No. 25-1313

IN THE

Supreme Court of the United States

ALEX CANTERO, et al., Individually and
on Behalf of All Others Similarly Situated,
Petitioners,

v.

BANK OF AMERICA, N.A.,
Respondent.

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

BRIEF FOR STATES OF NEW YORK, IOWA, ALASKA, COLORADO, CONNECTICUT, DELAWARE, GEORGIA, IDAHO, ILLINOIS, INDIANA, KANSAS, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEBRASKA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OKLAHOMA, OREGON, PENNSYLVANIA, SOUTH DAKOTA, UTAH, VERMONT, AND WYOMING, AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF PETITIONERS

BRENNA BIRD
Attorney General
State of Iowa
ERIC H. WESSAN
Solicitor General

1305 East Walnut Street
Des Moines, Iowa 50319
(515) 281-5164

LETITIA JAMES
Attorney General
State of New York
BARBARA D. UNDERWOOD*
Solicitor General
ANDREA OSER
Deputy Solicitor General
SARAH L. ROSENBLUTH
Assistant Solicitor General

28 Liberty Street
New York, New York 10005
(212) 416-8016
barbara.underwood@ag.ny.gov
**Counsel of Record*

(*Counsel listing continues on signature pages.*)

QUESTION PRESENTED

Does the National Bank Act preempt the application of state interest-on-escrow laws to national banks?

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

State Laws **Page(s)**

Miscellaneous Authorities

Miscellaneous Authorities **Page(s)**

INTERESTS OF AMICI CURIAE[1]

Amici curiae States of New York, Iowa, Alaska, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kansas, Maine, Maryland, Michigan, Minnesota, Nebraska, New Mexico, New Jersey, North Carolina, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Vermont, and Wyoming, and the District of Columbia ("Amici States") submit this brief in support of petitioners Alex Cantero, Saul R. Hymes, and Ilana Harwayne-Gidansky to urge this Court to grant certiorari to review a decision of the U.S. Court of Appeals for the Second Circuit. That decision held that the National Bank Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Act of 2010, preempts the application to national banks of New York General Obligations Law § 5-601, which requires mortgage lenders to pay a two percent minimum interest rate on sums held in mortgage-escrow accounts. At least thirteen other States have escrow-interest laws.[2]

Amici States have a strong interest in the enforcement of their banking-related laws against state and national banks alike for the benefit of consumers.

---

[1] Counsel for the State of New York timely provided notice to counsel for petitioners of Amici States' intention to file an amicus brief in support of the petition, as required by Rule 37.2. Two days after the deadline for providing notice, after counsel for respondent entered an appearance on the docket, counsel for New York provided the same notice to counsel for respondent, who consented to the filing of this amicus brief on less than 10 days' notice.

[2] *See* Cal. Civ. Code § 2954.8(a); Conn. Gen. Stat. § 49-2a; Iowa Code § 524.905(2); Me. Stat. tit. 33, § 504; Md. Code Ann., Com. Law § 12-109; Mass. Gen. Laws ch. 183, § 61; Minn. Stat. § 47.20, subdiv. 9; N.H. Rev. Stat. Ann. § 383-B:3-303(a)(7)(E); Or. Rev. Stat. § 86.205, 86.245; 19 R.I. Gen. Laws § 19-9-2; Utah Code Ann. § 7-17-1 et seq.; Vt. Stat. Ann. tit. 8, § 10404; Wis. Stat. § 138.052.

Consumer protection is a traditional state function, and States have historically been at the forefront of protecting consumers from financial exploitation and abusive lending practices. The Second Circuit's broad preemption holding unduly undermines this important sovereign interest.

SUMMARY OF ARGUMENT

The Court should grant certiorari to review the Second Circuit's decision for any of three reasons.

First, the Second Circuit's decision creates a square conflict among the circuits on the question whether the National Bank Act preempts the application of state interest-on-escrow laws to national banks, and also, more generally, on the proper way to determine when state consumer financial laws may be applied to national banks. That conflict creates uncertainty over the extent to which States can enforce interest-on-escrow laws in circuits that have not yet considered the preemption issue raised here. And more broadly, that conflict creates uncertainty over the enforceability of other consumer financial laws in all States. Indeed, the issues raised here potentially affect millions of homeowners and consumers of financial products across the country and thus cry out for resolution by this Court.

Second, the preemption analysis that the Second Circuit applied in this case departs from the statutory text of the National Bank Act and this Court's recent guidance in *Cantero v. Bank of America, N.A.,* 602 U.S. 205 (2024) (*Cantero I).* Under that text and guidance, the key inquiry is the nature and degree of the *state law*'s *interference* with the exercise of a federal banking power. The Second Circuit's analysis, in contrast, focused on the *nature of the federal power* at issue, without giving any weight to the degree of interference, if any, caused by the state law.

And third, the Second Circuit's analysis leaves States very little leeway to enforce other laws against national banks for the benefit of consumers and thus significantly undercuts the States' traditional role in this area. Yet Congress specifically enshrined that role in law when it enacted the Dodd-Frank Act in response to the 2008 foreclosure crisis, finding that overly aggressive federal preemption of state law had left consumers inadequately protected from abusive lending practices.

ARGUMENT

I. THE SECOND CIRCUIT'S DECISION CREATES A CIRCUIT SPLIT ON AN IMPORTANT ISSUE OF STATE SOVEREIGNTY AFFECTING MILLIONS OF HOMEOWNERS.

As petitioners demonstrate (Pet. 16-22), the Second Circuit's decision directly conflicts with that of the First Circuit in *Conti v. Citizens Bank, N.A.*, 157 F.4th 10 (1st Cir. 2025), *cert. denied,* __ S. Ct. __, 2026 WL 1052171 (Apr. 20, 2026), on the question whether the National Bank Act preempts the application of state interest-on-escrow laws to national banks. The decision also, more generally, conflicts with the First Circuit on the proper way to evaluate federal preemption of the application to national banks of state consumer financial laws. This circuit split is deepened by the Ninth Circuit's earlier decision that, like the First Circuit, reached an outcome opposite to that of the Second Circuit here. *See Kivett v. Flagstar Bank, FSB*, 154 F.4th 640 (9th Cir. 2025).[3]

The present circuit split creates uncertainty on an issue affecting millions of homeowners who reside in States outside the First, Second, and Ninth Circuits with interest-on-escrow laws on the books. The circuit split also creates uncertainty about the degree to which any State can enforce other consumer financial laws against national banks—an issue potentially affecting homeowners and consumers of financial products alike in all fifty States.

Amici States agree with petitioners that this case presents the best vehicle for considering the question presented here, as compared to the two other cases in which similar petitions are currently pending. As petitioners note (Pet. 25-26), because the Ninth Circuit in *Kivett* considered itself bound by its own pre-*Cantero* precedent, it had no occasion to apply this Court's preemption framework. And though *Conti* does not have the same problem, this case provides the superior vehicle because it has already been "battle-tested" before the Court and would not require the Court to take the extraordinary step of reconsidering a petition for certiorari that it has already denied. Pet. 27.

---

[3] After the Second Circuit handed down its decision in this case, counsel for Citizens Bank in *Conti v. Citizens Bank* moved for rehearing of its petition for certiorari, and that motion remains pending. *See* Dkt. No. 25-1004. And a petition for a writ of certiorari is now pending in *Kivett* as well. *See* Dkt. No. 25-1350.

II. THE SECOND CIRCUIT'S TEST FOR PREEMPTION DEPARTS FROM THE STATUTORY TEXT OF THE NATIONAL BANK ACT AND THIS COURT'S GUIDANCE.

Under the National Bank Act, as amended by the Dodd-Frank Act, "State consumer financial laws" are presumptively enforceable against national banks; such a law, if nondiscriminatory, may be invalidated as applied to national banks "only if" it "prevents or significantly interferes with the exercise by the national bank of its powers," in accordance with the standard set forth in *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996). 12 U.S.C. § 25b(b)(1)(B).

When this case first came before the Court in 2024, the Court explained that application of that statutory standard requires a "practical assessment of the nature and degree of the interference caused by a state law." Pet. App. 72a. The Second Circuit on remand departed from that instruction by manufacturing a new test: whether the federal power at issue is "express or broad" rather than "limited." Pet. App. 15a. According to the Second Circuit's majority opinion, a state law that "affects" a bank's exercise of an express or broad power is "likely to be preempted"—even where, as here, the "likely effect" of the state law on a bank's ability to exercise its power is "inconclusive." Pet. App. 15a, 20a, 25a.

This test has no basis in either the statutory text of the National Bank Act or this Court's decisions. The statutory preemption standard focuses on the effect of the state law—specifically, whether it "prevents or significantly interferes" with the exercise of a federally granted power—without requiring an analysis of the nature of the federal power at issue. Likewise, this Court in *Cantero I* instructed courts to analyze the nature of the "interference caused by a state law"—not the nature of the federal power itself. Pet. App. 72a. And though the Second Circuit cited *Barnett Bank*, 517 U.S. at 25, and *Fidelity Federal Saving & Loan Ass'n v. de la Cuesta*, 458 U.S. 141 (1982), as supporting an inquiry into the broad-versus-limited nature of the federal power, neither case in fact supports such an inquiry.

Barnett Bank does not support the Second Circuit's approach for two independent reasons.

First, as this Court explained in *Cantero I* (Pet. App. 66a-67a), there was little question that the state law at issue in *Barnett Bank* significantly interfered with the exercise of a federal banking power. That state law altogether prohibited national banks from engaging in an activity—selling insurance in small towns—that federal law expressly permitted. 517 U.S. at 31. *Barnett Bank* thus provides no guidance on how to decide whether a state law that affects a federal banking power to a far lesser degree, if at all, "significantly interferes" with a federal banking power within the meaning of 12 U.S.C. § 25b(b)(1)(B).

Second, *Barnett Bank* arose in a statutory context that is critically different from the context here, and its reference to the "broad" federal power at issue there must be understood in that context. The federal statute at issue in *Barnett Bank* said nothing about the law's relationship to state law, leading Florida to argue that federal law granted national banks permission to sell insurance *only* in those limited circumstances in which state law was not to the contrary. *Id.* at 32. In rejecting that argument, this Court observed that "normally Congress would not want States to forbid, or to impair significantly, the exercise of a power that Congress explicitly granted," and the federal statute contained no "explicit statement that the exercise of that power is subject to state law." *Id.* at 33-34. The federal statute's language thus suggested a "broad, not a limited, permission" to sell insurance with "no indication that Congress intended to subject that power to local restriction." *Id.* at 32, 34-35 (quotation marks omitted). This observation was accordingly not about the overall scope of the federal power; it was only about the breadth of the federal power vis-à-vis state law.

Here, in contrast, the National Bank Act, as amended by the Dodd-Frank Act, expressly addresses the relationship between the federal power at issue (the power to offer mortgage-escrow accounts) and state law by providing that national banks' exercise of that federal power is indeed subject to state law, unless state law "prevents or significantly interferes" with such exercise of power. 12 U.S.C. § 25b(b)(1)(B). It therefore makes no sense to rely on *Barnett Bank*'s "broad-versus-limited" principle—a principle designed to deduce the preemptive effect of a federal statute that is silent as to preemption—when the statute itself addresses the preemptive effect directly, by setting forth a presumption against preemption.

Fidelity lends no support to the Second Circuit's formulation, either. The Second Circuit characterized *Fidelity* as a case "where the text and structure of federal law indicated that Congress granted banks broad authority to exercise express powers." Pet. App. 17a. That is an inaccurate characterization of the case. *Fidelity* considered the preemptive effect of a federal regulation, not a statute. The Court's observation about the "broad" statutory language supported its conclusion that, in the Home Owners' Loan Act, Congress had granted the Federal Home Loan Bank Board wide latitude to regulate the lending practices of federal savings and loan associations—not that Congress had granted *banks* broad authority. 458 U.S. at 161.

Indeed, even assuming that the broad or limited nature of the federal power at issue is relevant to the "significant interference" question, there is no support for the Second Circuit's approach of gleaning the breadth of the federal power at issue from statutes other than the specific statute granting the power. And even if *that* were permissible, the two statutes that the Second Circuit cited do not support the conclusion that national banks enjoy broad powers to set the terms and conditions of mortgage escrow accounts.

The Second Circuit relied (Pet. App. 21a-22a) on the Real Estate Settlement Procedure Act (RESPA), 12 U.S.C. § 2601 et seq., which "extensively regulates national banks' operation of escrow accounts" (Pet. App. 62a), including by capping amounts that national banks can require borrowers to deposit into those accounts and by mandating the return of any remaining funds after the loan has been paid. *See* 12 U.S.C. §§ 2605(g), 2609(a). The Second Circuit additionally cited (Pet. App. 22a) the Truth in Lending Act (TILA), 15 U.S.C. § 1601 et seq., which among other things requires national banks to operate escrow accounts for certain mortgages, and, for those mandatory accounts, to pay interest in accordance with state law. 15 U.S.C. § 1639d. But those statutes do not demonstrate the grant to national banks of broad power to set the terms and conditions of mortgage escrow accounts; to the contrary, RESPA heavily constrains that power, and TILA expressly requires national banks to comply with state laws regulating mortgage escrow accounts. *See* 15 U.S.C. § 1639d(g)(3).

In sum, the Second Circuit's focus on the nature of the *federal* power at issue, rather than the nature and degree of the *state* law's interference, has no basis in either the statutory text of the National Bank Act or this Court's case law.

III. THE SECOND CIRCUIT'S TEST FOR PREEMPTION UNDERMINES THE STATES' ABILITY TO ENFORCE THEIR OWN LAWS, TO THE DETRIMENT OF CONSUMERS.

The Second Circuit's novel "broad-versus-limited" test doubly stacks the deck in favor of preemption, leaving States "between a rock and a hard place," as Judge Pérez argued in dissent. Pet. App. 49a. First, under the majority's approach, a broad federal power can be found based on "both Congress's expressed intent *and* silence on an issue." Pet. App. 49a. And then, once the federal power has been deemed "broad," a state law that affects the exercise of that power is "likely to be preempted," even if its probable effect on the exercise of the federal power is only "inconclusive." Pet. App. 15a, 25a.

This approach threatens to nullify States' sovereign interest in enforcing their own consumer financial laws for the protection of their residents—an interest that this Court has repeatedly recognized and that Congress has codified into law. As this Court has observed, States have a "traditional power to enforce otherwise valid regulations designed for the protection of consumers" in the absence of contrary federal law. *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 150 (1963). And States have "enforced their banking-related laws against national banks for at least 85 years." *Cuomo v. Clearing House Ass'n, L.L.C.*, 557 U.S. 519, 534 (2009). In the aftermath of the 2008 foreclosure crisis, after this state role had been curtailed by federal regulations that preempted state law in various areas, Congress responded by amending the preemption standard for state consumer financial laws in order to restore States' traditional power to protect their residents from abusive practices.

It is now widely accepted that one of the contributing factors to the 2008 foreclosure crisis was collapsing mortgage-lending standards, spurred on by federal agencies' overly aggressive preemption of state laws against abusive practices. As explained in the official report of the Financial Crisis Inquiry Commission, an entity created by Congress to examine the causes of the crisis,[4] the federal Office of the Comptroller of the Currency (OCC) and Office of Thrift Supervision (OTS) issued regulations that "preempted the applicability of state laws and regulatory efforts to national banks and thrifts, thus preventing adequate protection for borrowers and weakening constraints on this segment of the mortgage market." Fin. Crisis Inquiry Comm'n, *The Financial Crisis Inquiry Report* 155 (2011).

This project of federal preemption had real consequences for consumers: empirical analysis has shown, for example, that OCC preemption of state laws against predatory lending was responsible for an increase of up to 35 percent in the likelihood of mortgage default. *See* Lei Ding et al., *The Impact of Federal Preemption of State Antipredatory Lending Laws on the Foreclosure Crisis*, 31 J. Pol'y Analysis & Mgmt. 367, 379 (2012); *see also* Di Wu, Abdoul G. Sam & Xiangrui Wang, *Spillover Effects of Financial Deregulation: The Unintended Consequences of the OCC Preemption Rule on Mortgage Lending Practices*, 95 Int'l Rev. Fin. Analysis art. no. 103462, at 9-10 (2024) (concluding that OCC preemption induced higher risk-taking among lenders

---

[4] *See* Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-21, 123 Stat. 1617.

and contributed to "race to the bottom in lending practices").

Congress directly responded to such findings by restoring States' traditional consumer-protection role with the Dodd-Frank Act, which amended the National Bank Act. *See* S. Rep. No. 111-176, at 16 n.44 (2010) (citing research papers). In Congress's view, federal preemption was the culprit of the dramatic spike in foreclosures, and limiting federal preemption was the remedy. In passing the Dodd-Frank Act in 2010, Congress declared that the federal OCC and OTS had "actively created an environment where abusive mortgage lending could flourish without State controls." *Id.* at 17. Congress was therefore "undoing broader standards" of preemption and adopting a far narrower standard for state consumer financial laws that would "return it to what it had been for decades." *Id.* at 175.

That is not to say that the Second Circuit's decision in this case by itself will bring about another 2008-style crisis. But the decision's heavy thumb on the scale against the enforcement of state consumer financial laws against national banks is a step back down a path of federal preemption that could very well lead to another "race to the bottom" in consumer financial markets. The Court should grant certiorari in this case to preserve States' role in protecting consumers from abusive practices, as Congress intended.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

BRENNA BIRD
Attorney General
State of Iowa
ERIC H. WESSAN
Solicitor General

LETITIA JAMES
Attorney General
State of New York
BARBARA D. UNDERWOOD*
Solicitor General
ANDREA OSER
Deputy Solicitor General
SARAH L. ROSENBLUTH
Assistant Solicitor General
barbara.underwood@ag.ny.gov

June 2026

* *Counsel of Record*

(*Counsel listing continues on next page.*)

CORI MILLS
Acting Attorney General
State of Alaska
1031 West 4th Ave.
Anchorage, AK 99501

PHILIP J. WEISER
Attorney General
State of Colorado
1300 Broadway
Denver, CO 80203

WILLIAM TONG
Attorney General
State of Connecticut
165 Capitol Ave.
Hartford, CT 06106

KATHLEEN JENNINGS
Attorney General
State of Delaware
820 North French St.
Wilmington, DE 19801

CHRISTOPHER M. CARR
Attorney General
State of Georgia
40 Capitol Sq., SW
Atlanta, GA 30334

RAÚL LABRADOR
Attorney General
State of Idaho
700 West Jefferson St.
Ste. 210
P.O. Box 83720
Boise, ID 83720

KWAME RAOUL
Attorney General
State of Illinois
100 West Randolph St.
Chicago, IL 60603

THEODORE E. ROKITA
Attorney General
State of Indiana
302 West Washington St.
Indianapolis, IN 46204

KRIS KOBACH
Attorney General
State of Kansas
120 Southwest 10th Ave.
Topeka, KS 66612

AARON M. FREY
Attorney General
State of Maine
6 State House Sta.
Augusta, ME 04333

ANTHONY G. BROWN
Attorney General
State of Maryland
200 Saint Paul Pl.
Baltimore, MD 21202

DANA NESSEL
Attorney General
State of Michigan
P.O. Box 30212
Lansing, MI 48909

(*Counsel listing continues on next page.*)

KEITH ELLISON
Attorney General
State of Minnesota
75 Rev. Dr. Martin Luther
King Jr. Blvd.
St. Paul, MN 55155

DANIEL RAYFIELD
Attorney General
State of Oregon
1162 Court St. NE
Salem, OR 97301

MICHAEL T. HILGERS
Attorney General
State of Nebraska
2115 State Capitol
Lincoln, NE 68509

DAVID SUNDAY
Attorney General
Commonwealth of Pennsylvania
Strawberry Sq.
Harrisburg, PA 17120

JENNIFER DAVENPORT
Attorney General
State of New Jersey
25 Market St.
Trenton, NJ 08625

MARTY J. JACKLEY
Attorney General
State of South Dakota
1302 East Highway 14
Pierre, SD 57501

RAÚL TORREZ
Attorney General
State of New Mexico
408 Galisteo St.
P.O. Drawer 1508
Santa Fe, NM 87504

DEREK BROWN
Attorney General
State of Utah
350 North State St.
P.O. Box 142320
Salt Lake City, UT 84114

JEFF JACKSON
Attorney General
State of North Carolina
114 West Edenton St.
Raleigh, NC 27603

CHARITY R. CLARK
Attorney General
State of Vermont
109 State St.
Montpelier, VT 05609

GENTNER DRUMMOND
Attorney General
State of Oklahoma
313 Northeast 21st St.
Oklahoma City, OK 73105

KEITH KAUTZ
Attorney General
State of Wyoming
109 State Capitol
Cheyenne, WY 82002

(*Counsel listing continues on next page.*)

BRIAN L. SCHWALB
Attorney General
District of Columbia
400 6th St., NW
Washington, D.C. 20001