

No.

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**In the Supreme Court of the United States**

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CITIZENS BANK, N.A.,  
PETITIONER,

*v.*

JOHN CONTI, ON BEHALF OF HIMSELF AND ALL OTHERS  
SIMILARLY SITUATED,  
RESPONDENT.

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*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT*

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTION PRESENTED

The National Bank Act grants federally chartered national banks enumerated and incidental powers, subject to federal regulators' detailed proscriptions and extensive supervision. Given this reticulated federal scheme, the Court has long recognized that the National Bank Act preempts state laws that "prevent or significantly interfere with the national bank's exercise of its powers." *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25, 33 (1996). Congress codified that preemption standard in the Dodd-Frank Act. 12 U.S.C. § 25b(b)(1)(B).

Two years ago, in *Cantero v. Bank of America, N.A.*, 602 U.S. 205, 219-20 (2024), this Court held that bank preemption presents a legal question answered through a "nuanced comparative analysis." Specifically, courts must compare the "nature and degree of the interference caused by [the challenged] state law" to the nature and degree of the interferences at issue in seven bank-preemption precedents of this Court. *Id.*

But not all courts got the message. In the decision below, the First Circuit purported to apply *Cantero* in declining to hold that the National Bank Act preempts Rhode Island's law mandating payment of interest on mortgage-escrow accounts. Yet the court brushed off several of the precedents this Court instructed it to examine and made other errors that place its decision in direct conflict with *Cantero*.

Once again, the question presented is:

Whether the National Bank Act preempts state interest-on-escrow laws like Rhode Island Gen. Laws § 19-9-2(a), which purport to dictate how national banks price their mortgage-loan products.

## II

### **PARTIES TO THE PROCEEDING**

Petitioner, Citizens Bank, N.A., is a federally chartered national bank and was defendant in the district court and appellee in the First Circuit.

Respondent, John Conti, was representative of a putative class of borrowers and plaintiff in the district court and appellant in the First Circuit. After the First Circuit issued its opinion vacating the judgment and remanding the case to the district court, Donna Conti was substituted as representative of a putative class of borrowers and is now plaintiff in the district court.

### III

#### **CORPORATE DISCLOSURE STATEMENT**

Petitioner Citizens Bank, N.A. is a wholly owned subsidiary of Citizens Financial Group, Inc. Citizens Financial Group, Inc. is a publicly traded company. The Vanguard Group, Inc., BlackRock, Inc., and The Capital Group Companies, Inc., beneficially own over 10% of the shares of Citizens Financial Group, Inc.

## IV

### STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Conti v. Citizens Bank, N.A.*, No. 22-1770 (1st Cir. Sept. 22, 2025) (vacating the judgment dismissing the complaint and remanding for further proceedings)
- *Conti v. Citizens Bank, N.A.*, No. 1:21-cv-296-MSM-PAS (D.R.I. Sept. 28, 2022) (dismissing complaint based on National Bank Act preemption)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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**PETITION FOR A WRIT OF CERTIORARI**

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Petitioner Citizens Bank, N.A. respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

**OPINIONS BELOW**

The opinion of the court of appeals (Pet.App.1a-35a) is reported at 157 F.4th 10 (1st Cir. 2025). The district court's decision on the motion to dismiss (Pet.App.36a-46a) is unreported but available at 2022 WL 4535251 (D.R.I. Sept. 28, 2022).

## JURISDICTION

The judgment of the court of appeals was entered on September 22, 2025. On December 9, 2025, Justice Jackson extended the deadline to file a petition for a writ of certiorari to and including February 19, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

### STATUTORY PROVISIONS INVOLVED

12 U.S.C. § 25b provides in relevant part:

(b) Preemption standard

(1) In general

State consumer financial laws are preempted, only if—

\* \* \*

(B) in accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in *Barnett Bank of Marion County, N. A. v. Nelson, Florida Insurance Commissioner, et al.*, 517 U.S. 25 (1996), the State consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers; and any preemption determination under this subparagraph may be made by a court, or by regulation or order of the Comptroller of the Currency on a case-by-case basis, in accordance with applicable law ....

12 U.S.C. § 371 provides in relevant part:

(a) Authorization to make real estate loans; orders, rules, and regulations of Comptroller of the Currency

Any national banking association may make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate, subject to section 1828(o) of this title and such restrictions and requirements as the

Comptroller of the Currency may prescribe by regulation or order.

19 R.I. Gen. Laws § 19-9-2 provides in relevant part:

(a) Every mortgagee holding funds of a mortgagor in escrow for the payment of taxes and insurance premiums with respect to mortgaged property located in this state shall pay or credit interest on those funds at a rate equal to the rate paid to the mortgagee on its regular savings account, if offered, and otherwise at a rate not less than the prevailing market rate of interest for regular savings accounts offered by local financial institutions as determined by the director, said determination to be made within thirty (30) days of the effective date of this provision and thereafter annually on the first business day of the year. Said credit of interest shall accrue on the daily balance and be made annually on December 31. If the mortgage debt is paid prior to December 31 in any year, the interest to the date of payment shall be paid to the mortgagor. The provision of this section shall apply only with respect to mortgages on owner-occupied residential property consisting of not more than four (4) living units. The provisions of this section shall not be waived. No mortgagee holding the mortgagor's funds in escrow for the payment of taxes shall also charge an annual "tax service fee" or other annual fee for ascertaining whether or not the real estate taxes have in fact been paid. Any mortgagee violating the provisions of this section shall be fined not more than one hundred dollars (\$100) for each offense.

#### **STATEMENT**

This case concerns a question of exceptional importance to the nation's banking system: whether States may set the prices of national-bank products. The First Circuit held that States can require national banks to pay

interest on mortgage-escrow accounts, notwithstanding Congress' repeated refusal to do so. The decision below employed a mode of analysis that runs contrary to recent guidance from this Court on the bank-preemption standard and that threatens to inject uncertainty and instability into the regulatory framework covering national banks.

Congress enacted the National Bank Act (NBA) to establish “a uniform system” of federally chartered banks “that shall be substantially the same in Washington, in New York, in Boston, and in Chicago.” Cong. Globe, 38th Cong., 1st Sess. 1873 (1864) (statement of Sen. Charles Sumner). The NBA therefore endowed national banks with enumerated powers and “all such incidental powers as shall be necessary to carry on the business of banking.” 12 U.S.C. § 24 Seventh. The NBA made national banks' exercise of these powers “subject primarily to federal oversight and regulation,” while nonetheless preserving States' authority to charter “state banks ... subject to additional state oversight and regulation.” *Cantero v. Bank of Am., N.A.*, 602 U.S. 205, 210 (2024).

Consistent with this dual system of bank supervision, this Court developed an analytical framework to determine whether the NBA preempts state laws that impermissibly hinder national banks' exercise of federally authorized powers. See *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25 (1996); *Franklin Nat'l Bank of Franklin Square v. New York*, 347 U.S. 373 (1954); *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141 (1982); *First Nat'l Bank of San Jose v. California*, 262 U.S. 366 (1923); *Anderson Nat'l Bank v. Lockett*, 321 U.S. 233 (1944); *Nat'l Bank v. Commonwealth*, 76 U.S. (9 Wall.) 353 (1870); *McClellan v. Chipman*, 164 U.S. 347 (1896). Congress then codified “the legal standard for preemption” set out in *Barnett Bank* in the 2010 Dodd-Frank Act. 12 U.S.C. § 25b(1)(B).

Recently confronted with nearly identical circumstances as those presented here, the Court clarified that the preemption framework enunciated in *Barnett Bank* and codified in Dodd-Frank requires a “nuanced comparative analysis” with seven key bank-preemption cases. *Cantero*, 602 U.S. at 220. However, *Cantero* stopped short of applying its legal rule to the New York interest-on-escrow law before the Court. The Court instead remanded the case to the Second Circuit to conduct that preemption analysis in the first instance. *Id.* at 220-21.

This petition asks the Court to finish the job started in *Cantero*. Respondent financed the purchase of his home with a mortgage from Citizens Bank. The mortgage agreement required respondent to hold funds for taxes and insurance payments in a mortgage-escrow account. Citizens Bank declined to pay respondent interest on the money in that escrow account notwithstanding Rhode Island’s law requiring mortgage lenders to pay interest on escrow accounts at the same rate as their regular savings accounts. As a federally chartered national bank, Citizens Bank concluded that the NBA preempted Rhode Island’s interest-on-escrow law. Respondent sued, claiming breach of contract and unjust enrichment. But the district court agreed with Citizens Bank that the NBA preempted Rhode Island’s interest-on-escrow law and dismissed respondent’s complaint.

In 2024, while respondent’s appeal to the First Circuit was pending, this Court decided *Cantero*. Notwithstanding the Court’s attempted course correction, the decision below declined to preempt Rhode Island’s interest-on-escrow law using a mode of analysis directly at odds with *Cantero*. This Court took pains to clarify that the bank-preemption standard requires an in-depth comparison of the interference produced by the challenged state law

with the interferences produced by the state laws addressed in seven of this Court’s preemption precedents. Yet in the decision below, the First Circuit jettisoned the majority of those precedents as inapposite, cramping its analysis and putting a thumb on the scale against preemption. And the First Circuit made other errors, too, that directly conflict with *Cantero*. For instance, the decision below violated *Cantero*’s holding that the preemption standard remains the same before and after the Dodd-Frank Act by divining anti-preemptive intent from Dodd-Frank’s text.

The resolution of the question presented is of the utmost importance to national banks. Without a predictable understanding of how *Cantero*’s bank-preemption standard applies to interest-on-escrow laws, and to other state laws, national banks are placed in intolerable and costly uncertainty. As the Office of the Comptroller of the Currency (OCC) has recognized, “misapplication of the *Barnett Bank* standard in the context of state interest-on-escrow laws carries serious implications for national bank mortgage lending and the functioning of the multi-trillion-dollar U.S. mortgage market.” OCC Amicus Br. 13, *Kivett v. Flagstar Bank, FSB*, 154 F.4th 640 (9th Cir. 2025) (No. 21-15667). And this problem is bound to recur. “[A]t least twelve” States already have interest-on-escrow laws, Pet.App.26a, and others could be incentivized to enact them in light of the First Circuit’s decision.

Indeed, the issue has already arisen in the Second and Ninth Circuits. The Second Circuit’s remand in *Cantero* is still outstanding. And the Ninth Circuit refused to apply *Cantero* altogether, instead declining to preempt California’s interest-on-escrow law based on pre-*Cantero* circuit precedent. But, as the dissent correctly reasoned, “*Cantero*, standing alone, compels” the holding “that the

NBA preempts [the state] [interest-on-escrow] law.” *Kivett v. Flagstar Bank, FSB*, 154 F.4th 640, 653 (9th Cir. 2025) (R. Nelson, J., dissenting).

The upshot is clear: lower courts desperately need guidance on *how* to apply the preemption standard enunciated in *Cantero*. This case presents an ideal vehicle for this Court to finish the course correction it started.

#### A. Legal Background

1. Congress established a uniform national banking system in a pair of 1863 and 1864 statutes colloquially known as the NBA. 12 U.S.C. § 1 *et seq.*; *accord Cantero*, 602 U.S. at 210. The NBA endows federally chartered banks with several enumerated powers, including the power to provide home mortgage loans. 12 U.S.C. § 371(a); *accord Cantero*, 602 U.S. at 210. The NBA also vests national banks with “all such incidental powers as shall be necessary to carry on the business of banking.” 12 U.S.C. § 24 Seventh; *accord Cantero*, 602 U.S. at 210.

As part of their mortgage-lending function, banks “often offer escrow accounts”; indeed, “the vast majority of home mortgages come with” escrow accounts and federal law frequently requires them. *Cantero*, 602 U.S. at 210-11. Escrow accounts benefit borrowers and banks alike. *Id.* at 210. They “simplify[] expenses and budgeting” for borrowers by establishing a schedule of “small payments throughout the year” instead of “large lump-sum insurance and tax payments once or twice a year.” *Id.* at 210-11. Escrow accounts help banks by ensuring that insurance and tax bills are timely paid, thereby “protecting the loan collateral (the home) against tax foreclosure or uninsured damage.” *Id.* at 211.

As a result, “the establishment of escrow accounts” is “a logical outgrowth of the lending function,” OCC Conditional Approval #276, at 12 (May 8, 1998), and is

recognized as incidental to national banks' mortgage powers, *see* OCC Inter. Ltr. 1041, 2005 WL 3629258, at \*2 (Sept. 28, 2005); *Cantero*, 602 U.S. at 210-11. Below, respondent did not “meaningfully dispute” national banks' incidental power to administer escrow accounts. *See* Pet.App.11a-12a.

“[T]o protect borrowers,” federal law “sets out the general terms for national banks that operate escrow accounts.” *Cantero*, 602 U.S. at 211. Congress enacted the Real Estate Settlement Procedures Act of 1974 (RESPA), which “extensively regulates national banks' operation of escrow accounts.” *Id.* For instance, Congress placed limits on the amount of money that banks can require borrowers to place in escrow. 12 U.S.C. § 2609(a)(1). Congress also delineated how banks must service escrow accounts, imposing various disclosure requirements and processes for administering the accounts. *E.g., id.* § 2605(a), (g). And Congress gave its regulations teeth: if banks do not pay expenses or return leftover funds to borrowers, they face damages and attorneys' fees. *Id.* § 2605(f)-(g).

OCC, the federal regulator of national banks, has enacted further requirements to ensure that national banks originate and administer mortgage loans in a manner “consistent with safe and sound banking practices.” 12 C.F.R. § 34.62(b)(1)(i) & app. For instance, OCC requires national banks to avoid “abusive, predatory, unfair or deceptive” practices. *Id.* pt. 30 app. C.III.A. Other federal regulations cover national banks' escrow accounts as well, including the Consumer Financial Protection Bureau's “Regulation X.” *Id.* § 1024.17. Notwithstanding this extensive regulatory scheme, federal regulators have never required national banks to pay interest on all escrow accounts. To the contrary, Congress considered and rejected such a proposal three times. GAO, *Study of the*

*Feasibility of Escrow Accounts on Residential Mortgages Becoming Interest Bearing* (1973); H.R. 3542, 102d Cong. (1991); H.R. 27, 103d Cong. (1993).

Instead, in 2010 Congress elected to amend the Truth in Lending Act (TILA) in the Dodd-Frank Act. As amended, TILA now directs banks to pay interest on certain specified escrow accounts (but not respondent's), "if prescribed by applicable State or Federal law." 15 U.S.C. § 1639d(a), (g)(3); Pet.App.19a-20a n.7. But for all other mortgages, TILA recognizes that lenders can establish escrow accounts "on terms mutually agreeable to the parties to the loan" or "at the discretion of the lender or servicer." 15 U.S.C. § 1639d(f)(1)-(2).

Congress' approach to interest on escrow stands in contrast to its treatment of other types of interest. For instance, Congress expressly lets States cap the interest rate that national banks can charge customers on loans, subject to certain federal guidelines. 12 U.S.C. § 85. But no federal law expressly allows States to impose interest-rate ceilings or floors on every national-bank escrow account.

Nevertheless, roughly a dozen States attempt to dictate the amounts that national and other banks pay on customers' escrowed funds.<sup>1</sup> Although such interest-on-escrow laws are "intended to ... generate fair returns for consumers," research has found that these laws "on average d[o] not help consumers" and "likely harm[] those borrowers most in need." Laurence Bristow & Daniel Grodzicki 12, *Does Mandating Interest Payments on*

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<sup>1</sup> See Cal. Fin. Code § 50202; Conn. Gen. Stat. § 49-2a; Me. Stat. tit. 9-b, § 429; Md. Code Ann., Com. Law § 12-109; Mass. Gen. Laws ch. 183, § 61; Minn. Stat. § 47.2, subd. 9(a); N.Y. Gen. Oblig. Law § 5-601; Or. Rev. Stat. § 86.245; 19 R.I. Gen. Laws § 19-9-2; Utah Code Ann. § 7-17-3; Vt. Stat. Ann. tit. 8, § 10404.

*Mortgage Escrow Accounts Benefit Consumers?*, Bank Pol’y Inst. Working Paper (2026), <https://tinyurl.com/ycx32uk9>. To recoup the costs of complying with interest-on-escrow laws, lenders may “adjust other terms of the mortgage” which can increase fees for consumers and reduce “the chances a mortgage application end[s] in origination.” *Id.* at 1-2.

Rhode Island’s law provides that lenders “shall pay” interest on escrow accounts for “mortgaged property located in this state” at a rate equal to lenders’ “regular savings account, if offered,” or a rate set by the Director of Business Regulation. 19 R.I. Gen. Laws § 19-9-2. Other state laws impose flat interest rates, N.Y. Gen. Oblig. Law § 5-601, regulate only a subset of properties, Mass. Gen. Laws ch. 183, § 61, or cover any “residential real property” regardless of location, Md. Code Com. Law § 12-109.

OCC long ago decided that the NBA preempts such laws. In 1983, OCC explained that state laws regulating mortgages may constrain “national banks’ ability to respond to market conditions.” 48 Fed. Reg. 40698, 40699 (Sept. 9, 1983). OCC spoke specifically to mortgage-escrow accounts in 2004, issuing a rule providing that “a national bank may make real estate loans ... without regard to state law limitations concerning ... [e]scrow accounts, impound accounts, and similar accounts.” 69 Fed. Reg. 1904, 1917 (Jan. 13, 2004); 76 Fed. Reg. 43549, 43557 (July 21, 2011). Consistent with OCC’s longstanding position, national banks such as Citizens Bank ordinarily treat state interest-on-escrow laws as inapplicable to national-bank mortgages.

2. The Dodd-Frank Act codified this Court’s approach to NBA preemption. Under Dodd-Frank, “State consumer financial laws are preempted” if, “in accordance with the legal standard for preemption in ... *Barnett*

*Bank*, the State consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers.” 12 U.S.C. § 25b(b)(1)(B). By expressly incorporating *Barnett Bank*, Congress took pains not to disturb the Court’s pre-Dodd-Frank preemption precedents. *See id.*; accord *Cantero*, 602 U.S. at 214 n.2.

This Court clarified the *Barnett Bank* standard in *Cantero*. *Cantero* directs courts to treat significant interference as a legal question; courts should “consider the interference caused by the state laws in *Barnett Bank* ... and the other precedents on which *Barnett Bank* relied.” *Id.* at 220. In addition to *Barnett Bank*, these precedents include three cases preempting state laws—namely, *Franklin*, 347 U.S. 373; *Fidelity*, 458 U.S. 141; and *San Jose*, 262 U.S. 366. It also features three cases rejecting preemption: *Anderson*, 321 U.S. 233; *Commonwealth*, 76 U.S. 353; and *McClellan*, 164 U.S. 347. All seven cases are relevant to the preemption analysis, with *Franklin* singled out as “[t]he paradigmatic example” for courts. *Cantero*, 602 U.S. at 216.

As occurred in the cases highlighted in *Cantero*, courts should evaluate a state law’s interference by reference to “the text and structure of the laws,” “other precedents,” and “common sense.” *Id.* at 219-20 & n.3. Based on these sources, courts should undertake a “nuanced comparative analysis” to determine whether “the state law’s interference with national bank powers is more akin to the interference in cases” applying preemption, or more like cases rejecting preemption. *Id.* at 220. For example, a state law that “stand[s] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” like the law in *Barnett Bank*, is preempted. 517 U.S. at 31 (cleaned up). Finally, recognizing that “*Barnett Bank* did not draw a bright line,”

*Cantero* cautions against categorical rules and broad-based characterizations. *Cantero*, 602 U.S. at 221.

### **B. Factual Background**

Respondent John Conti purchased his Rhode Island home with a mortgage from federally chartered Citizens Bank. Respondent’s mortgage agreement specified that Citizens Bank would establish an escrow account to ensure timely payment of property expenses and would pay interest on escrowed funds if “[a]pplicable law requires.” Pet.App.37a. The funds held in escrow did not accrue interest because Citizens Bank understands that federal law empowers it to administer mortgage-escrow accounts irrespective of state pricing mandates.

Respondent filed a putative class-action lawsuit against Citizens Bank, alleging breach of contract and unjust enrichment. Pet.App.38a. Respondent sought to represent a class of Citizens Bank customers across Rhode Island, Connecticut, Massachusetts, New York, New Hampshire, and Vermont. Alternatively, respondent sought to represent a narrower class of Rhode Island-based customers only. Pet.App.4a n.2.

The district court dismissed respondent’s complaint, reasoning that the NBA preempts Rhode Island’s interest-on-escrow law. Pet.App.46a. Respondent appealed to the First Circuit. While his appeal was pending, this Court decided *Cantero*.

After *Cantero*, the First Circuit vacated and remanded the district court’s decision, holding that Citizens Bank “has failed to satisfy its burden of showing the Rhode Island statute should be preempted as a matter of law.” Pet.App.34a. The court broadly concluded that “[f]our of the cases [discussed in *Cantero*] – *McClellan*, *Commonwealth*, *Barnett Bank*, and *Fidelity* – are inapposite.” Pet.App.17a. The court then reasoned that

Rhode Island’s law is not “out of step” with federal law because “at least twelve states” maintain analogous provisions, and because TILA mandates compliance with such laws as to an inapplicable subset of mortgage-escrow accounts. Pet.App.26a. The court finally rejected Citizens Bank’s concerns about subjecting national banks to “a patchwork of varying and conflicting state regulations,” as a bygone relic of the “field preemption regime.” Pet.App.30a, 32a.<sup>2</sup>

### REASONS FOR GRANTING THE PETITION

The decision below conflicts with *Cantero*. The First Circuit’s conclusion that the NBA does not preempt Rhode Island’s interest-on-escrow law is patently incorrect under the governing preemption standard. The decision below improperly discarded the majority of *Cantero*’s preemption precedents as inapposite, rejected binding Supreme Court precedent as unpersuasive, and misinterpreted Dodd-Frank’s text to mandate a stricter preemption standard than the one articulated in *Barnett Bank*. In doing so, the First Circuit engaged in precisely the sort of bright-line construction of the preemption precedents that *Barnett Bank* and *Cantero* forbid. The question presented carries substantial significance for national banks, state regulators, and customers alike. This Court should grant certiorari to correct the deeply flawed decision below.

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<sup>2</sup> After the First Circuit’s decision, respondent moved the district court to amend the complaint to substitute Donna Conti for John Conti as the named plaintiff. D. Ct. Dkt. 38. Donna is John’s “former wife” and “is also named as a ‘Borrower’ on the same Mortgage Agreement” as John; she thus brought “the same claims” arising out of “the same Mortgage Agreement.” *Id.* at 2, 4. The district court granted that motion on October 30, 2025. D. Ct. Dkt. 40.

**I. The First Circuit’s Decision Directly Conflicts with *Cantero* and Is Wrong**

The First Circuit’s holding that the NBA does not preempt Rhode Island’s interest-on-escrow law is incorrect and premised on a misguided application of *Cantero*. Applying *all* of this Court’s bank-preemption precedents, as *Cantero* demands, demonstrates that interest-on-escrow laws significantly interfere with national banks’ express mortgage-lending power and incidental escrow power.

1.a. *Franklin*. Take first the cases holding state laws to be preempted, beginning with *Franklin*, the “paradigmatic example of significant interference.” *Cantero*, 602 U.S. at 216. There, New York prohibited banks from using the word “savings” in their business or advertising. *Franklin*, 347 U.S. at 374. That state law significantly interfered with national banks’ *enumerated* power to offer savings accounts using the “particular label” that Congress “specifically selected.” *Id.* at 375-78. Pursuant to 12 U.S.C. § 24 Seventh, *Franklin* also recognized national banks’ power to advertise savings accounts as incidental to the enumerated power to offer savings accounts. *See id.* at 375-78 & n.5. New York’s law significantly interfered with that *incidental* advertising power too. *Id.* at 377-78.

Considering both the saving and advertising powers, the Court reasoned that there was “no indication that Congress intended to make this phase of national banking subject to local restrictions, as it has done by express language in several other instances.” *Id.* at 378. *Franklin* went on to cite several examples of statutes in which Congress explicitly blessed state-law interference, including 12 U.S.C. § 85, which allows States to cap interest rates on loans. *Id.* at 378 n.7; *supra* p. 9; *see also* 12 U.S.C. §§ 24 Eighth (1952 ed.), 36(c) (1952 ed.), 90 (1952 ed.), 371 (1952

ed.). As a result, the Court held preempted New York's law. *Franklin*, 347 U.S. at 378.

In holding that *Franklin* did not support preemption, the First Circuit overlooked that New York's advertising ban and Rhode Island's interest-on-escrow law would yield similar effects on national-bank powers. As the First Circuit acknowledged, the state law in *Franklin* "was inconsistent with the overall federal scheme established by Congress" and would "likely" have a "material impact ... on banking operations." Pet.App.25a. Contrary to the First Circuit's holding, however, both dynamics are at play here.

First, Rhode Island's interest-on-escrow law is "inconsistent with the overall federal scheme," Pet.App.25a, because Congress has never blessed state interest-on-escrow laws with respect to all mortgage-escrow accounts, *supra* pp. 8-9. In fact, Congress has spoken much more specifically with respect to escrow accounts than Congress' statements in *Franklin*. Whereas in *Franklin* Congress never mentioned bank advertising at all, here Congress has exhaustively detailed consumer protections for escrow accounts and carefully delineated States' ability to regulate interest rates. But Congress left it to national banks to set interest rates on most escrow accounts, including respondent's.

By contrast, as *Franklin* itself recognized, Congress has allowed States to regulate interest rates in other contexts, allowing them to cap the interest charged on national-bank loans. 347 U.S. at 378 n.7 (citing 12 U.S.C. § 85). Yet Congress has not authorized States to impose interest floors, like that set by Rhode Island's law for escrow accounts. As a result, there is no "indication that Congress intended to make this phase of national banking subject to local restrictions." *Id.* at 378.

Second, the “material impact ... on banking operations,” Pet.App.25a, created by interest-on-escrow laws is significant. Interest-on-escrow laws are “far more disruptive to national banking powers than the law in *Franklin*.” *Kivett*, 154 F.4th at 660 (R. Nelson, J., dissenting). Interest-on-escrow laws directly alter the price terms of a national-bank product and make it more expensive for national banks to administer escrow accounts. As a result, banks “must offset the costs to ensure sufficient returns, either by charging higher interest rates on mortgage loans or requiring larger down payments.” *Id.* These dynamics can depress lending and make other national-bank products less attractive. *Id.* It is no surprise, then, that lower courts “regularly find federal preemption in cases involving national banks’ pricing schemes.” *Id.* Pricing is at least as essential to the “[m]odern competition for business” as advertising. *Franklin*, 347 U.S. at 377. A State cannot manipulate the price of a financial product that Congress expressly empowers national banks to offer, just like New York could not set the terms by which a national bank advertises those products.

The First Circuit disagreed, concluding that Rhode Island’s law did not “conflict[] with the overall scheme of federal-banking law,” because Congress mandated interest payments for some mortgages in TILA and “at least twelve states” have interest-on-escrow laws. Pet.App.26a. But to the extent TILA has any relevance, it mandates the opposite inference. TILA’s “[s]ection 1639d(g)(3) is not a broad congressional pronouncement on preemption of state [interest-on-escrow] laws, but a limited exception to the default rule that national banks need not pay interest on escrowed funds.” *Kivett*, 154 F.4th at 655 (R. Nelson, J., dissenting). And TILA’s circumscribed authorization of state interest-on-escrow laws for only a discrete set of mortgages suggests Congress’

hostility to the application of such laws to mortgages outside that defined category. *Cf. Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 637 (2012) (rejecting expansion of RESPA’s “limited text by the positing of an unlimited purpose”).

Likewise, the mere existence of multiple state interest-on-escrow laws says nothing about whether those laws are consistent with the federal regulatory scheme. The First Circuit’s count-the-states reasoning would convert the preemption analysis into a tyranny of the few, allowing a handful of States to massively burden national banks so long as they did so collectively. Nothing in *Cantero* supports such an outcome.

b. *Fidelity*. The First Circuit further erred in its treatment of *Fidelity*, which it brushed off as “inapposite.” Pet.App.17a. In *Fidelity*, a federal regulation allowed thrifts to include due-on-sale clauses in their mortgages “subject only to express limitations imposed by” federal regulators. 458 U.S. at 155. But a California law “limited that right to circumstances where the [thrifts] could make a showing that enforcing the due-on-sale clause was reasonably necessary.” *Cantero*, 602 U.S. at 216-17 (cleaned up). The Court held that federal law preempted the California law because it “deprived the lender of the ‘flexibility’ given it by the” federal regulator. *Fidelity*, 458 U.S. at 155.

The First Circuit dismissed *Fidelity*, concluding that it “turned on an express conflict between federal and state law.” Pet.App.18a. That conclusion is at war with *Cantero* in two ways. To start, the panel’s use of the word “express” to distinguish *Fidelity* distorts the NBA’s structure. As explained above, the NBA expressly enumerates some national-bank powers and also authorizes “all such incidental powers as shall be necessary to carry on the business of banking.” 12 U.S.C. § 24 Seventh.

Thus, the NBA expressly authorizes the general category of incidental powers, although it does not individually enumerate them.

Both types of power have identical preemptive effects. This Court's precedents have "emphasized" that "grants of both enumerated and incidental 'powers' to national banks" are "grants of authority ... ordinarily preempting[] contrary state law." *Cantero*, 602 U.S. at 215 (citation omitted). *Cantero* does not purport to cabin *Fidelity* to irreconcilable conflicts with enumerated banking powers. *See id.* at 216-17. Such a distinction would be at odds with the NBA's express authorizations of both enumerated and incidental powers as well as this Court's equal treatment of incidental and enumerated powers. *See id.* at 215; accord *Barnett Bank*, 517 U.S. at 32. Moreover, the First Circuit's categorical express-conflict requirement blinks *Cantero*'s rejection of "categorical test[s]" and "bright line" preemption rules. *Cantero*, 602 U.S. at 220-21.

But even if the First Circuit were correct that *Fidelity* applies only to state laws that interfere with powers enumerated by federal regulators, the decision below overlooks the effect of OCC's 2004 preemption regulation. That regulation assumes national banks are ordinarily empowered to set interest rates on mortgage-escrow accounts, and provides that they may continue to do so free from state-law interference. *See* 69 Fed. Reg. at 1917; 76 Fed. Reg. at 43557. OCC's 2004 regulation gives the same effect as the regulation in *Fidelity* authorizing thrifts to offer due-on-sale clauses, and it sets up a comparable conflict between state law and federal regulation as in *Fidelity*.

Moreover, the decision below misconstrued how the interference produced by Rhode Island's law compares to the interference produced by the state law in *Fidelity*.

*Cantero* explained that *Fidelity* held the state law preempted because the law “interfered with ‘the flexibility given’ to the [thrift] by federal law.” *Cantero*, 602 U.S. at 217 (citation omitted). Similarly here, an extensive federal regulatory scheme grants national banks “flexibility” to structure their escrow accounts. *See Fidelity*, 458 U.S. at 155; *Kivett*, 154 F.4th at 660-61 (R. Nelson, J., dissenting). “RESPA does not require lenders to pay interest on escrowed funds. And even TILA recognizes that lenders can decide the terms of escrow accounts for mortgage loans that do not require escrow-interest payments under § 1639d(g)(3).” *Kivett*, 154 F.4th at 661 (R. Nelson, J., dissenting); *accord Cantero*, 602 U.S. at 211. Indeed, Congress has thrice refused to impose an interest-on-escrow requirement on *all* mortgage-escrow accounts. *Supra* pp. 8-9.

Instead, Congress and federal regulators “consciously ha[ve] chosen” to afford national banks discretion over interest payments. *See Fidelity*, 458 U.S. at 155. Thus, a Rhode Island-based national bank may offer interest on its escrow accounts at any rate of its choosing, including 0%. But Rhode Island would compel the national bank to offer interest on its escrow accounts at the rate paid on its savings accounts. *See* 19 R.I. Gen. Laws § 19-9-2(a). In other words, state interest-on-escrow laws come at the expense of this federally afforded flexibility. A state interest-on-escrow law cabining national banks’ carefully preserved “flexibility” over mortgage pricing is just as much a “significant interference” as the limitation on due-on-sale clauses in *Fidelity*. *See Cantero*, 602 U.S. at 216-17. The First Circuit defied *Cantero* by rejecting *Fidelity* as “not useful.” Pet.App.23a.

c. *Barnett Bank*. Along these lines, the First Circuit further erred by dismissing *Barnett Bank* as “inapposite.” Pet.App.17a. *Barnett Bank* addressed a “non-

discriminatory Florida law” prohibiting the sale of insurance in small towns. *Cantero*, 602 U.S. at 214-15. Federal law, however, authorized national banks to sell insurance. *Id.* Although national banks could comply with both the federal and state laws, Florida’s law was preempted. *Id.*

The First Circuit deemed *Barnett Bank* inapplicable because “nothing in the [NBA] expressly prohibits state interest-on-escrow laws” or “reserves for national banks the option to decide whether to pay interest on escrow accounts.” Pet.App.18a-19a. That reading overly circumscribes *Barnett Bank*. Nothing in this Court’s analysis in *Barnett Bank* indicates that the case should be limited to only “express conflict[s].” Pet.App.18a. To the contrary, *Cantero* stated that *Barnett Bank* “did not draw a bright line” on preemption, 602 U.S. at 221, foreclosing the First Circuit’s categorical express-conflict-only rule.

And *Barnett Bank* does not reserve preemption only for state laws that would wholly foreclose banks’ exercise of an enumerated power. *Barnett Bank* instead contemplates preemption when compliance with both state and federal law would be “a physical impossibility,” “or” where the state law “stand[s] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” 517 U.S. at 31 (cleaned up). *Barnett Bank* extended this obstacle-preemption framework equally to the NBA’s “grant[] of both enumerated and incidental ‘powers’ to national banks.” *Id.* at 32.

Thus, the First Circuit should have considered how *Barnett Bank*’s obstacle-preemption principles apply here. As *Cantero* recognizes, “RESPA extensively regulates national banks’ operation of escrow accounts” and “does not mandate that national banks pay interest to borrowers on the balances of their escrow accounts.” 602 U.S. at 211. That stands in sharp relief when compared to

12 U.S.C. § 85, which allows States to set ceilings on interest rates for loans, but not floors. *See supra* p. 9. Thus Rhode Island’s law disrupts the “delicate balance of statutory objectives” in the broader federal mortgage-regulation scheme, further warranting preemption. *See Buckman Co. v. Plaintiffs’ Legal Comm.*, 531 U.S. 341, 348 (2001).

By discarding *Fidelity* and *Barnett Bank* out of hand, the First Circuit undertook the opposite of *Cantero*’s nuanced comparative analysis.

d. *San Jose*. The First Circuit also defied *Cantero* in its treatment of *San Jose*. In *San Jose*, a California law allowed the State to seize bank accounts after 20 years of inactivity without proving abandonment. 262 U.S. at 366. This Court recognized that the potential for “varying limitations ... incompatible with the purpose” of the national-banking system required preemption. *Id.* at 370. The Court therefore held that the NBA preempted the state law because “[i]f California may thus interfere” with deposit accounts, “other states may do likewise, and, instead of 20 years, varying limitations may be prescribed—3 years, perhaps, or 5, or 10, or 15.” *Id.*

The First Circuit dismissed *San Jose*’s discussion of uniformity as “not convincing” in light of Dodd-Frank’s text. Pet.App.32a. But, again, *Cantero* requires courts to carefully consider the interference at issue in each of the seven preemption precedents. And *Cantero* confirmed that *San Jose* remains a cornerstone preemption precedent. 602 U.S. at 218-19. The First Circuit defied *Cantero* by giving binding Supreme Court precedent the back of the hand.

Moreover, *San Jose*’s discussion of uniformity supports preemption here. In contrast to the uniform federal scheme governing escrow accounts for national banks, “at

least twelve” States employ different approaches. Pet.App.26a. Some are in direct conflict. Maryland’s law applies to “an interest in residential real property,” apparently extending to property out of the State. Md. Code Ann., Com. Law § 12-109(b)(1). Maryland prescribes the one-year Treasury rate, *id.*, in contrast to Rhode Island’s use of the rate on the mortgagee’s regular savings account, 19 R.I. Gen. Laws § 19-9-2(a). That States might force national banks to offer fifty products in fifty States “frustrat[es] the purpose for which” the national banking system was created, *Cantero*, 602 U.S. at 219 (citation omitted), and stymies national banks’ ability to “efficien[tly]” conduct their business, *see San Jose*, 262 U.S. at 369; *accord McClellan*, 164 U.S. at 358.

2. Additionally, the interference produced by interest-on-escrow laws is far afield from the interferences produced by laws that this Court has declined to preempt. The First Circuit was wrong to conclude otherwise.

a. *Anderson*. Start with *Anderson*. In that case, the Court upheld a state escheat law “as old as the common law itself” that allowed Kentucky to step into the shoes of the obligee in banks’ preexisting obligations. *See Anderson*, 321 U.S. at 248-49, 251. The law required “nothing more than performance of a duty by the bank [already] imposed by the federal banking laws.” *Id.* at 252. By contrast, Rhode Island’s law is neither a fixture of “the common law,” *see id.* at 251, nor does it merely require “national banks to perform a duty already required by federal law,” *Kivett*, 154 F.4th at 662 (R. Nelson, J., dissenting). Rather, Rhode Island’s law interferes with the pricing of a product that federal regulators have left to the bank’s discretion and imposes new terms on escrow accounts, with potential market implications. *Supra* pp. 8-10. The difference between the interference in *Anderson*

and the interference here should have underscored a finding of preemption.

b. *McClellan & Commonwealth*. The same logic applies to *McClellan* and *Commonwealth*, which each addressed generally applicable laws that produced only de minimis interferences with national-bank powers. *McClellan* considered “a generally applicable Massachusetts contract law.” *Cantero*, 602 U.S. at 219. And *Commonwealth* declined to hold preempted a Kentucky law that taxed “the shareholders of all banks ... on their shares of bank stock.” *Id.* at 218-19. Rhode Island’s interest-on-escrow law, by contrast, directly targets banking functions and significantly interferes with national banks’ power to price their mortgage-loan products. See *Kivett*, 154 F.4th at 660 (R. Nelson, J., dissenting); *supra* pp. 15-19.

The First Circuit disposed of *McClellan* and *Commonwealth* because both cases considered “generally applicable state laws,” Pet.App.17a-18a, but that was the wrong approach under *Cantero*. *Cantero* does not call for an exact match between the challenged state law and the laws in the preemption precedents. Rather, courts must compare and contrast the “nature and degree of the *interference* caused by [the] state law[s]” and decide if the challenged state law’s interference is “akin to the interference in cases like ... *Commonwealth*[] and *McClellan*.” *Cantero*, 602 U.S. at 219-20 (emphasis added). The First Circuit did not conduct that analysis. Rather than exclude these cases from the preemption analysis altogether, Pet.App.17a-18a, the court should have taken the fact that Rhode Island’s law produces an interference bearing no resemblance to those in *McClellan* and *Commonwealth* as a signal that “points to preemption,” *Kivett*, 154 F.4th at 663 (R. Nelson, J., dissenting).

3. Dodd-Frank. Finally, the decision below incorrectly read Dodd-Frank to put a thumb on the scale against preemption. Pet.App.21a, 28a, 31a. Although the First Circuit acknowledged the language of *Barnett Bank*'s significant-interference test, it added that Dodd-Frank's codification of the preemption standard "proceeds from a default premise that state-consumer-financial laws may lawfully regulate the conduct of national banks *unless* such laws discriminate against national banks, or prevent or significantly interfere with a national bank exercising federal-banking powers." Pet.App.21a. The First Circuit used that premise to reject the importance of the flexibility preserved in the federal regulatory regime absent an express delegation of flexibility. *See* Pet.App.21a. That reasoning again runs afoul of *Cantero*.

*Cantero* confirmed that Dodd-Frank did nothing more than codify the existing *Barnett Bank* preemption standard. 602 U.S. at 214 n.2. Were it otherwise, *Cantero*'s treatment of pre- and post-Dodd-Frank mortgages as alike for purposes of the preemption analysis would have been erroneous. *Id.* *Cantero*'s decision not to distinguish between pre- and post-Dodd-Frank mortgages therefore precludes the First Circuit's reliance on Dodd-Frank's text to give extra juice to an anti-preemption stance. And *Barnett Bank* recognized that States have the "power to regulate national banks" only when doing so does not "prevent or significantly interfere with the national bank's exercise of its powers." 517 U.S. at 33. Indeed, *Barnett Bank* starts from the premise that national-bank powers are "not normally limited by" contrary state laws, *id.* at 32, the opposite of the First Circuit's starting point here.

\* \* \*

For these reasons, the First Circuit’s analysis was directly contrary to the nuanced approach established in *Cantero* and produced the wrong outcome. This Court should grant certiorari to correct the First Circuit’s erroneous application of *Cantero*’s bank-preemption framework.

## **II. The Question Presented Is Extremely Important to National Banks, Federal Regulators, States, and Consumers**

1. The scope of national banks’ powers—and States’ ability to constrain those powers—“is a matter of foundational consequence to the OCC and to the federal banking system.” OCC Amicus Br. 5, *Lusnak v. Bank of Am. N.A.*, 883 F.3d 1185 (9th Cir. 2018) (No. 14-56755). OCC likewise has characterized the question of whether the NBA preempts state interest-on-escrow laws as “one of exceptional importance.” *Id.*; accord OCC *Kivett* Amicus Br. 13.

Recognizing that “everyone gains from having a stable banking system,” *Fed. Commc’ns Comm’n v. Consumers’ Rsch.*, 606 U.S. 656, 678 (2025), this Court developed precedent upon which courts, banks, consumers, and regulators can predictably rely to anticipate the NBA’s preemptive effect. *Cantero* respects this tradition by directing courts to consult *Barnett Bank*, *Fidelity*, *Franklin*, *McClellan*, *Commonwealth*, *Anderson*, and *San Jose*. Like the cases before it, *Cantero* recognizes that competing or duplicative state laws are necessarily more burdensome than a single state law in isolation. By endorsing a “practical assessment,” 602 U.S. at 219, *Cantero* requires courts to consider the real-world consequences of permitting States to enact different and potentially conflicting regulations on a subject.

The First Circuit’s decision risks destabilizing the financial system by throwing this predictable, pragmatic

analysis into disarray. For one thing, the First Circuit summarily discarded most of the precedents that this Court requires it to consider. Pet.App.17a. The First Circuit’s rejection of the bulk of this Court’s precedents invites other courts to selectively pick and choose among the precedents that might yield a preferred outcome.

For another, the First Circuit flouts *Cantero*’s call for practicality by examining Rhode Island’s law in artificial isolation and ignoring the collective interference caused by a patchwork of similar state regulations. Pet.App.30a-33a; *supra* pp. 21-22. That myopic approach ignores the real-world challenges of operating a national bank subject to a thicket of disparate legal regimes. And it systemically minimizes the actual impact of a state law on national banks’ efficient and flexible exercise of federally conferred authority.

2. The First Circuit’s flawed decision is of a piece with a growing trend of lower courts trying—and failing—to apply the *Cantero* framework properly. For instance, the Ninth Circuit recently decided that California’s interest-on-escrow law applies to national banks based on circuit precedent that bears little resemblance to *Cantero*. See *Kivett*, 154 F.4th at 646-49.

Likewise, district courts and state courts nationwide have been grappling with *Cantero*’s application to other types of state laws. See, e.g., *Ill. Bankers Ass’n v. Raoul*, 2026 WL 371196, at \*2-3 (N.D. Ill. Feb. 10, 2026) (prohibiting interchange fees on credit-card transactions and limiting use of card-transaction data); *In re Cap. One 360 Sav. Acct. Int. Rate Litig.*, 779 F. Supp. 3d 666, 693-94 (E.D. Va. 2024) (anti-fraud law); *Corvallis Hosp., LLC v. Wilmington Tr., N.A.*, 2025 WL 2624512, at \*2 (D. Or. Sept. 11, 2025) (prohibiting lenders from declaring default or imposing late fees during COVID-19); *Jensen v. Cap. One Fin. Corp.*, 2025 WL 606194, at \*4 (W.D. Wash. Feb.

25, 2025) (limiting text-message advertising); *Bank of Am., N.A. v. Riffard*, 19 N.W.3d 604, 607-08, 611 (Wis. Ct. App. 2025) (requiring notice of right to cure default); *Rubino v. HSBC Bank USA, N.A.*, 238 N.Y.S.3d 376, 383 (N.Y. Sup. Ct. 2025) (requiring recording of mortgage satisfactions).

These courts have applied *Cantero* with mixed results. In *Illinois Bankers*, for instance, the court entered a permanent injunction after determining the NBA preempted provisions of a state law that constrained national banks' use of electronic-payment data. 2026 WL 371196, at \*13-14; *see also Ill. Bankers Ass'n v. Raoul*, 760 F. Supp. 3d 636 (N.D. Ill. 2024) (preliminary-injunction ruling). The court also eschewed the First Circuit's erroneous express-conflict requirement, *supra* p. 17, observing that "[t]he Supreme Court has explicitly highlighted that express conflict is not a requirement for NBA preemption to apply." *Ill. Bankers*, 2026 WL 371196, at \*11. Yet, in declining to hold preempted other provisions of the law, the court also replicated certain of the First Circuit's errors. "As the First Circuit did in *Conti*," the court "broadly dispose[d]" of two of the seven bank preemption precedents this Court directed it to analyze. *Id.* at \*10 n.5.

Not all have taken *Cantero*'s message to heart. In *Jensen*, for example, the district court declined to hold preempted a state prohibition on advertising via text message after substantively discussing only two preemption precedents, *Franklin* and *Anderson*. 2025 WL 606194, at \*4-5. Conversely, in *Corvallis*, the district court held preempted a state law under the *Cantero* framework without substantive discussion of a single one of *Barnett Bank's* predecessors. 2025 WL 2624512, at \*5-6. As these

cases show, lower courts' confused application of the *Cantero* framework will only continue to spill into ever-expanding areas of banking law.

3. The First Circuit's decision also leaves incidental powers vulnerable, risking still other adverse effects on the national-banking system. After all, incidental powers, by definition, are never accompanied by "express[] reserv[ations]" of flexibility. Pet.App.19a. That conceptual blind spot in the decision below will lead to disastrous results. Start with other powers incidental to the administration of mortgages. Under the First Circuit's view, States could subject national banks' mortgage products to all sorts of onerous regulations unless and until a State banned mortgages outright. Fifty States might enact fifty incongruous laws dictating banks' loan-to-value ratios, defining their credit terms, limiting their insurance requirements, or qualifying the availability of due-on-sale clauses. Such regulations would prevent national banks from "efficiently and effectively balanc[ing] the risks and rewards of mortgage lending." OCC *Kivett* Amicus Br. 17. The First Circuit's decision, however, would invite courts to shut their eyes to the practical consequences imposed by the totality of these disparate state laws.

The potential harms are not confined to real-estate loans. The pricing of national banks' credit-processing services provides another recent example. "National banks play a vital role in processing credit and debit transactions, which are essential to the functioning of the Nation's economy." OCC Amicus Br. 10, *Ill. Bankers*, 760 F. Supp. 3d 636 (No. 24-7307). But just as States in the First Circuit can now dictate mortgage pricing, under the First Circuit's reasoning, they likely can also dictate the fees that national banks charge to process transactions or impose any other number of price controls on banks. National banks operating in these States "would be forced to

incur extraordinary costs” to comply with these regulations—costs that would multiply if other States followed suit. *Id.*

4. This case presents an ideal vehicle to resolve this exceptionally important issue. The question presented arises in a common fact pattern: mortgagors sue a national bank for violating state interest-on-escrow laws. No jurisdictional or procedural barriers obstruct this Court’s review. The First Circuit explicitly purported to apply *Cantero*, and the result was outcome determinative. *See* Pet.App.34a-35a. The decision provides this Court with a clean vehicle to model the application of *Cantero* for lower courts.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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