No. 22-529

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

BRIEF FOR STATES OF NEW YORK, IOWA, ALASKA, ARIZONA, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, GEORGIA, HAWAI'I, ILLINOIS, INDIANA, KANSAS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, MONTANA, NEBRASKA, NEVADA, NEW JERSEY, NORTH CAROLINA, OKLAHOMA, OREGON, PENNSYLVANIA, RHODE ISLAND, SOUTH DAKOTA, TEXAS, UTAH, VERMONT, WASHINGTON, AND WYOMING, AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

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

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INTERESTS OF AMICI CURIAE

Amici curiae States of New York, Iowa, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Georgia, Hawai'i, Illinois, Indiana, Kansas, Maine, Massachusetts, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, 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 reverse a decision of the U.S. Court of Appeals for the Second Circuit. That decision held that the National Bank Act 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.[1]

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

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[1] *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.

Amici States also have an interest in assuring that their “wild card” orders—orders that, for the sake of parity, extend to state banks privileges currently enjoyed by national banks—are not improperly viewed as preemption determinations. The Second Circuit erroneously used New York’s decision to issue a wild-card order as evidence of a preemption determination by the State. *See Cantero v. Bank of Am., N.A.*, 49 F.4th 121, 125 (2d Cir. 2022). New York made no such determination, however. And viewing such wild-card orders as preemption determinations could chill the use of such orders, to the detriment of state banks.

SUMMARY OF ARGUMENT

The Second Circuit’s decision unduly impairs States’ sovereign interest in enforcing their banking-related laws against state and national banks alike for the benefit of consumers.

The Second Circuit’s broad preemption decision conflicts with longstanding Supreme Court precedent that affirms States’ sovereign interest in enforcing their banking-related laws against national banks, as long as those laws do not prevent or significantly interfere with the exercise of national banks’ powers. The Second Circuit relied extensively on *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), while disregarding the Court’s many post-*McCulloch* precedents that have applied *McCulloch* narrowly. Letting the Second Circuit’s decision stand would unduly interfere with States’ well-settled role as enforcers of state laws against state and national banks for the protection of their residents.

The Second Circuit bolstered its erroneous decision by misinterpreting New York’s wild-card order. For the

sake of parity, that order relieved state banks to some degree from the State's escrow-interest law in response to a regulation issued by the Office of the Comptroller of the Currency (OCC) providing that national banks were not subject to, among other things, state escrow-interest laws. New York's wild-card order was not, as the Second Circuit incorrectly concluded, a determination that OCC's regulation was valid and thus that New York's escrow-interest law was in fact preempted as applied to national banks. Construing state wild-card orders as evidence of preemption determinations, as the Second Circuit did, could chill States' from exercising their wild-card authority to the detriment of state banks and, in turn, state residents.

ARGUMENT

I. The Second Circuit's Broad Preemption Rule Conflicts with This Court's Precedent Affirming States' Sovereign Interest in the Enforcement of Their Own Laws Against National Banks.

The broad preemption rule announced by the Second Circuit unduly undermines States' sovereign interest in the enforcement of their own laws against national banks. That rule also conflicts with longstanding Supreme Court precedent that has recognized and protected that interest.

1. The Second Circuit held that a state law is preempted as applied to a national bank if its enforcement would "control" a banking power granted by the federal government—a standard drawn from this Court's decision in *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819). The court concluded that New York General Obligations Law (GOL) § 5-601 failed this

test, and was thus preempted as applied to national banks, because, "[b]y requiring a bank to pay its customers in order to exercise a banking power granted by the federal government, the law would exert control over banks' exercise of that power." *Cantero*, 49 F.4th at 134. Such control, the court reasoned, amounts to an "important" interference with the banking power at issue. *Id.* at 136–37.

The Second Circuit's test contains no limiting principle. Indeed, because the court eschewed analyzing the effect on respondent Bank of America of GOL § 5-601—a law that requires only that the bank pay modest interest on relatively small sums in mortgage-escrow accounts—it is difficult to know which, if any, state laws would be sufficiently unimportant to pass the Second Circuit's test.[2] The "control" test of preemption adopted by the Second Circuit leaves little room for state law enforcement against national banks.

2. The Second Circuit's preemption analysis also conflicts with this Court's precedent since *McCulloch*, which confirms that *McCulloch*'s holding does not

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[2] The Second Circuit resisted the suggestion that all "State consumer financial laws" would be preempted under its rule, insisting that "states are generally free to impose restrictions on transactions engaged in by national banks, in common with those of other corporations doing business within the state." *Cantero*, 49 F.4th at 137 n.10. That protestation, however, only underscores the conflict between the Second Circuit's decision and this Court's precedents, which make clear that States may enforce against national banks both their general laws that apply to all corporations *and* their banking-specific laws. *See, e.g.*, *Cuomo v. Clearing House Ass'n, L.L.C.*, 557 U.S. 519, 534 (2009); *Atherton v. FDIC*, 519 U.S. 213, 222–23 (1997).

categorically shield national banks from the enforcement of state laws that to some degree, however limited, control an aspect of their operation.

For example, in *National Bank v. Commonwewalth*, the Court upheld a Kentucky law that required national and state banks to pay, on behalf of their shareholders, the State's tax on bank shares. 76 U.S. (9 Wall.) 353 (1869). The Court reasoned that requiring a national bank to remit a state tax on behalf of its shareholders did not "hinder" the national bank from performing its duties as a financial agent of the federal government; it was "only when the State law incapacitates the banks from discharging their duties to the [federal] government that it becomes unconstitutional." *Id.* at 362–63. The Court specifically rejected a reading of *McCulloch* that would "convert a principle founded alone in the necessity of securing to the government of the United States the means of exercising its legitimate powers" into an "unauthorized invasion of the rights of the States." *Id.* at 362; *see also* Arthur E. Wilmarth, Jr., *The Second Circuit's* Cantero *Decision Is Wrong About Preemption Under the National Bank Act*, 41 Banking & Fin. Servs. Pol'y Rep. 1, 6 (2022) (arguing that *National Bank* rejects any such overly broad reading of *McCulloch*).

In *McClellan v. Chipman*, the Court allowed Massachusetts to enforce against a national bank its prohibition on preferential transfers to creditors, rejecting the argument that "national banks in virtue of the act of Congress are entirely removed, as to all of their contracts, from any and every control by state law." 164 U.S. 347, 359 (1896). The Court held that there was no conflict between the power granted to national banks by Congress "to take real estate for certain purposes" and

the "general and undiscriminating" state law "subjecting the taking of real estate to certain restrictions, in order to prevent preferences in case of insolvency." *Id.* at 361. The Court did not cite *McCulloch*, apparently viewing it as not controlling. The Court simply applied ordinary conflict preemption. Roderick M. Hills, Jr., *Exorcising* McCulloch*: The Conflict-Ridden History of American Banking Nationalism and Dodd-Frank Preemption*, 161 U. Pa. L. Rev. 1235, 1266 (2013).

The Court again applied ordinary conflict-preemption principles in *First National Bank in St. Louis v. Missouri* when it upheld a Missouri statute that prohibited state and national banks from opening branches in the State. 263 U.S. 640 (1924). The Court reaffirmed that national banks are subject to state laws "unless such laws interfere with the purposes of their creation, tend to impair or destroy their efficiencies as federal agencies or conflict with the paramount law of the United States." *Id.* at 656. The Court concluded that the Missouri statute did not conflict with the National Bank Act (NBA), which did not then authorize national banks to establish branches. *Id.* Neither did the state statute frustrate the purpose for which the national bank was created or interfere with its federal powers. *Id.* at 659.

And in *Anderson National Bank v. Luckett*, the Court upheld a Kentucky statute providing that abandoned bank accounts would escheat to the State. 321 U.S. 233 (1944). The Court cited *McCulloch* as standing only for the proposition that a state statute may not discriminate against national banks, and then held that the Kentucky law was not discriminatory and did not otherwise conflict with the NBA. *Id.* at 247–48.

In *Barnett Bank of Marion County, N.A. v. Nelson*, the Court synthesized three of the above cases (*National*

Bank, *McClellan*, and *Anderson*) as standing for the proposition that States have the power to regulate national banks so long as doing so "does not prevent or significantly interfere with the national bank's exercise of its powers." 517 U.S. 25, 33 (1996). And in *Cuomo*, the Court relied on two of these cases (*First National Bank in St. Louis* and *Anderson*) as evidence that States "have enforced their banking-related laws against national banks for at last 85 years." 557 U.S. at 534.

Underscoring the point, the Court in *Cuomo* rejected the attempt of OCC to do what Congress had declined to do: exempt national banks from all state banking laws, or at least state enforcement of those laws. *Id.* at 533.

Indeed, Congress has since acted affirmatively both to codify the *Barnett Bank* preemption standard and to expressly curb OCC's authority to render preemption determinations. Under the Dodd-Frank Wall Street Reform and Consumer Act of 2010, a "State consumer financial law" is presumptively enforceable against national banks; it may be invalidated as applied to such banks "only if" one of three tests is satisfied. 12 U.S.C. § 25b(b)(1). And one of those tests is whether, in accordance with the *Barnett Bank* preemption standard, the state law "prevents or significantly interferes with the exercise by the national bank of its powers." *Id.* § 25b(b)(1)(B). Further, an OCC regulation or order may hold a state consumer financial law inapplicable to a national bank only if OCC determines, on a "case-by-case basis," with reference to "the impact of a particular State consumer financial law on any national bank," that "substantial evidence" supports a finding that *Barnett Bank*'s preemption standard has been satisfied. *Id.* § 25b(b)(3), (c).

Thus, the Second Circuit's reliance on *McCulloch* to hold that a state law may not be enforced against a national bank regardless of the degree of its impact on the bank is out of step with both this Court's precedents and Congress's enactment.

3. Accordingly, and as petitioners argue, the proper preemption standard is not *McCulloch*'s "control" test, but rather the standard set forth in *Barnett Bank* and since codified in the Dodd-Frank Act: whether the state law "prevents or significantly interferes with the exercise by the national bank of its powers," 517 U.S. at 33; 12 U.S.C. § 25b(b)(1)(B). Applying that standard requires a "case-by-case" inquiry into the practical effects of the specific state law challenged. 12 U.S.C. § 25b(b)(1)(B)*; see also* Wilmarth, *supra*, at 8 (arguing that Second Circuit's decision conflicts with standard codified in Dodd-Frank Act).

GOL § 5-601 satisfies this test. While application of the preemption standard may require record-intensive assessments in some circumstances, *cf.* Br. for U.S. as Amicus Curiae on Petition 13, several legal and practical considerations make clear that GOL § 5-601 is not preempted. The modest interest rate that New York imposes on mortgage-escrow accounts does not significantly interfere with national banks' power to require and maintain such accounts, let alone prevent them from doing so. Mortgage-escrow accounts exist to preserve a loan's collateral by ensuring that property taxes and homeowners' insurance premiums are paid in a timely fashion. That purpose is not impeded by GOL § 5-601's requirement that banks pay a modest rate of interest on monies held in mortgage-escrow accounts. Nor does the law bar the creation of such accounts, condition the accounts' creation on the relinquishing of any rights, or subject the accounts to auditing by state

regulators. It merely requires Bank of America to pay a modest interest rate on upfront sums it collects so that the bank cannot use required mortgage-escrow accounts to obtain interest-free loans from homeowners.

The Dodd-Frank Act itself confirms that state laws that require the payment of interest on mortgage-escrow accounts do not significantly interfere with the exercise of national banking powers. Under the Dodd-Frank Act, "If prescribed by applicable State or Federal law, each creditor shall pay interest to the consumer on the amount held in any impound, trust, or escrow account that is subject to this section in the manner as prescribed by that applicable State or Federal law." 15 U.S.C. § 1639d(g)(3). Although this provision does not apply to the particular mortgage loans at issue in this case, it nonetheless provides strong evidence that Congress does not believe that state escrow-interest laws prevent or significantly interfere with the exercise of a national banking power. *See Lusnak v. Bank of Am., N.A.*, 883 F.3d 1185, 1196 (9th Cir. 2018) (adopting this analysis).

4. Letting the Second Circuit's decision stand would unduly interfere with States' efforts to protect their residents from potentially abusive practices by national banks in the provision of financial services. Enforcement of state consumer-protection laws, in the financial-services arena and otherwise, has long been a significant area for the exercise of state police powers. *See Florida Lime & Avocado Growers, Inc. v. Paul,* 373 U.S. 132, 150 (1963) (refusing to intrude upon States' "traditional power to enforce otherwise valid regulations designed for the protection of consumers" without evidence of clear congressional intent).

Indeed, States routinely conduct investigations, pursue litigation, and obtain settlements in consumer-protection cases involving national banks in connection with violations of state laws about fair lending, debt collection, and other unfair and deceptive trade practices. Recent examples of such law-enforcement efforts include:

- All 50 States entered into a settlement agreement with Wells Fargo Bank, N.A., in 2018, to resolve claims that Wells Fargo violated state laws by, among other things, opening millions of unauthorized accounts and enrolling customers in online banking services without their knowledge or consent.[3]
- 49 States joined with the federal government to execute a settlement resolving state and federal investigations finding that national mortgage servicers routinely violated state law by "robo-signing" foreclosure documents (i.e., signing those documents without properly reviewing them).[4]

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[3] *See* Press Release, Pa. Off. of the Att'y Gen., *Attorney General Shapiro Announces $575 Million 50-State Settlement with Wells Fargo Bank for Opening Unauthorized Accounts and Charging Consumers for Unnecessary Auto Insurance, Mortgage Fees* (Dec. 28, 2018) (internet). (For sources available on the internet, full URLs appear in the Table of Authorities.)

[4] *See* Press Release, U.S. Dep't of Justice, *Federal Government and State Attorneys General Reach $25 Billion Agreement with Five Largest Mortgage Servicers to Address Mortgage Loan Servicing and Foreclosure Abuses* (Feb. 9, 2012) (internet); *see also* Press Release, Ohio Att'y Gen., *DeWine, 47 AGs Announce $136 Million Settlement with Chase Over Credit Card Collections* (July 8, 2015)

(*continues on next page*)

- New Mexico entered into a settlement with Capital One Bank to resolve its claim that the bank violated the New Mexico Unfair Practices Act by misrepresenting the terms of credit-card debt-protection products.[5]

- Hawaiʻi entered into settlements with various national banks to resolve claims that the banks violated Hawaiʻi consumer-protection statutes by deceptively marketing and enrolling credit-card holders in various debt-protection products.[6]

- Mississippi entered into settlements with various national banks to resolve claims that the banks violated the Mississippi Consumer Protection Act by charging consumers for credit-card products that they did not want or need.[7]

(internet) (announcing that 47 States, together with District of Columbia and federal government, executed settlement with Chase Bank to resolve claims that bank violated state and federal law by robo-signing debt-collection documents and by selling bad credit-card debt).

[5] *See* Notice of Voluntary Dismissal With Prejudice, *New Mexico v. Capital One Bank (USA) N.A.*, No. 13-cv-00513 (D.N.M. Feb. 2, 2015), ECF No. 53; *see also New Mexico v. Capital One Bank (USA) N.A.*, 980 F. Supp. 2d 1314 (D.N.M. 2013).

[6] *See, e.g.*, Joint Motion to Dismiss Certain Parties From the Appeal, *Hawaiʻi ex rel. Louie v. HSBC Bank Nev., N.A.*, No. 13-15611 (9th Cir. Apr. 11, 2014), ECF No. 58; *see also Hawaiʻi ex rel. Louie v. HSBC Bank Nev., N.A.*, 761 F.3d 1027 (9th Cir. 2014).

[7] *See, e.g.*, Agreed Order of Dismissal, *Hood ex rel. Mississippi v. JP Morgan Chase & Co.*, No. 12-cv-00565 (S.D. Miss. Feb. 26, 2014), ECF No. 67; *see also Hood ex rel. Mississippi v. JP Morgan Chase & Co.*, 737 F.3d 78 (5th Cir. 2013).

- Illinois, together with the federal government, entered into a settlement with Countrywide to resolve claims that it violated Illinois consumer-protection statutes by steering African-American and Latino borrowers into risky subprime loans more often than similarly situated white borrowers.[8]

As vividly demonstrated by the 2008 foreclosure crisis, the problems of irresponsible lending practices and financial exploitation are matters of profound state and local concern—problems that States have been at the forefront of addressing. *See generally* Martha Coakley & Alicia Daniel, *Improving Consumer Protection: Lessons from the 2008 Recession*, 103 Minn. L. Rev. 2477, 2483 (2019) (describing States' responses to foreclosure crisis); Br. for Amici States at 11, *Cuomo*, 557 U.S. 519 (No. 08-453) (describing States' record of enforcement in the area of abusive mortgage lending).

States have a duty to enforce state consumer-protection laws targeting these practices for the protection of their residents. Undermining this longstanding state law-enforcement function would inevitably result in a diminution of consumer protections in the banking arena.

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[8] *See* Press Release, Ill. Att'y Gen., *Madigan, U.S. DOJ Reach $335 Million Settlement With Countrywide/Bank of America Over Discriminatory Lending* (Dec. 21, 2011) (internet).

II. THE SECOND CIRCUIT MISINTERPRETED NEW YORK'S WILD CARD ORDER AS AN INDEPENDENT STATE DETERMINATION OF PREEMPTION

The Second Circuit improperly relied on a New York wild-card order ("Wild Card Order") to bolster its conclusion that the NBA preempts the application of GOL § 5-601 to national banks.

1. New York promulgated the Wild Card Order pursuant to its authority under the "wild card" statute of New York Banking Law § 12-a. Wild-card statutes—which have been enacted in some form in all 50 States[9]—enable state banking regulators to grant state banks a particular banking power enjoyed by national banks in order to maintain parity between the two. These statutes give States administrative authority to grant privileges to state banks within their jurisdictions, providing States with a flexible method of expanding or amending the powers of state-chartered banks in response to newly adopted federal initiatives, thereby enabling States to preserve the competitiveness of state charters vis-à-vis national ones for the benefit of consumers. *See* John J. Schroeder, Note, *"Duel" Banking System? State Bank Parity Laws: An Examination of Regulatory Practice, Constitutional Issues, and Philosophical Questions*, 36 Ind. L. Rev. 197, 198 (2003).[10]

New York promulgated the subject Wild Card Order in 2018 to address the application to New York–

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[9] *See* Nat'l Consumer L. Ctr., *Consumer Credit Regulation* § 3.7.1 n.672 (3d ed. 2020) (citing statutes).

[10] *See also* Jay B. Sykes, Cong. Rsch. Serv., R45081, *Banking Law: An Overview of Federal Preemption in the Dual Banking System* 8 (2018); Christian A. Johnson, *Wild Card Statutes, Parity, and National Banks—the Renascence of State Banking Powers*, 26 Loy. U. Chi. L.J. 351, 353 (1995).

chartered banks of GOL § 5-601 in light of a recent OCC regulation providing that national banks may make real-estate loans "without regard" to fourteen categories of state laws, including those concerning "[e]scrow accounts." 12 C.F.R. § 34.4(a)(6). While New York, 46 other States, and the District of Columbia objected to OCC's assertion by regulation that the covered state laws were preempted as applied to national banks,[11] New York took the step of exercising its wild-card authority while the OCC regulation remained in place to maintain parity between New York and national banks at a time when prevailing interest rates were historically low.

The Wild Card Order acknowledged that, under the OCC regulation, national banks could establish mortgage-escrow accounts "without restriction as to the payment of interest." Maria T. Vullo, Superintendent of Fin. Servs., *Order Issued Under Section 12-a of the New York Banking Law* (Jan. 19, 2018) (internet). To "achieve or maintain parity" between New York banks and national banks, the Wild Card Order set forth an alternative minimum interest rate to be paid by New York banks on escrow accounts.[12] *Id.* Setting such a rate, the Wild Card Order stated, was "consistent with the policy of the State of New York" and thus "protects the public interest, including the interests of depositors, creditors, shareholders, stockholders and consumers." *Id.*; N.Y. Banking Law § 12-a(5).

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[11] *See* Letter from 48 Attorneys General to John Walsh, Acting Comptroller, Off. of. the Comptroller of the Currency (June 27, 2011) (internet).

[12] That rate, adjusted quarterly, is the lesser of (i) two percent or (ii) the six-month yield on U.S. Treasury securities on the last business day of the immediately preceding calendar quarter. Wild Card Order at 1.

The Wild Card Order is effective only for as long as the underlying OCC regulation is extant. If the OCC regulation ceases to exist, the Wild Card Order will be revoked, either expressly or by operation of law. *See* N.Y. Banking Law § 12-a(6).

2. The Second Circuit was wrong to treat New York's Wild Card Order as evidence that New York "agreed that GOL § 5-601 is preempted." *Cantero*, 49 F.4th at 135. New York agreed to no such thing.

Preliminarily, state wild-card orders have no bearing on the preemption analysis used to determine whether a state law "prevents or significantly interferes with the exercise by the national bank of its powers." *Barnett Bank*, 517 U.S. at 33; *see also* 12 U.S.C. § 25b(b)(1)(B). That analysis requires an inquiry into the effect of the state law *on national banks*. State orders granting certain privileges to *state banks* do not address that inquiry.

Further, in issuing the Wild Card Order, New York was not deciding whether GOL § 5-601 is preempted as applied to national banks. Rather, New York was simply recognizing the practical reality that the OCC regulation announcing such preemption placed national banks at an advantage as compared to state banks. New York responded to that situation by setting an alternative lower minimum interest rate for state banks in order to maintain some parity. The Second Circuit was thus simply incorrect that New York, in the Wild Card order,

"stat[ed] that GOL § 5-601 *did not apply* to national banks." *Cantero*, 49 F.4th at 135.[13]

The Second Circuit also incorrectly suggested that, if petitioners prevail in this litigation, New York's Wild Card Order would be rendered "illegal." *Id.* Rather, if petitioners prevail, the Wild Card Order will be revoked, either expressly or by operation of law.

3. Construing state wild-card orders as evidence that a State agrees with the OCC's preemption determinations, as the Second Circuit did, could harm state banks and state consumers of banking services. Such an interpretation could make States reluctant to exercise their wild-card authority, lest they provide support for precisely the inference drawn by the Second Circuit. And the chilling of States' exercise of that authority could in turn weaken state banks by making them less competitive with national banks, to their detriment and the detriment of consumers who rely on them.

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[13] Indeed, the Wild Card Order did not expressly reference GOL § 5-601 at all. It did, however, cite New York Banking Law § 14-b, which cross-references GOL § 5-601 in authorizing the DFS superintendent to prescribe by regulation an interest rate on escrow accounts that exceeds the two percent rate that GOL § 5-601 requires.

CONCLUSION

The judgment of the U.S. Court of Appeals for the Second Circuit should be reversed.

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