No. 24-1293

In the United States Court of Appeals
for the Tenth Circuit

National Association of Industrial Bankers, et al.,

Plaintiffs-Appellees,

v.

Philip J. Weiser, Attorney General of the State of Colorado, et al.,

Defendants-Appellants.

On rehearing en banc of an appeal from the
United States District Court for the District of Colorado
No. 1:24-cv-812-DDD-KAS, Hon. Daniel D. Domenico

Amicus Brief of the States of Utah and 20 Other States in Support of Appellees and Affirmance

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Amici's Authority and Interest

Amici states of Utah, Alabama, Arkansas, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, West Virginia, and Wyoming (Amici States) are authorized to file an amicus brief without the consent of the parties or leave of court. Fed. R. App. P. 29(b)(2). The Court's order granting rehearing en banc also encouraged amicus participation.

The Amici States support Appellees and affirmance of the district court. This appeal involves an issue of first impression in the interpretation of the 1980 Depository Institutions Deregulation and Monetary Control Act (DIDMCA), Pub. L. No. 96-221, 94 Stat. 132.[1] Congress passed DIDMCA to preserve the balance between federally- and state-chartered financial institutions under the United States' dual banking system.

Amici States share this same interest. Utah law provides it is in the public's interest to (1) "preserve the competitive equality" of state- and federally-chartered institutions; (2) "preserve the advantages of the dual banking system"; and (3) "protect the interests of shareholders, members,

[1] Amici States cite to the public law because section 525, containing the state opt-out provision central to this appeal, appears only as a "note" in the United States Code. *See* 12 U.S.C. § 1831d (Historical Notes, Effective and Applicability Provision).

depositors, and other customers in financial institutions operating in" Utah. Utah Code § 7-1-102(1). Other states have similar provisions. *See* Ala. Code § 5-5A-18.1; Ga. Code §§ 7-1-3(a)(6), -628(c)(2); La. Stat. §§ 6:5, 6:121.B(1); Neb. Rev. Stat. § 8-1,140; Ohio Rev. Code § 1101.02; Wyo. Stat. § 13-1-603(c)(vi).

Nationally, the financial services industry employs over two million people and handles $25 trillion in assets.[2] This industry plays a significant part of Amici States' economies. In Utah alone, for example, over 100,000 residents work in the financial sector.[3] Yet, for such an important sector of the state economy, almost two-thirds of Utah's financial institution assets are already federally-controlled, not state-controlled. 2025 Report of the Commissioner of Financial Institutions, State of Utah, (UDFI Annual Report) at 21 (table showing division of total assets between state and national institutions).[4] So Amici States are alarmed by and interested in any actions—like Colorado's challenged law or the vacated panel decision—that would undermine state-chartered financial institutions and incentivize them to convert to federally-chartered institutions.

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[2] https://state-tables.fdic.gov/

[3] https://www.bls.gov/eag/eag.ut.htm

[4] Available at https://dfi.utah.gov/wp-content/uploads/sites/29/2025/10/Annual.pdf

The Amici States do not dispute Colorado's right to opt out of DIDMCA for its own state-chartered institutions, so Colorado-chartered banks may not export Colorado interest rates in loans made to out-of-state borrowers. But the Colorado law at issue here—H.B. 23-1229 (codified at Col. Rev. Stat. § 5-13-106)—purports to opt out of DIDMCA for purposes of "consumer credit transactions in [Colorado]."[5] That is a bridge too far, extending the reach of Colorado law to banks and other financial institutions that are chartered and regulated by the respective Amici States and have no physical presence in Colorado. Their only nexus with Colorado is that Colorado residents wish to borrow from these out-of-state institutions. H.B. 23-1229 conflicts with Amici States' interest in protecting and promoting the dual banking system, including protecting the interests of the participants in that system. And the law interferes with Amici States' ability to regulate and insure the financial health of their own state-chartered financial institutions.

Argument

The Court's order granting rehearing asks whether DIDMCA's enactment history informs the meaning of "loans made in such State" in section 525 and whether the phrase should mean "loans in which either the

[5] Under pre-existing Colorado law, a "consumer credit transaction" is "made" in Colorado if the borrower or lender is in Colorado. Colo. Rev. Stat. § 5-1-201(1).

lender *or* the borrower is located in the opt-out state." Amici States focus on those two questions. And the answers are that DIDMCA's enactment history within the dual-banking system does matter and confirms that "loans made in such State" does NOT encompass the borrower's state. Amici States thus address the dual banking system, DIDMCA's scope and context, and some of the ways that Colorado's law (as interpreted by Colorado) would undermine DIDMCA's express purpose to help preserve state-chartered banks.

A. The dual-banking system is a valued feature of the American banking regime.

The United States has a dual banking system with federally-chartered institutions regulated by federal agencies and state-chartered institutions regulated by their respective states. *See Cantero v. Bank of Am., N.A.*, 602 U.S. 205, 209-10 (2024). Historically, banks were exclusively state-chartered institutions and, outside the Midwest, most banks had only a single location, not even having branches in state. *See* Mark D. Rollinger, *Interstate Banking and Branching Under the Riegle-Neal Act of 1994*, 33 Harv. J. Legis. 183, 188-89 (1996). Although Congress chartered two national banks (from 1792 to 1811 and from 1816 to 1836, respectively), both charters expired without renewal. *Id.* at 188 n.19.

The current system of federally-chartered financial institutions began in 1864 with the passage of the National Bank Act (NBA). *Id.* at 189.

Ironically, the NBA may have been intended to end state-chartering in favor of a national system. *See* Kenneth E. Scott, *The Dual Banking System: a Model of Competition in Regulation*, 30 Stan. L. Rev. 1, 9 (1977) ("When the national banking system was created during the Civil War, it was expected to replace the state bank system. Congress intended to assure this replacement by the passage in 1865 of a prohibitive 10 percent per annum tax on state bank notes." (footnotes omitted)). That did not happen. Instead, the two alternatives have grown in parallel. And for at least the past several decades, this dual system has been regarded as a feature, not a flaw, of the American banking system. *Id.* at 1 ("In banking circles, the 'dual system' of both national and state banks and national and state agencies regulating banking is an object of almost universal veneration.").

Several states, including Amici States, have codified their intention of preserving the advantages of this dual system. *See, e.g.,* Ala. Code § 5-5A-18.1; Ga. Code §§ 7-1-3(a)(6), -628(c)(2); La. Stat. §§ 6:5, 6:121.B(1); Neb. Rev. Stat. § 8-1,140; Ohio Rev. Code § 1101.02; Utah Code § 7-1-102(1)(e); Wyo. Stat. § 13-1-603(c)(vi).

Likewise, scholars and industry experts have noted the advantage of these parallel regulatory regimes in allowing "an escape valve from arbitrary or discriminatory chartering and regulatory policies at either the state or Federal level." Scott, *supra*, at 12 (quoting a study by the American Bankers

Association). So it is cause for alarm when changes—legal, policy, or economic—cause a persistent flow of chartering in only one direction. *Id.* at 30 (noting industry and congressional alarm over the high rate of conversion to federal charters in the 1960s due to Comptroller policies at the time).

In sum, the dual banking system has a recognized value both in practice and in statute. And even though the balance between state and federal chartering is somewhat self-correcting, *see id.*, Amici States have legitimate interests in preserving the viability of state chartering through DIDMCA's proper interpretation and application.

B. DIDMCA's scope and enactment context show that section 525 does not allow one state to regulate banks chartered by and located in another state.

Congress passed DIDMCA specifically to protect this dual system by protecting the viability of state chartering. After the Supreme Court held that federal institutions could export their home-state interest rates, *Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp.*, 439 U.S. 299, 310-13 (1978), Congress enacted DIDMCA extending the same opportunity to state-chartered institutions. *See* Pub. L. No. 96-221 § 521. The statute was expressly meant "to prevent discrimination against State-chartered insured banks." *Id.* Since then, state and federal financial institutions have enjoyed an equal playing field, both being able to lend

nationally at the rates determined by federal law and the state in which the institution is located.

DIDMCA includes a provision for states to opt out of this arrangement for "loans made in such State" by adopting a law expressly opting out. Pub. L. No. 96-221 § 525. Scope and context matter in understanding this provision. By scope, DIDMCA is expressly focused on banking regulation with the intent "to facilitate the implementation of monetary policy, to provide for the gradual elimination of all limitations on the rates of interest which are payable on deposits and accounts, and to authorize interest-bearing transaction accounts, and for other purposes." *Id.* preamble.

In multiple sections, DIDMCA expressly overrides any state law that would limit interest on various types of loans from various types of financial institutions, and each time this is accompanied by a provision that a state may opt out for loans "made in such State." *See, e.g., id.* § 501, § 512, § 521, § 522, § 523, § 524, § 525.

DIDMCA made this provision in the context where existing case law had already held that a loan is "made" at the site of the lending institution, not where the borrower happens to live. This was implicit in *Marquette*, the decision that led Congress to enact DIDMCA. *Marquette* concerned a Nebraska bank issuing credit cards to consumers in Minnesota. *Marquette*, 439 U.S. at 301-02. There was "no question" that the bank was located in

Nebraska, not Minnesota or any other state. *Id.* at 309. And the Supreme Court expressly rejected the suggestion that the Nebraska bank was making loans wherever its credit cards were used: "If the location of the bank were to depend on the whereabouts of each credit-card transaction, the meaning of the term 'located' [in Section 85 of the National Banking Act] would be so stretched as to throw into confusion the complex system of modern interstate banking." *Id.* at 312. And the conclusion that a loan is made at the lender's location stretches back to the nineteenth century. *See, e.g., Hieronymus v. New York Nat'l Bldg. & Loan Ass'n*, 101 F. 12, 14 (C.C.S.D. Ala. 1899) (holding that a mortgage extended by a New York institution to an Alabama resident for property in Alabama was "made" in New York and New York law governed over Alabama usury laws: "Parties to a loan by a foreign corporation to a resident of another state, to be paid to the borrower in his own state, and to be secured by a trust deed upon property in his state, will be presumed to have contracted with reference to the laws of the state of the lender, where repayment of the loan is to be made there."), *aff'd*, 107 F. 1005 (5th Cir. 1901).[6]

[6] Citing *Nickels v. People's Bldg., Loan & Sav. Ass'n,* 25 S.E. 8 (Va. 1896); *Bldg. & Loan Ass'n of Dakota v. Logan*, 66 F. 827 (5th Cir. 1895); *Coghlan v. S.C.R.R. Co.*, 142 U.S. 109 (1891).

And DIDMCA was passed in the context of states that exclusively regulated their own chartered institutions. Banks generally did not have branches even within their chartering state until the early twentieth century. Rollinger, *supra*, at 190. Even so, branching across state lines was uniformly prohibited. *Id.* at 191-92. When banks sought to circumvent these restrictions through the use of bank holding companies, Congress closed that loophole in the 1956 Bank Holding Company Act (BHCA). *Id.* at 193; *Northeast Bancorp Inc. v. Bd. of Governors of Fed. Reserve Sys.*, 472 U.S. 159, 162-63 (1985) (describing passage and effect of the BHCA).

The BHCA provided that states could lift this ban on interstate banking at their discretion but the state response was tepid for almost twenty years. Most states did not act until 1972, when some passed laws allowing acquisitions in limited circumstances (such as insolvency) or a specialized purpose (such as grandfathering an existing institution). *Northeast Bancorp*, 472 U.S. at 163-64. This state of affairs was noted by the Supreme Court in *Marquette*, which observed the Nebraska bank had no branches in Minnesota "nor apparently could it under federal law." *Marquette*, 439 U.S. at 309. State statutes lifting the ban more generally did not begin until 1982. *Northeast Bancorp*, 472 U.S. at 164.

Utah passed its own such statute in 1986. *See* 1986 Utah Laws 1 (H.B. no. 189 Banking Reform Act of 1986). Even where interstate bank branches

are permitted, serious conflict of laws issues may arise between competing regulations. Thus, Utah banking law expressly provides that, while a branch bank must comply with both its home state laws and Utah law, when there is a conflict, Utah may declare Utah law paramount. Utah Code § 7-1-702(8)(c) (providing that, for Utah branches of out-of-state institutions, Utah law may prevail over the home state law). Such a provision is only necessary because sometimes sister state regulations *do* conflict, and it is not possible for an institution to comply with both. This is for situations where a bank has a physical presence—a branch—in another state. To extend the reach of state law to any bank making a loan to consumers in that state would, as the Court said in *Marquette*, "throw into confusion the complex system of modern interstate banking." *Marquette*, 439 U.S. at 312.

All of this is to say that when Congress passed DIDMCA, the proposition that one state might regulate an institution chartered in another state was virtually non-existent.[7] So Congress could not have contemplated,

[7] Rollinger describes the history of interstate banking slightly differently from *Northeast Bancorp*, but still recognizes it was very limited before the 1980s. Rollinger, *supra*, at 193 (identifying Maine as the first state to adopt legislation permitting out-of-state banks in 1975, with other states not following until the 1980s). The salient point remains the same: any situation in which a state might have the opportunity to regulate another state's chartered institution was exceedingly rare.

much less intended, that section 525's opt out provision could be used by a state like Colorado to regulate an out-of-state bank with no branch in Colorado based solely on the fact that a Colorado state resident borrowed from that out-of-state bank. Such purported regulation is literally unprecedented. The chartering state regulates its chartered financial institutions located within its borders. One state regulating another state's chartered institutions only happens when that institution has a physical presence inside the regulating state. And even then the situation is still fraught.

C. Reading section 525's "loans made in such State" to include the borrower's state will interfere with chartering states' ability to regulate and examine their chartered institutions.

Regulation of another state's chartered institutions is fraught because of the extent and scope of state banking regulation. "Banking is one of the longest regulated and most closely supervised of public callings." *Fahey v. Mallonee*, 332 U.S. 245, 250 (1947).[8] Regulation is extensive and tends to be exclusive. Federally-chartered financial institutions are regulated by the

[8] Though off-topic, one illustration of the extent of banking regulation is that no regulatory takings claim is available when a bank is placed in receivership. A takings claim is unavailable because the institution "voluntarily subjected itself to an expansive statutory regulatory system when it obtained federal deposit insurance" and knew that a receiver would be appointed if the bank's assets were dissipated. *Cal. Hous. Sec., Inc. v. United States*, 959 F.2d 955, 958 (Fed. Cir. 1992).

Office of the Comptroller of the Currency (OCC) and are not subject to regulation by state entities. *See* 12 U.S.C. §§ 481, 484. State-chartered banks are regulated by the respective states. In Utah, for example, state-chartered institutions are regulated by the Utah Department of Financial Institutions (UDFI). *See* Utah Code § 7-1-201.

Both the FDIC and the relevant state authority (UDFI in Utah) regularly review the financial well-being of all state-chartered and FDIC-insured institutions. 12 U.S.C. § 1817(a)(3); Utah Code § 7-1-314; *see, e.g., FDIC ex rel. Co-op. Bank v. Rippy*, 799 F.3d 301, 307-08 (4th Cir. 2015) (discussing annual examinations). Most of UDFI's staff consists of examiners and senior examiners, who conduct these reviews. *See* UDFI Annual Report at 15.

These examinations include a review of the loan portfolios. Financial institutions are required by both regulation and good banking practice to maintain an allowance for losses in their loan portfolios. *See, e.g.,* Utah Code §§ 7-3-25, -8-15, -9-29; UDFI Annual Report at 33-41 (noting "Allowance for Losses" on "Loan and Lease Financing Receivables" for state-chartered banks and nationally-chartered banks headquartered in Utah). Understatement of potential loan losses can result in a capital crisis for the institution, leading to insolvency and receivership in a worst-case scenario. *See* 12 U.S.C. § 1831o(h)(3).

Troubled institutions often seek to conceal their condition by understating their expected loan loss allowance. A study of the Great Recession of 2007-2009 found that understating these allowances was the most common accounting ploy banks used to disguise financial problems and to falsely meet regulatory requirements. *See* Gillian G.H. Garcia, *Failing Prompt Corrective Action*, 11 J. Banking Regul. 171, 180 (2010).

Interpreting "loans made in such State" to include any state in which the borrower is located, as Colorado purports to do, confounds the ability of banking examiners to assess loan loss reserves. Normally, small consumer loans are assessed collectively, because the same state laws and regulations apply to all loans, and individual variations in the borrowers may be ignored, as these are smoothed out when examined as a whole. But under H.B. 23-1229, loans to Colorado consumers must now be separately assessed, as loans to these borrowers are uniquely subject to Colorado requirements and limitations in addition to the requirements of the issuing bank's state. An examining state no longer applies its own law to determine the allowable loan terms but must apply Colorado law for any "consumer credit transactions in" Colorado. *See* Colo. Rev. Stat. § 5-13-106.

So Amici States' ability to regulate their own financial institutions under their own regulations and ensure their viability is impaired by H.B. 23-1229. This endangers the shareholders, members, depositors, and

customers of these institutions and increases uncertainty in the financial market.

D. H.B. 23-1229 impairs the competitive equality of state- and federally-chartered institutions and the preservation of the dual banking system contrary to DIDMCA's express purpose.

H.B. 23-1229 upsets the balance Congress expressly sought to protect by passing DIDMCA. Federally-chartered financial institutions are unaffected by this state law. *See* 12 U.S.C. § 484; *Marquette*, 439 U.S. at 301. So federal lenders continue to lend to Colorado consumers at whatever rate is permitted by the lender's home state and federal law, without regard to Colorado law. But state-chartered institutions in every state must now regulate their conduct according to federal law, the law of the state in which they are located, and Colorado law. This discriminatory impact violates the purpose of DIDMCA, "to prevent discrimination against State-chartered insured banks." Pub. L. No. 96-221 § 521.

That purpose should resolve any possible ambiguity about the meaning of "loans made in such State" in section 525 in favor affirmance. *See, e.g., Nat'l Credit Union Admin. Bd. v. Nomura Home Equity Loan, Inc.*, 764 F.3d 1199, 1214 (10th Cir. 2014) (considering the statute's "stated purpose to resolve any lingering ambiguity" (citation modified)); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012) ("[T]he

resolution of an ambiguity or vagueness that achieves a statute's purpose should be favored over the resolution that frustrates its purpose.").

This discrimination against state-chartered institutions also adversely affects the Amici States (and all states) by creating pressure on state-chartered institutions to convert to a federal charter to continue to compete in the Colorado market for Colorado borrowers. Conversion is relatively easy, with no structural barriers for a healthy institution, requiring little more than a shareholder vote and OCC approval. *See* 12 U.S.C. § 35; Scott, *supra*, at 11-12 (discussing evolution of the current regime to facilitate conversion). And once an institution is federally-chartered, it is no longer subject to state regulation. 12 U.S.C. § 484.

Conclusion

Colorado's interpretation of "loans made in such State" threatens state-chartered financial institutions' ability to compete with federally-chartered banks and undermines DIDMCA's overall purpose. For the foregoing reasons, and those outlined in Appellees' briefing, the Court should affirm the district court's decision.

Respectfully submitted,

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/s/ Steve Geary

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I certify that on 4 June 2026 the foregoing brief was served on all counsel of record via the Court's ECF system.

/s/ Steve Geary