 11, 22

Montgomery v. *Bank of Am. Corp.*,
515 F. Supp. 2d 1106 (C.D. Cal. 2007) 22

NNDJ, Inc. v. *Nat'l City Bank*,
540 F. Supp. 2d 851 (E.D. Mich. 2008) 22

Pereira v. *Regions Bank*,
918 F. Supp. 2d 1275 (M.D. Fla. 2013), *aff'd*, 752 F.3d
1354 (11th Cir. 2014) 22

Powell v. *Huntington Nat'l Bank*,
226 F. Supp. 3d 625 (S.D. W. Va. 2016) 22

Rizo v. *Yovino*,
No. 16-15372 (9th Cir. Aug. 9, 2019) 8

Skidmore v. *Swift & Co.*,
323 U.S. 134 (1944) 19

SPGGC, LLC v. *Ayotte*,
488 F.3d 525 (1st Cir. 2007) 22

Watters v. *Wachovia Bank, N.A.*,
550 U.S. 1 (2007) 15

Wyeth v. *Levine*,
555 U.S. 555 (2009) 11

Statutes

12 U.S.C. § 25b 18

12 U.S.C. § 24 ..... 9, 13, 15

12 U.S.C. § 371(a) 9, 13

15 U.S.C. § 1693d 7, 20, 21

California Civil Code § 2954.8(a) ..... *passim*

National Bank Act of 1864, Act of June 3, 1864,
§ 8, 13 Stat. 99, 101 (1864) ..... *passim*

Regulatory and Congressional Authorities

12 C.F.R. § 34.4(a) 6

12 C.F.R. § 34.6 7

OCC, *Bank Activities and Operations; Real Estate Lending and Appraisals*, 69 Fed. Reg. 1904 (Jan. 13, 2004) 17, 18

OCC, *Interpretive Ruling Concerning National Bank Service Charges*, 48 Fed. Reg. 54,319 (Dec. 2, 1983) 14, 15

OCC, *Office of Thrift Supervision Integration; Dodd-Frank Act Implementation*, 76 Fed. Reg. 43,557 (July 21, 2011) 15, 19

Other Authorities

Federal Reserve System, Federal Funds Effective Rate 17

FHFA & CFPB, *A Profile of 2016 Mortgage Borrowers: Statistics from the National Survey of Mortgage Originations* 1 (2018) 14

OCC, *Comptroller's Handbook, Mortgage Banking* (2014) 16

Statement of Comptroller of the Currency John D. Hawke, Jr. Regarding the Issuance of Regulations Concerning Preemption and Visitorial Powers (2004) 18

U.S. General Accounting Office, *Study of the Feasibility of Escrow Accounts on Residential Mortgages Becoming Interest Bearing* 5 (1973) 14

STATEMENT OF INTEREST

Amici respectfully submit this brief in support of Defendant-Appellant's petition for rehearing or rehearing *en banc*.[1]

BPI. BPI is a nonpartisan public policy, research, and advocacy group, that represents universal banks, regional banks, and the major foreign banks doing business in the United States. BPI produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

ABA. Established in 1875, the ABA is the united voice of America's $23.4 trillion banking industry, comprised of small, regional, and large national and State banks that safeguard nearly $18.6 trillion in deposits, and extend more than $12.3 trillion in loans.

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[1] The parties have consented to the filing of this *amici curiae* brief. *See* Fed. R. App. P. 29(a)(2). The undersigned counsel certify that no party's counsel authored this brief in whole or in part, and no party or party's counsel, or any other person, other than the *Amici*, their members, or their counsel, contributed money that was intended to fund preparing or submitting this brief. *See* Fed. R. App. P. 29(a)(4)(E).

Chamber. The Chamber is the world's largest business federation. It represents approximately 300,000 members and indirectly represents the interests of more than three million businesses and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts.

CBA. The CBA is the trade association for banking services geared toward consumers and small businesses. Its members include the nation's largest financial institutions, as well as many regional banks, which operate in all 50 States and collectively hold two-thirds of the country's total deposits.

MBA. The MBA is the national association representing the real estate finance industry, an industry that employs more than 300,000 people in virtually every community in the country. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field.

Amici regularly file *amicus curiae* briefs in cases, like this one, that concern questions critical to the U.S. banking system. Questions of preemption under the National Bank Act of 1864 are of particular interest to *Amici*'s members. By upholding a State-imposed price control, the Panel has undermined national banks' lending function, introducing significant cost and uncertainty into the marketplace.

INTRODUCTION

Flagstar Bank's rehearing petition concerns an issue that is critical to the U.S. banking system. In *Kivett* v. *Flagstar Bank, FSB*, 2022 WL 1553266 (9th Cir. May 17, 2022) ("*Kivett I*"), the Panel, relying on this Court's earlier opinion in *Lusnak* v. *Bank of America, N.A.*, 883 F.3d 1185 (9th Cir. 2018), held that the National Bank Act of 1864 ("NBA") does not preempt "non-punitive" State price controls on national banks' products and services. Applying that standard, the Panel held that California Civil Code § 2954.8(a), which requires lenders to pay a minimum 2% interest annually on mortgage escrow accounts, is not preempted.

The U.S. Supreme Court vacated and remanded *Kivett I* to this Court to reconsider its analysis in light of *Cantero* v. *Bank of*

America, N.A., 602 U.S. 205 (2024), where the Supreme Court directed courts to conduct a "nuanced comparative analysis" comparing the State law at issue to those scrutinized in the Court's prior preemption decisions. *See Flagstar Bank, N.A.* v. *Kivett*, 144 S. Ct. 2628 (2024).

Rather than follow the Supreme Court's instruction, the Panel—without any post-remand briefing—quickly issued an unpublished opinion addressing *Cantero*, by saying only that "the Supreme Court's decision in *Cantero* suggests that *Lusnak* was correctly decided," *Kivett* v. *Flagstar Bank, FSB*, 2024 WL 3901188, at *2 (9th Cir. Aug. 22, 2024) ("*Kivett II*"), although *Lusnak* is nowhere referenced in *Cantero*. More broadly, there is no suggestion in the Supreme Court's opinion that it agreed with *Kivett I*. But the Panel nonetheless held, without analysis, "[w]e properly applied the test for preemption from *Barnett Bank of Marion Cnty., N.A.* v. *Nelson*, 517 U.S. 25 (1996), in concluding that no legal authority established that [interest-on-escrow] laws significantly interfered with national bank powers, and that the text of Dodd–Frank also reflected Congress's view that such laws do not." *Id.*

The post-*Cantero* contours of NBA preemption are extremely important to the banking and financial system and deserve more analysis

than two lines in an unpublished opinion. The Court should rehear the matter with full briefing. If it does, the Court will find that the California price control is preempted as to national banks for multiple reasons.

First, rather than examining whether Section 2954.8(a) "prevents or significantly interferes" with a national bank power, the Panel simply extended *Lusnak*'s holding to this case. But in *Lusnak*, the Court held that State laws mandating interest on mortgage escrow accounts can only be preempted if the law "set[s] punitively high rates." 883 F.3d at 1195 n.7. This "punitive" standard is not only unsupported by the Supreme Court decisions identified in *Cantero* for guidance, but it plainly contradicts those decisions.

Second, the Panel completely disregarded the Supreme Court's instruction to conduct the "nuanced comparative analysis" required for NBA preemption, which considers "the text and structure of the laws, comparison to other precedents, and common sense." 602 U.S. at 220 & n.3. Had the Panel addressed the Court's admonition, it would have reached the inescapable conclusion that Section 2954.8(a) is preempted. As certain Justices made clear at oral argument, interfering with a bank's ability to set its own prices is self-evidently much more

significant than the interference that led to preemption decisions in past Supreme Court cases. *See infra* at Part II.A. Here, if national banks are forced to pay State-mandated interest rates on mortgage escrow accounts, the banks would need to balance the requirement by passing on the increased costs to borrowers, or originating fewer loans altogether.

Third, by simply re-endorsing *Lusnak*, the Panel ignored the Supreme Court's direction that "common sense"—instead of a fact-intensive inquiry—guides the analysis over whether a State law constitutes "significant interference." 602 U.S. at 220 n.3. The Court rejected a comparable argument made by the *Cantero* petitioners for a bank-specific factual inquiry into the practical effects of the State law at issue, holding that such an approach "would preempt virtually no non-discriminatory state laws that apply to both state and national banks." 602 U.S. at 221. Left untouched, the Panel's decision would have this exact effect.

Fourth, the Panel failed to grant appropriate weight to the Office of the Comptroller of the Currency ("OCC")'s regulations, which provide that State laws concerning national banks' management of escrow accounts are preempted by the NBA. *See* 12 C.F.R. §§ 34.4(a),

34.6. The Panel's decision to ignore the OCC's regulations will lead to a fragmented and unworkable regulatory landscape.

Finally, by extending the holding of *Lusnak* to this appeal, the Panel endorsed the now-rejected rationale that Section 1639d of the Dodd-Frank Act, which amended the Truth in Lending Act ("TILA"), evidences "Congress's view that creditors, including large corporate banks like Bank of America, can comply with state escrow interest laws without any significant interference with their banking powers." 883 F.3d at 1196. But the Supreme Court in *Cantero* confirmed that the TILA amendment does not alter the preemption analysis where, as here, TILA does not apply to the mortgages at issue. 602 U.S. at 211 n.1.

ARGUMENT

I. REHEARING IS WARRANTED SO THE PARTIES CAN SUBMIT FULL BRIEFING ON THIS EXCEPTIONALLY IMPORTANT ISSUE.

In an unfortunate departure from normal practice, the Panel's issuance of an opinion without supplemental briefing on remand raises significant concerns that, on their own, warrant rehearing.

Following the Supreme Court's vacatur and remand in *Cantero*, the Second Circuit rightfully requested supplemental briefing

from all parties to understand and apply appropriately the Court's fresh guidance on conducting the required "nuanced comparative analysis." *Cantero*, 602 U.S. at 220. The First Circuit, too, has ordered additional briefing in *Conti* v. *Citizens Bank, N.A.*, No. 22-01770 (1st Cir. June 20, 2024)—an appeal concerning a comparable Rhode Island law, held in abeyance pending the Court's *certiorari* rulings in *Cantero* and *Kivett I*. This approach accords with this Court's own routine practice, which allows the Court to consider fully and fairly the impact of a novel Supreme Court decision and other legal developments affecting a case. *See, e.g.*, *Cassirer* v. *Thyssen-Bornemisza Collection Found.*, No. 19-55616, Dkt. 79 (9th Cir. May 23, 2022); *hiQ Labs, Inc.* v. *LinkedIn Corp.*, No. 17-16783, Dkt. 97 (9th Cir. June 16, 2021); *California* v. *U.S. Dep't of Health & Hum. Serv.*, No. 19-15072, Dkt. 193 (9th Cir. Aug. 13, 2020); *Rizo* v. *Yovino*, No. 16-15372, Dkt. 101 (9th Cir. Aug. 9, 2019).

Following this practice here is important given this case's implications for national banks. The Panel's decision would provide an invitation for States to impose pricing limitations, prohibitions, or requirements on national banks' products or services, upending long-standing precedent that has shielded national banking operations from

such individual State-level mandates. *See, e.g.*, Appendix A (listing federal cases holding that the NBA preempts State-imposed rates and terms on national banks' products and services).

In light of this decision's serious implications, *Amici* urge this Court to rehear this remanded case with the benefit of full briefing.

II. REHEARING IS WARRANTED TO CORRECT THE PANEL'S HOLDING THAT CALIFORNIA'S PRICE CONTROL DOES NOT "SIGNIFICANTLY INTERFERE" WITH NATIONAL BANK POWERS.

By holding that Section 2954.8(a) does not significantly interfere with national banks' powers, the Panel ignored *Cantero*, the practical necessity for national banks to price their own products, and the OCC's regulations.

A. The Panel's Decision Is Inconsistent With *Cantero*.

The NBA grants national banks the power "to administer home mortgage loans" and "all such incidental powers as shall be necessary to carry on the business of banking." *Cantero*, 602 U.S. at 210 (citing 12 U.S.C. §§ 24, 371(a)). State laws are preempted if they "prevent or significantly interfere" with these powers, a standard informed by the Supreme Court's prior jurisprudence. *Id.* at 220. To apply properly this standard, courts must undertake a "practical assessment of the nature

and degree of the interference caused by a state law," which entails a close examination of the "text and structure of the laws, comparison to other precedents, and common sense." *Id.* at 219-20 & n.3. Unfortunately, the Panel did not follow the proper preemption standard or mode of analysis.

First, the Panel disregarded the seven prior Supreme Court decisions that the Court cited in *Cantero* as the relevant precedent. Had the Panel reviewed those decisions, it would have found that not a single Supreme Court case—whether holding for or against preemption—has cited "punitively high" as the relevant standard, unlike in *Lusnak*. *See* 883 F.3d at 1195 n.7. This is because a State law could "significantly interfere" with national banks' powers without reaching the level of being "punitive," *i.e.*, designed to punish. *See, e.g.*, *Franklin Nat'l Bank of Franklin Square* v. *New York*, 347 U.S. 373, 374 (1954) (noting "[t]he Legislature was concerned" about public confusion between national banks and mutual savings banks). Indeed, we are unaware of any Supreme Court or lower court decision, other than *Lusnak* and *Kivett*, holding that a State law was not preempted because it was not punitive. Unsurprisingly then, the Supreme Court vacated and remanded *Kivett I*,

which endorsed this erroneous standard. The standard thus remains "significant interfere[nce]," which is "not [a] very high" standard. *See Monroe Retail, Inc.* v. *RBS Citizens, N.A.*, 589 F.3d 274, 283 (6th Cir. 2009).

Second, even if the Panel applied the proper standard, it failed to conduct the mandated "nuanced comparative analysis." *Cantero*, 602 U.S. at 220. The Supreme Court's direction was clear: "[i]f the state law's interference with national bank powers is more akin to the interference" in cases where preemption was found, "then the state law is preempted." *Id.* at 220. When properly undertaken, this analysis leads to an obvious conclusion: Section 2954.8(a) is preempted.

The key case here is *Franklin*, which the Court called "[t]he paradigmatic example of significant interference." *Cantero*, 602 U.S. at 216.[2] At issue there was a New York law that prohibited banks "from using the word 'saving' or 'savings' in their advertising or business." *Franklin*, 347 U.S. at 374. The Court reasoned that national banks had

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[2] Notably, *Lusnak* did not mention *Franklin* or the other cases cited in *Cantero*, and instead relied on a non-NBA preemption case, *Wyeth* v. *Levine*, 555 U.S. 555 (2009). *See* 883 F.3d at 1191-93.

the power to accept savings deposits, and all powers incidental to that power, and that the State law would impede national banks' exercise of those powers. *Id.* at 376, 378. As explained in *Cantero*, the Court reached this conclusion even though "the New York law did not bar national banks from receiving savings deposits, or even from advertising that fact," and merely prevented it from using a single word to describe their activities. 602 U.S. at 216 (citation omitted).

A State law limiting advertising is dramatically *less* impactful than a State law regulating a national bank's pricing of its products. Indeed, at the *Cantero* oral argument, Justice Kavanaugh—who wrote the Court's unanimous opinion—said that "the pricing of the product almost by definition interfere[s] more with the operations of a bank than something that affects advertising." *Cantero* Tr. at 13. He continued rhetorically, "tell someone you have to pay out large sums of money collectively, rather than how you describe your product in your advertising, isn't one more significant interference than the other[?]" *Id.* at 36-37. Likewise, after Bank of America's counsel argued that "[w]hat interest you charge is so fundamental to a banking product and the banking power that it would seem absurd to say a state could dictate

the interest rate on something like a savings account just because that's an incidental power," Justice Thomas replied, "I agree with you on that." *Id.* at 85. *See also* Appendix A (listing preempted State-imposed pricing mandates).

The Justices' observations are borne out by national banks' experiences. To begin, Congress "expressly supplies national banks with the power to 'make, arrange, purchase or sell loans or extensions of credit secured by liens on interest in real estate'—in other words, to administer home mortgage loans"—and "all incidental powers as shall be necessary to carry on the business of banking." *Cantero*, 602 U.S. at 210 (citing 12 U.S.C. §§ 24, 371(a)). The inability of national banks to set their own pricing strikes at the core of that power,[3] as it fundamentally changes national banks' ability to manage their mortgage business and its risks. Mortgage escrow accounts help ensure a homeowner's payment of taxes

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[3] California's attempt to dictate a national bank's ability to price its own products is further compounded by the fact that it comes in the area of real estate lending, which is a national bank power that Congress has specifically indicated should be shielded from State laws by stating that such powers are subject only to OCC regulation. *See* 12 U.S.C. § 371(a) (national banks' real estate lending power are subject only to "such restrictions and requirements as the [OCC] may prescribe by regulation or order").

and insurance, and thus allow lenders to mitigate risks associated with tax and liens on the mortgaged property and potential property damage or loss. *See* U.S. General Accounting Office, *Study of the Feasibility of Escrow Accounts on Residential Mortgages Becoming Interest Bearing* 5, 6 (1973). The widespread adoption of these accounts in the U.S. residential mortgage market is a testament to their value, with the vast majority of new loan originations now including escrow accounts. *See, e.g.*, FHFA & CFPB, *A Profile of 2016 Mortgage Borrowers: Statistics from the National Survey of Mortgage Originations* 1, 27, 30 (2018) (79% of mortgage originations in 2016 "included an escrow account for taxes or homeowner insurance"). But if the use of these accounts is made more costly by subjecting national banks to State-imposed pricing, national banks will be required to offset these costs by charging higher interest rates on mortgage loans or requiring borrowers to make higher down payments, or deciding not to offer loans to certain borrowers with risky credit profiles.

As the OCC has explained, "the safety and soundness of banks depends in significant part on their ability to devise" means "appropriate for their needs." OCC, *Interpretive Ruling Concerning National Bank*

Service Charges, 48 Fed. Reg. 54,319 (Dec. 2, 1983). These means include mechanisms like escrow accounts that reduce a bank's financial risk. Put simply, allowing States to force national banks to pay mandated interest rates on mortgage escrow accounts necessarily interferes with the flexibility national banks need to "manage credit risk exposures," OCC, *Office of Thrift Supervision Integration; Dodd-Frank Act Implementation*, 76 Fed. Reg. 43,557 (July 21, 2011), which, in turn, significantly interferes with the national banks' ability "to carry on the business of banking." *See Watters* v. *Wachovia Bank, N.A.*, 550 U.S. 1, 11 (2007) (quoting 12 U.S.C. § 24); *see also id.* at 13 (noting it is "[b]eyond genuine dispute" that States may not burden the exercise of national banks' lending power or "curtail or hinder a national bank's efficient exercise of any other power, incidental or enumerated").

As the Supreme Court made clear in *Cantero*, the question is not whether banks—federal or State-chartered—*can* comply with the State law. As the Court there explained, "*Barnett Bank* made clear that a non-discriminatory state banking law can be preempted even if it is possible for the national bank to comply with both federal and state law[.]" *Cantero*, 602 U.S. at 214. And, in *Franklin*, the paradigmatic

example of significant interference, the Court did not consider whether national banks could have complied with the State law limiting the use of the term "savings" in their advertisements while still operating savings accounts. 347 U.S. at 378.[4]

Third, a court would need to undertake a fact-intensive inquiry to determine whether a State-imposed price control is "punitive" as required under the Panel's decision and *Lusnak*. But the Supreme Court squarely rejected that approach in *Cantero*, opting instead for a practical approach guided by precedent and common sense. 602 U.S. at 219 & 220 n.3.

This makes sense. Under the Panel's approach, whether a given rate substantially interferes with bank powers would vary based on prevailing interest rates, a particular State's market conditions, and a specific bank's line of business and financial condition. An interest rate of 2% might not "significantly interfere" with a particular bank in 2024

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[4] Furthermore, preemption of State price controls does not render national banks unregulated, contrary to claims that the *Cantero* litigants advanced. *See, e.g.*, OCC, *Comptroller's Handbook, Mortgage Banking* (Feb. 2014), https://tinyurl.com/5ytdc2e9 (outlining federal guidance for national banks' escrow account activities, which State banks need not abide by).

(when federal funds rates are around 5%), but it is well above the roughly 1.5% average federal funds effective rate over the last decade and the 1.5% effective rate when *Lusnak* was rendered. *See, e.g.*, Board of Governors of the Federal Reserve System, Federal Funds Effective Rate, https://fred.stlouisfed.org/series/FEDFUNDS#0 (last accessed Sept. 20, 2024). If there is a low-interest-rate environment next year, or in five years, will the Court revisit its determination to assess whether there is an unacceptable level of interference? Moreover, because there is no statutory standard for courts to apply in deciding whether the specific rate is unacceptably high, the issue would be inherently subjective from judge to judge. This cannot be what Congress intended in codifying the *Barnett* standard or what the Supreme Court meant when it directed courts to use "common sense" in preemption determinations.

Fourth, the Panel failed to grant appropriate weight to the OCC, the authority created by Congress to regulate national banks. Recognizing that mortgage escrow accounts play a critical role in relation to the power to administer mortgage loans, the OCC has determined that the NBA protects national banks' power to use escrow accounts "without regard to state law limitations concerning [such accounts]." OCC, *Bank*

Activities and Operations; Real Estate Lending and Appraisals, 69 Fed. Reg. 1904, 1916 (Jan. 13, 2004).[5] Rather than consider the OCC regulations, however, the Panel simply stated that "as the *Lusnak* court reasoned, '[t]hese [regulations] have no bearing here where the preemption determination is made by this court and not the OCC.'" *Kivett II*, 2024 WL 3901188 at *2 (citing *Lusnak*, 883 F.3d at 1194).

This was clear error. As part of an overall compromise concerning changes to the national bank system, Congress not only codified the *Barnett* standard in Dodd-Frank, but it also declined to overrule the OCC's prior preemption determinations. As Senators Carper and Warner, the authors of Dodd-Frank's preemption provision, wrote in 2011, "[c]onsistent with [the] desire to provide legal certainty to all parties, [Section 25b] is not intended to retroactively repeal the OCC's

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[5] The then-Comptroller of the Currency explained that the OCC's regulation captures State laws that "impos[e] conditions on lending and deposit relationships" because such laws lead to "higher costs and operational burdens that the banks either must shoulder, or pass on to consumers," and thus "create impediments to the ability of national banks to exercise powers that are granted under federal law." OCC, Statement of Comptroller of the Currency John D. Hawke, Jr. Regarding the Issuance of Regulations Concerning Preemption and Visitorial Powers (Jan. 7, 2004), https://www.occ.gov/news-issuances/news-releases/2004/nr-occ-2004-3a.pdf.

2004 preemption rulemaking." *See Cantero* Resp. App. 32a (Carper & Warner OCC Letter). Congress thus chose stability and predictability as to national banks.

In line with Senators Carper's and Warner's comments, in a 2011 rulemaking process that implemented amendments to the OCC's regulations pursuant to Dodd-Frank, the OCC reaffirmed that "state laws that would alter standards of a national bank's depository business—setting standards for permissible types and terms of accounts and for funds availability" significantly interferes "with management of a core banking business." *See* 76 Fed. Reg. at 43,557. And the OCC confirmed this determination following the *Barnett* standard. *Id.*

As the Supreme Court observed in *Cantero*, the specific weight to be given to the OCC's preemption rules remains a live issue. 602 U.S. at 221 n.4. Accordingly, even if the Panel correctly declined to apply *Chevron*-like deference to the OCC, rehearing should be granted to determine whether the Panel should have afforded *Skidmore* deference to the OCC's consistent and reasoned opinion. *See Loper Bright Enterp.* v. *Raimondo*, 144 S. Ct. 2244, 2259 (2024) (citing *Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944)) (noting that agencies' opinions and

interpretations can offer guidance to courts, "even on legal questions," especially where the agency's opinion is thorough, reasoned, and consistent).

In light of these significant errors, this Court should grant rehearing to ensure that States are not granted the ability to set pricing on national banks' products or services.

B. The Panel's Decision Is Based On The Now-Rejected View That The TILA Amendment Overrode NBA Preemption For Escrow Accounts.

By relying exclusively on *Lusnak* in concluding that California's interest-on-escrow law is not preempted, the Panel committed another error. *Lusnak* relied on TILA's Section 1639d in reaching its preemption decision, which requires the payment of interest on certain mortgage escrow accounts "[i]f prescribed by applicable State or Federal law[.]" 15 U.S.C. § 1693d(g)(3). According to *Lusnak*, Section 1693 expressed congressional intent to overcome NBA preemption as to State interest-on-escrow laws. The Supreme Court in *Cantero*, however, found that Section 1693d was irrelevant to the analysis because, as all parties there agreed, Section 1693d did not apply to the mortgages at issue. *See* 602 U.S. at 211 n.1. Likewise here, Section 1693d is irrelevant

to the analysis because no party has ever claimed that TILA applies to the escrow accounts at issue. This, too, compels the Court to grant rehearing.

CONCLUSION

For these reasons, *Amici* respectfully urge the Court to grant Defendant-Appellant's petition.

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APPENDIX A

Deming v. *Merrill Lynch & Co.*, 528 F. App'x 775 (9th Cir. 2013) (loan administrative and compliance fees)

Baptista v. *JPMorgan Chase Bank, N.A.*, 640 F.3d 1194 (11th Cir. 2011) (non-account holder check-cashing fees)

Martinez v. *Wells Fargo Home Mortg., Inc.*, 598 F.3d 549 (9th Cir. 2010) (underwriting and tax service fees)

Monroe Retail, Inc. v. *RBS Citizens, N.A.*, 589 F.3d 274 (6th Cir. 2009) (account service fees)

SPGGC, LLC v. *Ayotte*, 488 F.3d 525 (1st Cir. 2007) (gift card expiration dates and administrative fees)

Bank of Am. v. *City & Cty. of S.F.*, 309 F.3d 551 (9th Cir. 2002) (deposit and lending-related service fees)

Powell v. *Huntington Nat'l Bank*, 226 F. Supp. 3d 625 (S.D. W. Va. 2016) (payments ordering and late fees)

Pereira v. *Regions Bank*, 918 F. Supp. 2d 1275 (M.D. Fla. 2013), *aff'd*, 752 F.3d 1354 (11th Cir. 2014) (check-cashing and settlement fees)

NNDJ, Inc. v. *Nat'l City Bank*, 540 F. Supp. 2d 851 (E.D. Mich. 2008) (non-account holder official check-cashing fees)

Montgomery v. *Bank of Am. Corp.*, 515 F. Supp. 2d 1106 (C.D. Cal. 2007) (nonsufficient funds and overdraft fees)

Metrobank v. *Foster*, 193 F. Supp. 2d 1156 (S.D. Iowa 2002) (non-account holder ATM fees)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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