No. 24-1293

IN THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

National Association of Industrial Bankers,

Plaintiffs-Appellees,

vs.

Philip J. Weiser, in his official capacity as Attorney General of the State of Colorado, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Colorado, 1:24-cv-00812

BRIEF OF AMICI CURIAE STATES OF CALIFORNIA, CONNECTICUT, HAWAII, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEW YORK, WASHINGTON, AND THE DISTRICT OF COLUMBIA, IN SUPPORT OF APPELLANTS

KEITH ELLISON
Attorney General
State of Minnesota

ADAM WELLE*
Assistant Attorney General

*Counsel of Record
Attorneys for Amici Curiae States

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RULE 29(a)(4)(D) STATEMENT OF IDENTITY

California, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New York, Washington, and the District of Columbia ("the Amici states supporting Colorado") submit this brief through their respective attorneys general, who are authorized to defend and enforce state laws and have great interest in this appeal because Appellees' arguments would nullify their ability to retain state protections from predatory lending. In doing so, Appellees rely on a contorted reading of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDA), which reserves states the right to override the law's preemptive application and restore the *status quo ante* within that state. This brief is submitted pursuant to Fed. R. App. P. 29(a)(2), which permits participation without party consent or the Court's leave.

SUMMARY OF ARGUMENT

To assist the Court as to the questions raised, this brief explains usury laws and applicable choice-of-law issues, the National Bank Act (NBA) and DIDA, how that history informs this case, and application of the longstanding "presumption against preemption." Ultimately, the arguments by Appellees and their amici defy statutory text, the history underlying that text, interpretive canons regarding preemption, and common sense.

ARGUMENT

I. STATES HAVE LONG HELD THE SOVEREIGN PREROGATIVE TO PROTECT RESIDENTS FROM USURY IN THE STATE, WHATEVER THE LENDER'S LOCATION.

The prior amicus brief submitted by states supporting Colorado detailed the well-developed authority of states to regulate marketing and sales by out-of-state companies to resident consumers. Courts universally recognize that consumer-protection laws apply to all businesses—wherever located—that engage in marketing and make sales in a given state. Conflict-of-law analyses have in turn developed and generally favor application of the state where the consumer resides during the sale. (Dkt No. 54, at 11-17.)

Such principles equally apply when lenders sell financing, an area of special concern to states based on unique risks of abuse. *E.g., Lewis v. BT Invest. Managers*, 447 U.S. 27, 38 (2009) ("[S]ound financial institutions and honest financial practices are essential to the health of any State's economy and to the well-being of its people[.]"). And perhaps the most fundamental of statutory protections in consumer lending are usury laws that have existed since the Founding Era and "protect borrowers from the demands of unscrupulous lenders[]." *Massie v. Rubin*, 270 F.2d 60, 63 (10th Cir. 1959).

Early cases addressing lending between a lender and a borrower located in different states applied historical contract principles to decide choice-of-law questions but generally developed a "regime for usury cases involving consumers that almost always resulted in the application of the law of the borrower's jurisdiction." Peter V. Letsou, *The Political Economy of Consumer Credit Regulation*, 44 EMORY L.J. 587, 660 (1995). In the modern era, courts have just as consistently applied usury laws of the state where the consumer enters into a loan contract and becomes indebted.[1]

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[1] *See Otoe Missouria Tribe v. N.Y. State Dep't of Fin. Serv.*, 769 F.3d 105, 113 (2d Cir. 2014) (affirming application of New York usury law because "[m]uch of the commercial activity at issue takes place in New York[,] where the borrower is located; the
(Footnote Continued on Next Page)

The Tenth Circuit is no different. In *Aldens v. Ryan*, this Court affirmed application of an Oklahoma usury law to an Illinois creditor that conducted mail-order sales. 571 F.2d 1159, 1160 (10th Cir. 1978). The Court found it "clear" that Oklahoma could "regulate … commercial transactions on its citizens which arise or are directed from outside its borders." *Id*. Then, in *Quik Payday v. Stork*, this Court applied a Kansas usury law to a Utah-based lender that "made … payday loans" online. 549 F.3d 1302, 1304-05 (10th Cir. 2008). The law stated that a loan was "made in" Kansas if "the creditor induce[d] … a resident of this state to enter into the transaction by solicitation in [Kansas] by any means." *Id*. (quoting Kan. Stat. Ann. § 16a–1–201(1)(b)). The Court held that "the borrower's physical location" invoked Kansas interests, and that "aspects of the transaction" such as "the transfer of loan funds to the borrower" also occurred in Kansas. *Id*.

II. BOTH THE NBA AND DIDA PREEMPT USURY LAWS, BUT ONLY DIDA ALLOWS STATES TO RESTORE SUCH LAWS IN THEIR RESPECTIVE STATES.

A. *Marquette* Recognized a Federal Exception for National Banks to Preempt and "Export" Home-State Usury Caps Nationwide.

The NBA displaces state usury laws based on the identity of the lender as a federally chartered bank. 12 U.S.C. §§ 85, 86. Specifically, Congress set a federal usury cap at "the

borrower seeks the loan without ever leaving the state, and certainly without traveling to the [lender's location]."); *CFPB v. CashCall*, 35 F.4th 734, 743 (9th Cir. 2022) (holding loans subject to usury law of state where consumers resided when they took out loans); *Hengle v. Treppa*, 19 F.4th 324, 352-53 (4th Cir. 2021) (same); *TitleMax of Delaware, Inc. v. Weissmann*, 24 F.4th 230, 239 (3d Cir. 2022) (same); *Aldens, Inc. v. LaFollette*, 552 F.2d 745, 751 (7th Cir. 1977) (upholding Wisconsin usury law for out-of-state lender because it "protect[s] Wisconsin citizens from usurious credit terms imposed when they are residents of the state"); *Aldens, Inc. v. Packel,* 524 F.2d 38, 42-50 (3d Cir. 1975) (same as to Pennsylvania law applied to out-of-state seller).

rate allowed by the laws of the State … where the bank is located, or at a rate [1% higher than the federal discount rate], whichever [is] … greater." *Id*. The NBA does not tip the scale in any state's favor under a conflict-of-law analysis; rather it creates its own usury claim that "arises from federal law" and "refer[s] to the state law [where the bank is located] only to determine the maximum permitted rate." *Evans v. Nat'l Bank of Savannah*, 251 U.S. 108, 114 (1919).

In 1978, the Supreme Court in *Marquette Nat'l Bank v. First of Omaha* interpreted this preemption language as applied to loans involving a national bank in one state and consumers in another. 439 U.S. at 311-12. There, a bank in Nebraska was sued by a competing bank in Minnesota for making loans in Minnesota at rates above those allowed under Minnesota law. *Id*. at 302-06. The Court thus had to interpret section 85 to determine if the defendant bank was "located" in Nebraska or Minnesota. *Id*. at 308. In doing so, it observed that "the whereabouts of each [loan] transaction" posed a different inquiry than construing the NBA's "location of the bank" statutory language. *Id.* at 312. Ultimately, since the bank was headquartered and organized in Nebraska, it was "located" there for purposes of section 85. *Id*. at 310. Thus, section 85 allowed the defendant to lend to Minnesota residents at the higher of Nebraska's usury rate or 1% above the federal discount rate, effectuating Congressional intent to "give advantages to National banks over their State competitors." *Id*. at 313-14.

As a result, because of the NBA as applied in *Marquette*, federally chartered banks operate under a "notable exception" to the "conflict of laws regime whereby states apply their consumer credit laws to all transactions involving local borrowers." Letsou, *supra*, at

662-63. And while the Court noted that the "exportation of interest rates" would "impair the ability of States to enact effective usury laws," it held that "[t]his impairment … [was] implicit in the structure of the [NBA]" and a matter of "legislative policy" that would be "better addressed to the wisdom of Congress." *Id*. at 318-19; *Tikkanen v. Citibank*, 801 F. Supp. 270, 279 (D. Minn. 1992) ("The *Marquette* Court reached [its] holding notwithstanding the fact that the exportation principle erodes state authority to enforce consumer protection laws."). *Marquette* thus recognized that the NBA uniquely limited states' preexisting authority to protect consumers when national banks are located out-of-state, but it recognized that result as Congress's intent and prerogative.

B. Congress Enacted DIDA to Afford Similar Treatment for State Banks *Except* When States Override and Restore Pre-existing Usury Authority.

Two years after *Marquette*, Congress enacted DIDA to give state banks similar rate privileges. Pub. L. No. 96-221, 94 Stat. 132. It did so by "engraft[ing] … language" from section 85 of the NBA. *Greenwood Tr. Co. v. Massachusetts*, 971 F.2d 818, 826 (1st Cir. 1992). Thus DIDA permitted state banks, like national banks, to lend at "a rate of not more than 1 per centum in excess of the [federal discount rate] or at the rate allowed by the laws of the State, territory, or district where the bank is located, whichever may be greater." 94 Stat. 132, § 521. This "transfused … the principle of exportation" to state banks, allowing them "to use the favorable interest laws of [a bank's] home state in certain transactions with out-of-state borrowers." *Greenwood*, 971 F.2d at 827.

But unlike the NBA, Congress made a "necessary political gesture to the states' rights advocates" by including "state-override provision[s]" that allowed legislatures to prevent preemption in their states. Coreen S. Arnold Ralph, *The 'Most Favored Lender' Doctrine for Federally Insured Financial Institutions—What Are Its Boundaries?*, 31 CATH. U. L. REV. 1, 48 (1981).[2] Specifically, section 525 allowed states to end application of DIDA preemption "with respect to loans made in any State" by passing legislation stating "that such State does not want the amendments made by such sections to apply with respect to loans made in such State." PL 96-221, 94 Stat. 132, § 525. DIDA thus allowed states to reinstate usury caps in a way the NBA did not.[3]

The reason for this difference is explained in the Senate's *Usury Lending Limits Report*, where the bill's supporters repeatedly assured Senators that states would retain authority to reimpose the *status quo ante* and re-apply their usury laws if they so decided[4]:

- Page 10: [T]he [preemption] legislation is not mandatory. Each State is given a chance to decide whether or not it desires to receive the benefits which this legislation will confer. The various State legislatures are given the ability to curtail the operations of this legislation with respect to their

[2] *See also* Donna C. Vandenbrink, *Usury Ceilings & DIDMCA*, FEDERAL RESERVE BANK OF CHICAGO (1985) ("Congress acceded to the states' historical role in regulating usury ceilings and their concerns about the consumer protection function of ceilings by giving states the opportunity to override any or all portions of Title V.").

[3] *See Greenwood*, 776 F. Supp. 21, 34 (D. Mass. 1991) ("The most notable divergence between the [NBA] and [DIDA] … is that states were given no escape from [NBA] supremacy, while [DIDA] allows states to override the preemptive effect … by reasserting state usury ceilings otherwise preempted.").

[4] Legislative history related to DIDA is compiled in the Senate Committee's Dec. 17, 1979 report *Usury Lending Limits*, which is available for download from Westlaw for PL 06-221, HR 4965, 94 Stat. 132 under "Legislative History Part I." The report is cited herein as "Senate Committee Report" and page citations refer to the cumulative page numbers in the downloadable PDF document.

own particular States and situations. (Arkansas Banking Commissioner B.J. Lambert);

- Page 35: "The preemptions of State law mandated by the bill would be effective until such time as State legislatures adopted laws stating, in effect, that the Federal override was not wanted." (FHLB Board Member Jay Janis);

- Page 41: "S. 1988 … would honor State prerogatives by enabling legislatures to reject the rate flexibility provisions of this bill through passage of a new State law reaffirming existing regulations. … [T]his approach would provide adequate preservation of State authority to regulate lending practices." (Frederick Schultz, Federal Reserve Vice Chairman);

- Page 53: "[B]ecause of the critical nature of the problem, it was worthwhile giving [state legislatures] the opportunity to go at it from the other direction—to say that these usury laws will be preempted but you can reinstate them, you can override, if you wish to do so." (Frederick Schultz, Fed Vice Chairman, responding to Committee Chairman Sen. Dale Bumpers);

- 211: "I am satisfied, … in this particular instance on this bill, leaves the State legislature of Texas, if they want to override this, the opportunity to do it." (R.M. Duffey, President of Texas Banker's Association).

This operation of the override and the carefully circumscribed scope of DIDA's preemption is confirmed in practice since enactment too. After DIDA, some states exercised their right to override based on commercial, practical, and policy interests in each state. And while several states have since decided to revoke their prior opt-out, Iowa and Puerto Rico have consistently maintained overrides of preemption via sections 521 through 523. 1980 Iowa Acts, ch. 1156, sec. 32; 10 L.P.R.A. § 998l. DIDA's formula of limited preemption thus instilled a workable state-by-state compromise allowing state legislatures to respond to possible predatory aspects of "rate exportation" if the need arises.

Section 525's application as to out-of-state lenders was also interpreted by the FDIC eight years after DIDA's enactment. The FDIC issued an opinion in 1988 confirming that override "enable[s] States to recover authority [to protect consumers from usury] that section 521 had taken away" and that determining which state a loan is "made in" for purposes of which state's determination controls is based on "the facts surrounding the extension of credit" under a "traditional conflict-of-laws analysis." *Relationship of State Usury Preemption Laws*, FDIC, 1988 WL 1741336 (June 29, 1988).[5] State banks largely operated under the FDIC's opinion for decades without controversy.

Colorado is the most recent state to override DIDA preemption in response to high-interest lending by tech companies operating via "partnerships" with banks in states without usury limits. *See* HB 23-1229 (amending Colo. Rev. Stat. § 5-2-214). These arrangements have exploded in the last decade and provoked renewed consideration of DIDA opt outs. *See* Adam J. Levitin, *Rent-A-Bank: Bank Partnerships and the Evasion of Usury Laws*, 71 DUKE L.J. 329, 370-390 (2021). Such arrangements prompted Iowa to enforce violations (based on its prior override) as to an out-of-state online lender. *See, e.g.*, *In re Transp. Alliance Bank*, Assurance of Discontinuance (Iowa AG Dec. 12, 2022) (https://perma.cc/ERD7-Y97N). And they are why other states have renewed consideration

[5] The 1988 opinion was the only direct statement from the FDIC on the override before this case and is thus especially instructive.

of opt-out legislation. *See* H.F. 3680, 93rd Leg. (Minn. 2023-24); S.B. 2275, Reg. Sess. (R.I. 2024); B25-0609, 25th Council (D.C. 2023-24).

III. APPELLEES AND THEIR AMICI MISCONSTRUE DIDA'S TEXT AND UPEND CONGRESS'S CAREFUL BALANCING OF FEDERAL AND STATE INTERESTS.

From the above history, the following principles should inform the Court's analysis of the questions raised for *en banc* consideration: *First*, while Appellees and their amici argue it is unfair that national banks can charge higher rates than state-chartered banks in states that override DIDA preemption, that is the scheme Congress created when it crafted the override provision in DIDA only. Such a result is not abnormal: as recognized in *Marquette*, Congress has long "give[n] advantages to National banks over their State competitors." 439 U.S. at 314. There is also logic in allowing states to override DIDA but not NBA preemption: national banks are supervised by the OCC, which is accountable to Congress and the entire nation's citizenry.[6] State banks, on the other hand, are overseen by policymakers that are not answerable to other states' residents and may be incentivized to attract lenders that would charge exorbitant rates that exploit out-of-state residents. In any event, Congress allowed states to override under DIDA but not the NBA. Like the Supreme Court told Minnesota and other states in *Marquette*, any complaint with that result is "an

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[6] The OCC historically disallowed rent-a-bank schemes, *e.g.,* OCC Advisory Letter No. AL 2000-10 (Nov. 27, 2000) (https://perma.cc/C2RP-UADE), thus they have not proliferated with national banks, and the policy arguments made by Appellees that predatory lenders will seek national-bank partnerships has not been the reality. But even if the OCC reversed course, the states' residents and their federal elected officials have the ability to influence such policies.

issue of legislative policy" and "better addressed to the wisdom of Congress" than the courts. 439 U.S. at 318-19.

Second, Congress enacted section 525 to empower states to shield themselves from DIDA's preemptive sword and revert to the *status quo ante*—i.e., a legal landscape (explained in section I) where usury laws protect residents from predatory loans taken out in that state, whatever the lender's location. Indeed, DIDA's preemptive mandate is what allows "rent-a-bank" arrangements to exist where they didn't before. So if a state overrides, it should necessarily restore the preexisting legal landscape where the state's usury statutes protect residents from such predatory lending by both in- and out-of-state lenders.

Third, nothing in the lead-up to DIDA supports appellees' novel theory that the opt-out was meant to prevent a state's own chartered banks from "exporting" rates for loans to borrowers in other states. The theory makes no sense: there is no reason a state would inhibit its own home-state banks' lending with consumers nationwide while allowing out-of-state banks to exploit consumers within the state. **The very purpose of usury laws is to protect the resident consumers**, which was repeatedly recognized in DIDA's legislative history to describe the preempted interest at stake and subject to override. *Usury Lending Limits Report* at 25 ("Usury laws are intended to protect small and low-income borrowers from unscrupulous money lenders and to limit the power of lenders to charge whatever interest rate they want."), 42 (noting that "usury laws" are "traditionally a State concern" that is "interfered with" by DIDA), 235 ("Usury laws have evolved from an ethically rooted prohibition against all interest charges to become a system of rate ceilings designed to protect unsophisticated consumers from the exploitive practices of lenders with differential market power."). Just as well, the federalism concerns litigated in *Marquette* and which precipitated Congress granting the override in DIDA were about states' historical authority to maintain usury laws that protect resident consumers. *See supra* § II.B. Yet under appellees' bizarre theory, the override would have no relationship to this core police power and would instead restrict in-state banks' lending to out-of-state consumers. Appellees' theory turns the clear purpose of section 525 on its head and should be readily rejected.

Fourth, the override's text confirms its intended application to all lending in the overriding state. Section 525's reference to the state where the loan is "made in" starkly contrasts with section 521's earlier reference to the state "where the bank is located." *Id*. This distinction is consistent with *Marquette*, which recognized that "the whereabouts of each [loan] transaction" is a different inquiry than "the location of the bank." 439 U.S. at 312. It is also consistent with caselaw described in section I, which uses similar reasoning to apply state usury laws to loans in the resident borrower's state regardless of the lender's location: if the "making" of loans did not take place (at least in part) in the borrower's state, that state's laws could not apply and the borrower's state would have no interest under a choice-of-law analysis. Such precedent—including this Circuit's holdings in *Aldens* and *Quick Payday*—is thus relevant to interpreting the override provision.

Fifth, recognizing that a loan is "made" at least in part where it is taken out aligns with common sense and usage. The "making" of a loan may reasonably refer to the contractual "making" of the loan agreement between parties.[7] It may refer to the transfer of funds from one party to and receipt of such funds by another pursuant to that agreement.[8] Or it may refer more generally to the way in which the agreement or any aspect of the lending is brought about or "made."[9] Regardless, important aspects of these activities undeniably occur in the state where the borrower is located—i.e., where the loan contract is executed, funds are paid out and received, and the debt is incurred. Indeed, nearly all business activity subject to consumer-protection laws concern an act involving two sides: a seller *makes* a sale to a buyer; an advertiser *markets* to a consumer; a fiduciary *advises* a client; a health professional *treats* a patient. Consistent with the basic law explained in section I, such verbs ("make," "market," "advise," and "treat') involve voluntary commercial acts whereby out-of-state businesses *enter our states* to transact *with our consumers*. By their very nature, they take place to significant degree in the state where the consumer resides and invoke the sovereign interests of that state.

Sixth and finally, the law explained in section I dispels the notion asserted by Appellees' and their amici that it is impossible for lenders to comply with usury laws of

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[7] BLACK'S LAW DICTIONARY at 844 & 861 (5th ed. 1979) (defining *make* as "to cause to exist"; *make a contract* as "to agree upon, and conclude or adopt, a contract"; and *loan* as "the creation of debt by the lender's … agreement to pay money to the debtor [or] the forbearance of debt arising from a loan").

[8] *Id*. (defining "loan" as "delivery by one party to and receipt by another party of sum of money upon agreement … to repay it with our without interest").

[9] *Id*. (referring to "loan" as "a lending"); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1363-64 (1971) (defining "make" as "to bring about" or "to cause to exist, occur, or appear: bring to pass" among other like definitions).

states that override. It is routine for national businesses to check compliance with consumer-protection laws where they do business. Usury laws, in particular, have always been subject to state-by-state variation (and residents in opted-out jurisdictions Iowa and Puerto Rico do not suffer from any dearth of consumer credit). Indeed, many nonbank lenders active in our states do not engage in rent-a-bank relationships and comply with usury protections, just like any other national business is mindful of consumer-protection laws in the states in which they do business and make sales.

IV. The Court Should Apply the Presumption Against Preemption to Resolve Any Ambiguity Related to DIDA.

Since as long as the Supreme Court has recognized the federal preemptive power to invalidate state law via the Supremacy Clause, it has held that doing so in areas of historic state police power requires Congress's clear and manifest intent:

> [I]n the application of this principle of supremacy of an act of Congress in a case where the State law is but the exercise of a reserved power, the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together…

Sinnot v. Davenport, 63 U.S. 227, 243 (1859).[10]

[10] *See also, e.g.*, *Reid v. Colorado*, 187 U.S. 137, 148 (1902) ("It should never be held that Congress intends to supersede, or by its legislation suspend, the exercise of the police powers of the states, even when it may do so, unless its purpose to effect that result is clearly manifested."); *Napier v. Atl. Coast Line R. Co.*, 272 U.S. 605, 611 (1926) ("The intention of Congress to exclude states from exerting their police power must be clearly manifested."); *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 148, 176-77 (1942) ("Due regard for the maintenance of our dual system of government demands that the courts do not diminish state power by extravagant inferences regarding what Congress might have intended if it had considered the matter, or by reference to their own conceptions of a policy
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Appellees urge the Court to disregard this historic doctrine based on *Puerto Rico v. Franklin Cal.*, where the Supreme Court in 2016 held that legislation by Puerto Rico enabling public utilities to restructure debt was preempted by the U.S. Bankruptcy Code; the Court did "not invoke any presumption against pre-emption" because the Code's express preemptive language was clear. 579 U.S. 115, 125, (2016). But the invalidated legislation in *Franklin California* did not concern an area of historic state police powers. *Shuker v. Smith & Nephew, PLC*, 885 F.3d 760, 771 n.9 (3d Cir. 2018). Nor did the Court state it was overturning precedent in this regard. 579 U.S. at 125. Moreover, three years later the Supreme Court reiterated caution in invalidating state laws based on preemption:

> Invoking some brooding federal interest or appealing to a judicial policy preference should never be enough to win preemption of a state law; a litigant must point specifically to a constitutional text or a federal statute that does the displacing or conflicts with state law.

Va. Uranium, Inc. v. Warren, 587 U.S. 761, 767 (2019). For this point the Court cited *Puerto Rico Dep't of Consumer Affairs v. Isla Petroleum*, which emphasized that courts "start" the preemption analysis "with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." 485 U.S. 495, 503 (1988). Appellees thus oversimplify the caselaw when they assert that this doctrine grounded in the Constitution is now discarded.

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which Congress has not expressed and is not plainly to be inferred from the legislation which it has enacted."); *Arizona v. United States*, 567 U.S. 387, 400 (2012) ("In preemption analysis, courts should assume that the historic police powers of the States" are not superseded "unless that was the clear and manifest purpose of Congress.").

But even if one construed *Franklin California* to eschew an overarching "presumption against preemption" in favor of statutory construction in cases involving an express preemption clause, that does not mean the underlying canon has no place in the analysis. As noted above, preemption in *Franklin California* was based on the unambiguous text of the Bankruptcy Code. Such "plain language" was also the basis for preemption in this Circuit's decisions in *EagleMed LLC v. Cox* and *Thornton v. Tyson Foods*, which cited *Franklin California* in applying unambiguous statutory text and stating that no "presumption regarding preemption" need be considered. 28 F.4th 1016, 1024 (10th Cir. 2022); 868 F.3d 893, 903-05 (10th Cir. 2017). Such analyses are merely consistent with the general rule that plain statutory meaning can be dispositive evidence of Congressional intent. *E.g.*, *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 583 U.S. 109, 127 (2018) (stating that when "the plain language" of a statute is "unambiguous," the Court's "inquiry begins with the statutory text, and ends there as well").

Where an express preemption provision is not clear in its application, however, the canon disfavoring preemption should be apply. The Supreme Court has stated that where preemptive language is "susceptible of more than one plausible reading, courts ordinarily accept the reading that disfavors pre-emption in areas of traditional state regulation." *Altria Grp. v. Good*, 555 U.S. 70, 77, 129 (2008) (cleaned up). The effect of the canon is "to support, where plausible, 'a narrow interpretation' of an express pre-emption provision." *CTS Corp. v. Waldburger*, 573 U.S. 1, 19 (2014). This canon "has greatest force when Congress legislates in an area traditionally governed by the States' police powers." *Id.*

Here, protecting consumers from usury is a bedrock power of states.[11] Yet Appellees seek an interpretation that broadly preempts this domain in Colorado despite that state's override. Unlike cases like *EagleMed*, where "[n]either Amicus nor Defendants have presented a single textual reason" to interpret preemption contrary to Appellees' theory, 868 F.3d at 904, here the majority panel already applied a reasonable (if not plain) reading in favor of Colorado. Accordingly, if this Court finds that section 525 is susceptible to more than one plausible application, it can and should presume that Congress did not intend to invalidate Colorado's usury laws in this regard. Precedent and interpretive canons support the reading advanced by Colorado: DIDA preempts state usury laws in a state until that state overrides and restores the preexisting state of law protecting borrowers.

CONCLUSION

The Amici states supporting Colorado request that this Court reverse the injunctive order and preserve the states' sovereign ability to override preemption in their states.

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[11] Contrary to what the Chamber of Commerce argues, usury is profoundly unlike areas in which courts have found a "federal-interest exception" to the presumption against preemption. As discussed in section I, usury is squarely the historical purview of states and the opposite of an area "inherently federal in character"—i.e., areas such as aviation safety, federal-employee insurance plans, or policing of fraud on federal agencies. *See Helfrich v. Blue Cross & Blue Shield Ass'n*, 804 F.3d 1090, 1105 (10th Cir. 2015). Indeed, all lending—including by both federally and state-chartered banks—was historically "subject to state usury laws." *United States v. Philadelphia Nat. Bank*, 374 U.S. 321, 328 (1963).

Dated: July 13, 2026

KEITH ELLISON
Attorney General
State of Minnesota

/s/Adam Welle

ADAM WELLE
Assistant Attorney General
MN Atty. Reg. No. 0389951

445 Minnesota Street, Suite 600
St. Paul, Minnesota 55101-2130
(651) 757-1425 (Voice)
(651) 296-1410 (TTY)
adam.welle@ag.state.mn.us

ATTORNEYS FOR AMICI CURIAE STATES

Other counsel:

ROB BONTA
Attorney General
State of California
1300 Street
Sacramento, CA 95814

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

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

ANNE E. LOPEZ
Attorney General
State of Hawaii
425 Queen Street
Honolulu, HI 96813

KWAME RAOUL
Attorney General
State of Illinois
115 S. LaSalle St.
Chicago, Illinois 60603

AARON M. FREY
Attorney General for the State of Maine
6 State House Station
Augusta, Maine 04333

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

ANDREA JOY CAMPBELL
Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

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

NICHOLAS W. BROWN
Attorney General
State of Washington
P.O. Box 40100
Olympia, WA 98504

LETITIA JAMES
Attorney General
State of New York
28 Liberty Street
New York, NY 10005

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limitations of this Court's April 2, 2026 Order and Federal Rule of Appellate Procedure 29(a)(5) (providing that an amicus brief may be no more than one-half the maximum length of a party's principal brief) because, excluding the parts of the document exempted by Rule 32(f), this text of the document is in 13-point font and the document is 15 pages in length.

2. This document complies with the typeface requirements of this Court's April 2, 2026 Order and Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirement of Rule 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Office 365 in 13-point Times New Roman font.

Dated: July 13, 2026

/s/Adam Welle
Adam Welle