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SUSAN M. SEAMAN

MADISON:

608.255.4440

SUSAN.SEAMAN@

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U.S. Supreme Court Rejects a More Bright-Line National Bank Act Preemption Standard

In a unanimous decision, the U.S. Supreme Court rejected a more bright-line standard for determining whether the National Bank Act (NBA) preempts a state law. Rather, the Supreme Court explained that the NBA preemption standard under the Dodd-Frank Act and in *Barnett Bank of Marion Cty., N. A. v. Nelson* requires “a practical assessment of the nature and degree of the interference caused by a state law” on a national bank’s exercise of its powers. The Supreme Court determined that the U.S. Court of Appeals for the Second Circuit applied the NBA preemption standard in *Cantero v. Bank of America* in a manner that was inconsistent with the court’s prior *Barnett Bank* decision. Thus, the Supreme Court vacated the Second Circuit’s judgment and remanded the case.

The issue in *Cantero v. Bank of America* was whether the NBA preempts a New York law that requires a bank to pay borrowers interest that accrues on mortgage escrow accounts. The Second Circuit concluded that the NBA preempted the state law because New York law would exert control over a national bank’s power to create and fund escrow accounts. However, the Supreme Court concluded that this “exercise of control” approach is not consistent with the “prevents or significantly interferes” preemption standard required by the Dodd-Frank Act and *Barnett Bank*. The Supreme Court wrote that “*Barnett Bank* did not purport to establish a clear line to demarcate when a state law ‘significantly interfere[s] with the national bank’s exercise of its powers.’” Instead, the NBA preemption standard in *Barnett Bank* requires a more “nuanced comparative analysis.”

The Supreme Court could have stopped here, but the opinion includes important dicta, signaling a framework that courts can use to determine NBA

preemption under the Dodd-Frank Act and *Barnett Bank* preemption standard. First, the opinion explained pre-*Barnett Bank* Supreme Court precedents where the Court determined that a state law significantly interfered and did not significantly interfere with a national bank's powers. Specifically, the Supreme Court examined and grouped the precedent, stating, "if the state law's interference with national bank powers is more akin to the interference in [the Supreme Court cases finding preemption], then the state law is preempted." Similarly, the opinion continues "[i]f the state law's interference with national bank powers is more akin to the interference in [the Supreme Court cases finding no preemption], then the state law is not preempted."

Further, in a footnote, the Supreme Court also shared that *Barnett Bank* and its earlier precedents reached preemption "conclusions about the nature and degree of the state laws' alleged interference with the national banks' exercise of their powers based on the text and structure of the laws, comparison to other precedents, and common sense." This dicta could provide additional guidance for courts and national banks making NBA preemption determinations.

The *Cantero* case was the first time that the Supreme Court has addressed the NBA preemption standard in *Barnett Bank* since the Supreme Court issued *Barnett Bank* in 1996. Because the Supreme Court concluded that the Dodd-Frank Act and *Barnett Bank* require "a practical assessment of the nature and degree of the interference caused by a state law," NBA preemption determinations of state law will involve judgment calls by courts in particular cases on particular state laws. In the wake of the *Cantero* decision, national banks should review their prior NBA preemption positions and evaluate their litigation strategies when NBA preemption questions arise.

Contact us

If you want to discuss the *Cantero* decision or NBA preemption more generally, please contact Susan Seaman or your Husch Blackwell attorney.