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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

STATE OF OREGON, et al., Plaintiffs, v. OFFICE OF THE COMPTROLLER OF THE CURRENCY, et al., Defendants.	Case No. 3:26-cv-01672-SI PLAINTIFF STATES' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO TRANSFER

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I. INTRODUCTION

Ten states, each having passed consumer protection laws requiring banks in their states to pay interest on mortgage escrow balances, brought this case to challenge two final rules issued by Defendants as violating the Administrative Procedure Act. Together, the twin rules purport to preempt all of Plaintiff States' interest-on-escrow laws as they relate to nationally chartered banks. As alleged in the Complaint, Defendants issued these rules in flagrant violation of the strict substantive and procedural limits that Congress placed on the Office of the Comptroller of the Currency's (OCC) ability to preempt state consumer protection laws when it enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act. Among other defects, Defendants' final rules cite *no* supporting evidence (despite Dodd-Frank's requirement that they be supported by *substantial* evidence), purport to preempt state interest-on-escrow laws *across-the-board* (contrary to Dodd-Frank's requirement that preemption determinations be made on a *case-by-case* basis), and apply a categorical test for banking preemption (which Dodd-Frank and the Supreme Court have explicitly rejected).

Eager to avoid the merits, Defendants misstate Plaintiffs' harm to raise meritless standing arguments and move to dismiss or transfer the case from the forum Plaintiffs selected, asking this Court to ignore binding precedent in favor of transferring some or all of the Plaintiffs to litigate in Defendants' home court. Defendants ask this Court to adopt a novel interpretation of the law to deprive Plaintiffs from their proper and chosen venue, because this case—which Defendants concede is likely to be decided on the administrative record alone—was filed in a Court where the OCC preempted state law rather than where its rules were promulgated, and that is too far away. Defendants additionally suggest that the only way for each of the Plaintiffs to challenge Defendants' intrusion on their state sovereignty would be to bring a case in its home district court: that is, to bring ten separate cases in ten separate districts, or to file in the U.S. District Court for the District of Columbia. The OCC concedes that the Ninth Circuit and every other court has rejected this view for nearly fifty years. That is unsurprising, given the venue statute contemplates

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this exact situation. Challenging the rules in a single court is especially appropriate where each Plaintiff seeks identical relief: vacatur of the final rules under the APA.

Defendants also move to dismiss a portion of Count One for failure to state a claim as to one of the rules. But Count One alleges that the two rules work together to preempt state law, citing Defendants' language in promulgating the rules, and details how the rules violate several of Dodd-Frank's limitations on Defendants' preemption authority. That plainly states a claim and, in any event, dismissing half of one count does nothing to streamline or dispose of the case.

For the reasons set forth below, the Court should deny the motion.

II. BACKGROUND

A. State Interest-on-Escrow Laws Have Long Protected Consumers from Predatory Practices.

Starting in the 1970s, Plaintiff States have protected consumers from predatory escrow practices by requiring banks and other mortgage servicers to pay minimum interest on mortgage escrow accounts. *See* Cal. Civ. Code § 2954.8; Conn. Gen. Stat. § 49-2a; 9-B Me. Rev. Stat. Ann. tit. § 429; Md. Code Ann., Com. Law § 12-109(b)(1); Mass. Gen. Laws ch. 183, § 61; Minn. Stat. Ann. § 47.20, subd. 9(a); N.Y. Gen. Oblig. Law § 5-601; Or. Rev. Stat. § 86.245(2); R.I. Gen. Laws § 19-9-2(a); Vt. Stat. Ann. tit. 8, § 10404(b); *see also* Compl. ¶¶ 40-49. Some states also prohibit service charges on escrow accounts in some or all circumstances. *See* Cal. Civ. Code § 2954.8; 9-B Me. Rev. Stat. Ann. tit. § 429; Md. Code Ann., Com. Law § 12-109(b)(1); N.Y. Gen. Oblig. Law § 5-601; Or. Rev. Stat. § 86.245(2); *see also* Compl. ¶¶ 40, 42, 43, 46, 47. In 1974, Congress also acted to regulate certain other aspects of bank management of escrow accounts, while leaving state interest-on-escrow laws undisturbed. *See* Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601–2617.

The States' regulation of banks' escrow practices is entirely consistent with the United States' longstanding dual-banking tradition. States have chartered and regulated banks since the nation's founding. Congress in the National Bank Act authorized federally chartered banks, but those national banks remain "subject to the laws of the State, and are governed in their daily course

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of business far more by the laws of the State than of the nation." *First Nat. Bank v. Kentucky*, 76 U.S. 353, 362 (1869). Indeed, states "have always enforced their general laws against national banks," including "banking-related laws against national banks." *Cuomo v. Clearing House Ass'n*, 557 U.S. 519, 534 (2009). And in balancing state and federal interests regarding oversight of national banks, the Supreme Court, over decades of precedent, established a test holding that state laws apply to national banks unless those laws "significantly interfere[d]" with banks' exercise of their powers. *Barnett Bank of Marion Cnty., N.A. v. Nelson*, 517 U.S. 25, 33 (1996).

Under this regime, both state and national banks complied with Plaintiff States' interest-on-escrow laws for decades without issue.

B. The OCC Has Been Repeatedly Rebuffed in its Efforts to Undermine the Dual-Banking System and Immunize National Banks from State Regulation.

Not content with the careful balance struck by our dual-banking system, the OCC has long sought to exempt national banks from state laws. In 2004, the OCC issued a sweeping regulation seeking to preempt fourteen broad categories of state banking law, including any "state law limitations" regarding "[e]scrow accounts" in connection with mortgage lending. *See* Bank Activities and Operations; Real Estate Lending and Appraisals, 69 Fed. Reg. 1904, 1904, 1917 (Jan. 13, 2004). This rule created "a regime of field preemption in everything but name" when it came to state regulation of national banks. Arthur E. Wilmarth, Jr., *The Dodd-Frank Act's Expansion of State Authority to Protect Consumers of Financial Services*, 36 J. CORP. L. 893, 937 (2011).

Within a few years, the United States experienced a housing crash and the most severe financial crisis since the Great Depression. Fin. Crisis Inquiry Comm'n, *The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* xv (2011), https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf. A congressionally chartered commission and scholars alike concluded that the OCC's aggressive preemption efforts contributed to the financial crisis by crippling state efforts to curtail predatory lending practices. *See id.* at 126; *see, e.g.*, Nicolas Bagley, *The*

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Unwarranted Regulatory Preemption of Predatory Lending Laws, 79 N.Y.U. L. Rev. 2274, 2275 (2004).

Congress responded by passing Dodd-Frank, which expressly overturned the 2004 preemption rule and instructed that future preemption determinations were subject to the "significant interference" test previously established by the Supreme Court in *Barnett Bank*. 12 U.S.C. § 25b(b). Congress further strictly limited the OCC's authority to make future preemption determinations, including by requiring individualized, case-by-case findings, requiring the agency to support such findings with substantial evidence, and limiting judicial deference to future OCC preemption determinations. *Id*. § 25b(b)(3), (b)(5), (c). Dodd-Frank also amended the federal Truth-in-Lending Act to expressly provide that housing lenders, including national banks, must pay interest on escrow accounts for four select categories of mortgages if such interest is required by any "applicable State or Federal law" and must do so "in the manner" set forth "by that applicable" law. 15 U.S.C. § 1639d(b), (g)(3). The Supreme Court also weighed in to confirm the invalidity of the OCC's overreaching 2004 rule, concluding that the OCC "attempt[ed] to do what Congress declined to do: exempt national banks from all state banking laws." *Cuomo*, 557 U.S. at 533.

C. Controlling Authority Holds that State Interest-on-Escrow Laws Apply to National Banks.

In the years that followed, while many national banks resumed compliance with state interest-on-escrow laws and made minimum interest payments, some refused to do so. In 2018, the Ninth Circuit held that the National Bank Act did not preempt California's interest-on-escrow law because "no legal authority establishes that state escrow interest laws prevent or significantly interfere with the exercise of national bank powers, and Congress itself, in enacting Dodd-Frank, has indicated that they do not." *Lusnak v. Bank of Am., N.A.*, 883 F.3d 1185, 1197 (9th Cir. 2018). A few years later, the Second Circuit disagreed and, consistent with the position of the OCC appearing as amicus, held that New York's interest-on-escrow law was preempted because it would "target, curtail, and hinder" to any degree national banks' "power to create and fund escrow

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accounts." *Cantero v. Bank of Am., N.A.*, 49 F.4th 121, 134 (2d Cir. 2022). The Supreme Court, however, unanimously reversed and remanded for the Second Circuit to apply the proper preemption standard from *Barnett Bank*, reasoning that the Second Circuit, at the OCC's urging, had adopted "a categorical test that would preempt virtually all state laws that regulate national banks." *Cantero v. Bank of Am., N.A.*, 602 U.S. 205, 220–21 (2024).

Next to weigh in was the First Circuit, which applied the Supreme Court's decision in *Cantero* to hold that the National Bank Act does not preempt Rhode Island's interest-on-escrow statute. *Conti v. Citizens Bank, N.A.*, 157 F.4th 10, 13 (1st Cir. 2025), *cert. denied*, No. 25-1004, 2026 WL 1052171 (U.S. Apr. 20, 2026), *pet. for reh'g pending and resp. requested*, 2026 WL 1640846 (U.S. June 8, 2026). The Ninth Circuit has also applied *Cantero* to reaffirm its prior holding that California's interest-on-escrow law is not preempted by the National Bank Act. *See Kivett v. Flagstar Bank, FSB*, 154 F.4th 640 (9th Cir. 2025), *cert. pending*, No. 25-1350 (U.S. June 3, 2026). The Second Circuit on remand in *Cantero II* again held that New York's interest-on-escrow law was preempted, in a split decision adopting an approach that the dissent criticized as "a strained analysis of the Supreme Court's precedents to reach an approach that is just as capacious" as the categorical test the Supreme Court has previously rejected. *Cantero v. Bank of Am., N.A.*, 175 F.4th 201, 215 (Pérez, J., dissenting) (2d Cir. 2026), *cert. pending*, No. 25-1313 (U.S. May 27, 2026).

D. The OCC Promulgates Rules to Once Again Preempt Interest-on-Escrow Laws.

Despite Congress's clear limitations on the scope of preemption in Dodd-Frank, the OCC has again attempted to preempt state interest-on-escrow laws using an approach that would create the de facto field preemption Congress expressly rejected. On May 19, 2026, two weeks after the Second Circuit issued its decision in *Cantero II*, the OCC published the Escrow Powers Rule and the Preemption Rule in the Federal Register. Real Estate Lending Escrow Accounts, 91 Fed. Reg. 29340 (May 19, 2026) (codified at 12 C.F.R. § 34.3(d)) (Escrow Powers Rule); Preemption Determination: State Interest-on-Escrow Laws, 91 Fed. Reg. 29350 (May 19, 2026) (codified at

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12 C.F.R. § 34.7) (Preemption Rule). Together, the Rules purport to preempt all state interest-on-escrow laws by granting national banks the exclusive power to determine the interest and fees associated with escrow accounts. The OCC issued a single press release titled "OCC Issues Two Final Rules on Preemption of State Interest-on-Escrow Laws," which hailed the agency's use of "federal preemption as a critical tool for reducing unnecessary burden, enabling local and national prosperity, and unleashing economic growth." OCC News Release 2026-37 (May 15, 2026), https://www.occ.gov/news-issuances/news-releases/2026/nr-occ-2026-37.html [https://perma.cc/2744-WUMK].

The Preemption Rule issues a preemption determination purporting to nullify state interest-on-escrow laws, specifically listing each Plaintiff States' interest-on-escrow laws as ones that national banks no longer have to comply with. *See* 91 Fed. Reg. at 29358. The Rule analyzes only New York's interest-on-escrow law in detail while summarily applying the same conclusions to the laws of eleven other states and two territories. *Id*. at 29356–57. In tacit acknowledgement that its analysis of New York's law is contrary to Dodd-Frank and to the decisions of the Supreme Court and First and Ninth Circuits, the Preemption Rule expressly relies on its twin Escrow Powers Rule to manufacture a conflict between federal and state law out of thin air. *Id*. at 29355.

The Escrow Powers Rule attempts to codify national banks' purportedly unfettered "flexibility in making business judgments as to the terms and conditions of [escrow] accounts." 91 Fed. Reg. at 29340. The Escrow Powers Rule recognizes that its purpose is to "complement the OCC's preemption determination." *Id.* at 29341; *see also id*. (noting that "codifying these Federal powers makes clear that those State laws also directly conflict with a Federal regulation"). Nowhere does the Escrow Powers Rule identify the congressional authorization for the OCC to "clarify" a new national bank power for the express purpose of preempting state law. Nor does the Rule identify any evidence of need for this purported clarification, instead engaging in base speculation that, if state interest-on-escrow laws continue to stand, national banks "may" impose

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other costs on consumers to recoup their losses, such as "by imposing additional fees, such as origination fees" or "reduced mortgage lending." *Id.* at 29340–41.

The Rules took effect on June 18, 2026.

E. Plaintiff States File this Case to Redress their Sovereign Injuries.

On August 11, 2026, Plaintiff States filed this suit against Defendants to declare the Rules unlawful and set them aside. Compl., ECF No. 1. Count 1 of the Complaint alleges that the Escrow Powers Rule and the Preemption Rule violate the APA because they are contrary to law and were promulgated in excess of the OCC's statutory authority and in violation of procedure required by law. *Id.* ¶¶ 94–101. Count 2 alleges that the Rules are arbitrary and capricious. *Id.* ¶¶ 102–107.

Both sides agree that the issues in this case are legal in nature and require no further factual development. *See* Defs.' Mot. to Dismiss, ECF No. 16 at 26[1] ("[T]he OCC has no reason to expect that anything other than the administrative record will be necessary for a court's review . . . .").

On October 5, Defendants filed this Motion. *Id.* They seek dismissal for lack of subject matter jurisdiction under Rule 12(b)(1), arguing that Plaintiff States' sovereign injuries are not concrete or ripe despite the Rules currently being in effect. *Id.* at 14–16. The Motion also nominally seeks dismissal for improper venue under Rule 12(b)(3), *see id.* at 9, but the Motion's argument section seeks only transfer to the District of Columbia, arguing that "It Is Highly Questionable Whether Venue Is Proper" in this District for any State except for Oregon, *see id.* at 20–23. Alternatively, the motion seeks a discretionary transfer to the District of Columbia. *Id.* at 23–29. Finally, the Motion seeks dismissal of Count 1 as against the Escrow Powers Rule for failure to state a claim upon which relief may be granted under Rule 12(b)(6). *Id.* at 29–32.

On October 9, Defendants also moved to stay all proceedings, except for this Motion, in light of the Supreme Court's request for the views of the Solicitor General of the United States on

[1] When citing to filed documents, this brief cites page numbers of the original document, not the numbers imprinted in the ECF header.

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three pending petitions for certiorari. *See* Defs.' Mot. to Stay, ECF No. 17. The stay motion is pending.

On October 14, this Court held a status conference and set a briefing schedule for Defendants' motions and for production of the administrative record should those motions be denied. *See* Order, ECF No. 19.

III. ARGUMENT

A. Plaintiff States Have Standing.

Defendants bring a facial attack to the Court's subject matter jurisdiction under Rule 12(b)(1) on standing and ripeness grounds. "The district court resolves a facial attack as it would a motion to dismiss under Rule 12(b)(6): Accepting the plaintiff's allegations as true and drawing all reasonable inferences in the plaintiff's favor, the court determines whether the allegations are sufficient as a legal matter to invoke the court's jurisdiction." *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).

1. Plaintiff States Allege a Sovereign Injury Ripe for Judicial Review.

To establish Article III standing, "the plaintiff must have suffered an injury in fact . . . that is fairly traceable to the challenged conduct and likely to be redressed by the lawsuit." *Biden v. Nebraska*, 600 U.S. 477, 489 (2023). The plaintiff's injury must also be ripe for review, and "[t]he constitutional component of ripeness overlaps with the 'injury in fact' analysis for Article III standing." *Wolfson v. Brammer*, 616 F.3d 1045, 1058 (9th Cir. 2010). "Whether framed as an issue of standing or ripeness, the inquiry is largely the same: whether the issues presented are definite and concrete, not hypothetical or abstract." *Id.* (citation modified).

Defendants argue that Plaintiff States have failed to allege an injury-in-fact. In Defendants' view, the States' injury is not ripe absent allegations that national banks have stopped complying with Plaintiff States' interest-on-escrow laws. *See* ECF No. 16 at 15.

Overwhelming authority rejects Defendants' position. States have a sovereign interest in the enforceability of their laws and thus have standing to challenge a federal statute or regulation

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that purports to preempt state law. Here, Plaintiff States assert a sovereign injury to the enforceability of their laws because the OCC's Rules work together to explicitly preempt the States' interest-on-escrow laws. The States' sovereign injury is ripe for adjudication because the Rules are already in effect and purport to nullify the States' interest-on-escrow laws.

The Supreme Court has long recognized a state's interest in "the exercise of sovereign power over individuals and entities within" the state, including "the power to create and enforce a legal code." *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 601 (1982). Because "a State clearly has a legitimate interest in the continued enforceability of its own statutes," *Maine v. Taylor*, 477 U.S. 131, 137 (1986), the Supreme Court has for more than a century permitted states to challenge federal regulations that "interfere with the sovereign rights of the State," *Colorado v. Toll*, 268 U.S. 228, 229–30 (1925).

Applying this precedent, the Ninth Circuit has made clear that states have "standing to vindicate their authority as sovereign entities," including standing to "challenge a federal statute that preempts or nullifies state law." *Washington v. U.S. Food & Drug Admin.*, 108 F.4th 1163, 1176–77 (9th Cir. 2024) (concluding Idaho lacked standing because Idaho alleged only that the federal action made "violations of state law more difficult or costly to detect" but did not allege that the action "encroache[d] on [Idaho's] authority to govern"). The Ninth Circuit has also held that a state's challenge to a federal statute is ripe where "the operation of" the challenged federal law against the state was "inevitable." *Arizona v. Atchison, T. & S. F. R. Co.*, 656 F.2d 398, 402

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(9th Cir. 1981). Other circuits agree that federal preemption of state law creates an injury-in-fact that is ripe for judicial review.[2]

This issue has also been settled in this District. In *Oregon v. Ashcroft*, the State of Oregon challenged U.S. Attorney General John Ashcroft's directive stating that federal law prohibited physicians from dispensing controlled substances to assist suicide. 192 F. Supp. 2d 1077, 1077–78 (D. Or. 2002), *aff'd*, 368 F.3d 1118 (9th Cir. 2004), *aff'd sub nom.*, *Gonzales v. Oregon*, 546 U.S. 234 (2006). Ashcroft's directive "essentially nullified" the Oregon Death with Dignity Act, which authorizes physician-assisted suicide, and the State "immediately commenced [a] lawsuit to, among other things, enjoin Ashcroft and the other defendants from giving the Ashcroft directive any legal effect." *Id.* at 1079–80 (footnote omitted). Because the Ashcroft directive would have nullified Oregon law, the district court concluded that "Oregon has alleged and proved a sufficient injury to its sovereign and legitimate interest in the continued enforceability of its own statutes." *Id.* at 1087. This sovereign injury did not require the State to allege or prove that any physicians had refused to comply with Oregon's statute, or that any physicians had been federally prosecuted for assisting suicide. *See id.* Indeed, courts do not "require evidence or allegations of underlying violations of the states' laws, and the states' subsequent inability to enforce its own laws, in order to demonstrate standing" under a sovereign-interest theory. *California v. United States*, No. C 05-00328 JSW, 2005 WL 1513156, at *3 (N.D. Cal. June 27, 2005) (citing *Oregon*, 192 F. Supp. 2d at 1087). "The mere conflict between state and federal law, and thus, the states' consequent

[2] *See Alaska v. U.S. Dep't of Transp.*, 868 F.2d 441, 443 (D.C. Cir. 1989) (holding states had standing where they "suffered injury to their sovereign power to enforce state law" after the Department of Transportation "claim[ed] that its rules preempt state consumer protection statutes"); *Texas v. United States*, 809 F.3d 134, 153 (5th Cir. 2015) (explaining that states have standing to challenge "federal preemption of state law" and "federal interference with the enforcement of state law"), *aff'd by an equally divided court*, 579 U.S. 547 (2016); *Kentucky v. Biden*, 23 F.4th 585, 598 (6th Cir. 2022) ("States have a sovereign interest to sue the United States when a federal regulation purports to preempt state law."); *Wyoming ex rel. Crank v. United States*, 539 F.3d 1236, 1242 (10th Cir. 2008) ("Federal regulatory action that preempts state law creates a sufficient injury-in-fact . . . .").

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inability to enforce their own laws, [is] sufficient to demonstrate an injury for standing purposes." *Id.*

Defendants fail to engage with any of this well-established precedent. They instead argue that Plaintiff States have not stated an injury to their sovereign interests because "the Complaint does not plausibly allege how and whether the States have been (or will be) unable to enforce their interest-on-escrow laws or why any such future risk is imminent." ECF No. 16 at 16. This argument is remarkable given that Defendants' own Rules purport to have made the States' interest-on-escrow laws unenforceable as of June 18, 2026. *See* Compl., ECF No. 1 ¶ 71 (alleging the Rules "took effect on June 18, 2026" and "purport to preempt all state mortgage-on-escrow laws"). Defendants' focus on national banks' possible voluntarily compliance with interest-on-escrow laws also misunderstands the States' sovereign injury. The States are injured because the OCC is attempting to nullify duly enacted state statutes. It is irrelevant whether national banks "decid[e] to pay their customers the interest-on-escrow required by state law when exercising their business judgment." ECF No. 16 at 15. No factual allegations or developments are needed to make the injury to Plaintiff States' sovereign interests ripe for review. *See California*, 2005 WL 1513156, at *3.

It makes no difference that the OCC opted to announce its preemption of state interest-on-escrow laws as two Rules rather than one. *See* ECF No. 16 at 14–15 (arguing that "the States incorrectly conflate and collapse two distinct actions" and "make no attempt to allege what concrete injury they have allegedly suffered from the Powers Rule alone"). The Rules assert that they work in conjunction to preempt Plaintiff States' laws. *See, e.g.*, Preemption Rule, 91 Fed. Reg. at 29351 (stating that the Preemption Rule would "complement the OCC's concurrent proposed Escrow Powers Rule" because "if the concurrent Rule were finalized, State interest-on-escrow laws would directly conflict with the Federal power addressed therein and would thus be preempted"). The Escrow Powers Rule is the foundation of the OCC's preemption determination, and together the Rules harm Plaintiff States' sovereign interest in enforcing their interest-on-

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escrow laws. In any event, state sovereign standing is not limited to express preemption determinations. The doctrine extends to federal actions that "essentially nullif[y]" state law, *Oregon*, 192 F. Supp. 2d at 1079, and to "federal interference with the enforcement of state law," *Texas*, 809 F.3d at 153. The Escrow Powers Rule purports to nullify Plaintiff States' interest-on-escrow laws and directly interferes with the States' enforcement of those laws by granting national banks exclusive power to decide whether they pay interest on escrow.

Defendants also wrongly suggest that Plaintiff States are pursuing a *parens patriae* standing theory merely because the Complaint mentions how the Rules harm consumers. *See* ECF No. 16 at 16–17. This is not a *parens patriae* case—invoking a state's sovereign interest in enforcing its laws does not "rel[y] on impermissible notions of third-party standing in which a state asserts in a purely vicarious manner the interests of its citizens." *Kentucky*, 23 F.4th at 599. "The state instead asserts an injury that, while possibly overlapping with individual citizens' injuries, is really an additional injury to the state *itself*." *Id.*; *see also Alaska*, 868 F.2d at 443 n.1 ("Inasmuch as the States' sovereign interest in law enforcement is sufficient to support standing, we need not delve into the issue of *parens patriae* standing.").

2. Defendants' Arguments Challenging the Standing of Connecticut, Vermont, and New York Are Irrelevant and Meritless.

In addition to challenging the standing of all Plaintiffs on ripeness grounds, the Motion also makes a more bespoke argument that three of the ten Plaintiff States—New York, Connecticut, and Vermont—"cannot establish traceability or redressability to support their standing, given *Cantero II*'s binding conclusion that the National Bank Act preempts state interest-on-escrow laws." ECF No. 16 at 17–20. As a threshold matter, this Court "need not consider" this argument at this preliminary stage, since it does not apply to the other seven Plaintiff States, and those States unquestionably have standing to sue for the reasons set forth above. *See Clinton v. City of New York*, 524 U.S. 417, 431 n.19 (1998) (because some plaintiffs had standing it was unnecessary to consider whether the other plaintiffs also had standing); *Nat'l Ass'n of Optometrists & Opticians LensCrafters, Inc. v. Brown*, 567 F.3d 521, 523 (9th Cir. 2009) ("Because

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LensCrafters unquestionably has standing . . . we do not address the challenge to the other appellees' standing . . . ."); *Oregon v. Trump*, 809 F. Supp. 3d 1193, 1232 (D. Or. 2025) (finding that, "at the very least, the State of Oregon satisfies Article III standing" and declining to address the standing of plaintiffs California or the City of Portland).

Defendants' alternative standing argument misconstrues *Cantero II*, in any event. The Second Circuit's decision in *Cantero II* did not issue a "binding conclusion that the National Bank Act preempts state interest-on-escrow laws" generally, ECF No. 16 at 17, 20; it held only that "New York's interest-on-escrow law is preempted," *Cantero II*, 175 F.4th at 216. Indeed, *Cantero II* did not mention Connecticut's or Vermont's interest-on-escrow laws. And, as alleged in the Complaint, those laws have materially different features from New York's. *Compare* ECF No. 1 ¶ 46 (describing New York's law as requiring lenders to pay interest of at least 2%), *with id.* ¶ 41 (describing Connecticut's interest rate as tied to "the average of the national rates for savings deposits and money market deposits"), *and id.* ¶ 49 (describing Vermont's interest rate as tied to the rate paid on a regular savings account). As of the date the Complaint was filed, the OCC's Rules were the only federal law or regulation purporting to nullify Connecticut's or Vermont's interest-on-escrow laws. Thus, the harm to Connecticut's and Vermont's sovereign interests is traceable to Defendants' unlawful Rules and a court ruling vacating and setting them aside would redress those injuries.

Defendants' argument fails as to New York for a different reason. As acknowledged in the Complaint, the Second Circuit held in *Cantero II* "that the National Bank Act preempts New York's law." ECF No. 1 ¶ 70 n.1. Yet, Defendants issued the Rules *after* the issuance of *Cantero II*, shoring up their preemption argument by manufacturing a separate "Federal regulation" that "directly conflicts" with New York's and other states' interest-on-escrow laws. ECF No. 1 ¶ 76 (quoting Escrow Powers Rule, 91 Fed. Reg. at 29341). In other words, Defendants' Rules purport to supply an independent basis for preempting New York's law, above and beyond the National Bank Act preemption found in *Cantero II*. As such, those Rules inflict a distinct sovereign injury

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on New York that can only be redressed through a ruling in this lawsuit vacating the Rules. And while Defendants accuse the Plaintiff States of "forum shopping" because *Cantero II* is not binding on this Court's preemption analysis, it would similarly not be binding in Defendants' preferred venue, the District of Columbia. Thus, *Cantero II* is not relevant to the analysis of whether New York (or any other Plaintiff State) has standing to raise this claim in this suit.

True, *Cantero II* may need "to cease being binding precedent" to *fully* redress the incursion on New York's sovereign prerogatives. ECF No. 16 at 20. But Plaintiffs "need only show redress of an injury, not every injury." *Matsumoto v. Labrador*, 122 F.4th 787, 801 (9th Cir. 2024) (citation modified). Thus, "if a court decision can provide a 'small incremental step' to reduce the risk of harm to the plaintiffs 'to some extent,' that is enough to show causation as well as redressability." *Id.* (quoting *Massachusetts v. EPA*, 549 U.S. 497, 524–26 (2007)). Because the Rules provide a separate impediment to enforcement of New York's law that is distinct from the National Bank Act preemption ruling in *Cantero II*, a ruling in New York's favor in this litigation removing that impediment would provide, at the very least, a "small incremental step" towards reducing the harm to the State's sovereign interest in enforcing its interest-on-escrow laws. *Id.* New York has therefore satisfied both the traceability and redressability prongs of the standing requirement.

B. Venue is Proper in the District of Oregon

Defendants seek to dismiss or transfer this case under Rule 12(b)(3), which "allow[s] dismissal only when venue is 'wrong' or 'improper'" under "federal venue laws." *Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas*, 571 U.S. 49, 55 (2013). Defendants alternatively seek transfer under 28 U.S.C. § 1404(a), under which the Court "may transfer any civil action to any other district or division where it might have been brought" "[f]or the convenience of parties and witnesses, in the interest of justice." The Court has discretion to transfer venue based on "an individualized, case-by-case consideration of convenience and fairness." *CollegeNet, Inc. v. Common Application, Inc.*, 355 F. Supp. 3d 926, 945 (D. Or. 2018) (quoting *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000)).

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1. This Litigation Meets the Venue Requirements of 28 U.S.C. § 1391.

Defendants concede, as they must, that venue in the District of Oregon is proper for Plaintiff State of Oregon pursuant to 28 U.S.C. § 1391(e)(1). *See* ECF No. 16 at 20–21. This concession resolves Defendants' improper-venue argument, because it is hornbook law that the requirements of § 1391(e)(1) are satisfied when "one of several plaintiffs resides" in the challenged judicial district. 14D Wright & Miller's Fed. Prac. & Proc. § 3807 (4th ed.) (collecting cases). As Defendants acknowledge, *see* ECF No. 16 at 21–22, controlling Ninth Circuit precedent follows this long-standing rule. *See Rw. Lab. Execs.' Ass'n v. ICC*, 958 F.2d 252, 256 (9th Cir. 1991) ("[I]n order to avoid a multiplicity of similar suits in different courts, venue need be proper for only one plaintiff . . . ." (citing *Exxon Corp. v. FTC*, 588 F.2d 895, 898–99 (3d Cir.1978))); *accord Sidney Coal Co. v. Soc. Sec. Admin.*, 427 F.3d 336, 344 (6th Cir. 2005) (noting this "broad interpretation 'is not only the majority view—it is the only view adopted by the federal courts since 1971'").

Because Defendants can point to no case law in their favor, they attempt the novel argument that recent Supreme Court precedent requires a "different, textualist approach" to an "unambiguous" statute. ECF No. 16 at 22. This is no basis for the court to ignore binding circuit precedent—particularly when the Supreme Court has never expressed any discomfort with lawsuits brought by multiple state plaintiffs being filed in one of those states. *See, e.g. Biden v. Missouri*, 595 U.S. 87, 92 (2022) (noting that "two groups of States—one led by Louisiana and one by Missouri—filed separate actions challenging" federal COVID-19 vaccination mandate in "the Western District of Louisiana and the Eastern District of Missouri"); *see also Day v. Apoliona*, 496 F.3d 1027, 1031 (9th Cir. 2007) (explaining that Ninth Circuit panels and district courts are bound by circuit precedent unless it is "clearly irreconcilable" with an intervening Supreme Court decision (quoting *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc))). Nor has the U.S. Department of Justice filed a similar Rule 12(b)(3) motion to dismiss in the dozens of multi-state cases filed in a single federal district in recent years. *See* Or. Dep't of Justice, *Federal Litigation Tracker*, https://www.doj.state.or.us/oregon-department-of-justice/federal-oversight/

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federal-litigation-tracker/ (last visited October 16, 2026) (collecting cases brought by the State of Oregon and additional state plaintiffs against federal defendant(s)).

Defendants' textual reading is also wholly unpersuasive. They fail to identify any "unambiguous" language in 28 U.S.C. § 1391 that requires each plaintiff in a multi-plaintiff action against the federal government to file separately in an appropriate venue. And Defendants' "textualist approach" does not even consider the entire statute: They rely solely on 28 U.S.C. § 1391(e)(1)(C), which permits venue based on a plaintiff's residence, while ignoring 28 U.S.C. § 1391(e)(1)(B), which permits venue where "a substantial part of the events or omissions giving rise to the claim occurred." Courts have recognized that this language in the federal venue statute (which is hardly "unambiguous") "contemplates that there may be more than one district in which a substantial part of the events giving rise to the claim occurred, and that venue would be proper in each such district." *Sidco Indus. Inc. v. Wimar Tahoe Corp.*, 768 F. Supp. 1343, 1346 (D. Or. 1991).

Accordingly, because venue in this district is concededly proper for Plaintiff State of Oregon, Plaintiffs have satisfied the statutory requirements of 28 U.S.C. § 1391(e)(1) and Defendants' motion to dismiss for lack of venue must fail. *See Or. Council for Humans. v. DOGE Serv.*, 794 F. Supp. 3d 840, 897 (D. Or. 2025) (Simon, J.) (citing *Ry. Lab. Execs.' Ass'n*, 958 F.2d at 256); *Las Americas Immigr. Advoc. Ctr. v. Trump*, 475 F. Supp. 3d 1194, 1202 (D. Or. 2020), *on reconsideration sub nom. Las Americas Immigr. Advoc. Ctr. v. Biden*, 571 F. Supp. 3d 1173 (D. Or. 2021); *City & Cnty. of San Francisco v. Trump*, No. 25-CV-01350-WHO, 2025 WL 2243619, at *6 (N.D. Cal. Aug. 5, 2025) ("[T]he clear weight of federal authority holds that venue is proper in a multi-plaintiff case if any plaintiff resides in the District." (citation omitted)).

2. Defendants' Motion to Transfer to Their Preferred Venue Lacks Merit.

The Court should also deny Defendants' motion to transfer this case to their preferred venue pursuant to 28 U.S.C. § 1404(a). A "defendant must make a strong showing of inconvenience to warrant upsetting the plaintiff's choice of forum." *Decker Coal Co. v.*

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Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986); *see also Adidas Am., Inc. v. Herbalife Int'l, Inc.*, No. CV 09-661-MO, 2010 WL 596584, at *7 (D. Or. Feb. 12, 2010) ("Where the balance of factors is relatively even . . . the law favors deference toward the plaintiff's choice of forum." (citing *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1117 (9th Cir. 2002))). Defendants make no showing, let a long a "strong" one.

As a threshold matter, Defendants are simply wrong that Plaintiffs' choice of forum "warrants no deference." *See* ECF No. 16 at 24–26. Defendants have issued rules that purport to preempt the banking and consumer protection laws of the sovereign Plaintiff States, including the State of Oregon. Venue in any of those states would thus be permitted under 28 U.S.C. § 1391. The Plaintiff States have exercised their right to file a single action in *this* forum; although Plaintiffs' reasons for choosing the District of Oregon are irrelevant, it is an especially appropriate forum considering the State of Oregon has taken a leadership role in prosecuting this litigation on behalf of Plaintiffs. *See* ECF No. 19 ("Oregon Senior Assistant Attorney General Leanne Hartmann spoke for Plaintiffs."). Defendants cannot point to a single factor that outweighs the deference required under binding Ninth Circuit law.

First, the "convenience of potential witnesses and access to any possible evidence" makes no difference when the parties do not expect to call any witnesses or rely on any evidence beyond the administrative record that Defendants should produce shortly. *See* ECF No. 16 at 26 ("[T]he OCC has no reason to expect that anything other than the administrative record will be necessary for a court's review in this Administrative Procedure Act ('APA') case should it reach the merits.").

Second, as Defendants admit, "the factor of familiarity with applicable law is neutral." *Id.* at 27.

Third, even if the OCC decided to preempt Plaintiff States' laws in the District of Columbia, *see id.* at 28, the impact of that decision is felt within the Plaintiff States, including Oregon. Contrary to Defendants' Beltway-centric view of the world, this is exactly the type of

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"local interest" that warrants hearing this suit in one of the Plaintiff States. *See Las Americas Immigr. Advoc. Ctr.*, 475 F. Supp. 3d at 1203. Indeed, accepting Defendants' arguments as to the location of evidence and decision-making (despite the lack of any need for discovery outside of the administrative record) would require litigating virtually every lawsuit challenging federal regulatory action in the District of Columbia. That is not the law. *See Minn–Dak Farmers Coop. v. Espy*, 851 F. Supp. 1423, 1425 (D.N.D. 1994) ("This court does not believe Congress intended each and every plaintiff with a cause of action against a governmental officer located in Washington, D.C. to travel to that city to plead his or her case.")

Fourth, Defendants' statistics about "relative court congestion" do not suggest that the District of Oregon lacks the capacity to dispose of this litigation in a timely manner. Furthermore, Defendants' invocation of this factor is contradicted by their simultaneous motion for an indefinite stay, which undermines their claim that a transfer to the District of Columbia is needed to take advantage of the purported two-month difference in average case disposition time. *See* ECF No. 16 at 28–29.

And *fifth*, the "interest of justice" does not support a transfer, because Defendants' accusations of "forum-shopping" are meritless. As Defendants acknowledge, half of the Plaintiff States (Oregon, California, Maine, Massachusetts, Rhode Island) reside in jurisdictions with Circuit precedent upholding state interest-on-escrow laws against National Bank Act preemption challenges, and this District is home to Oregon, which has taken a lead role in prosecuting the litigation. Filing a single lawsuit with all ten of the Plaintiff States conserves the parties' and judicial resources and the "interests of justice" do not require the Plaintiff States to forgo filing that lawsuit in this District simply because Defendants disapprove of prevailing Circuit precedent.

In short, none of the factors cited by Defendants weigh in favor of a transfer of venue. Transferring to Defendants' preferred venue "would merely shift rather than eliminate the inconvenience" to the litigating parties. *See Decker Coal Co.*, 805 F.2d at 843. Accordingly, their Motion should be denied.

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C. The Complaint Adequately Alleges that the Escrow Powers Rule Exceeds the OCC's Powers and is Contrary to Law.

Defendants seek partial dismissal under Rule 12(b)(6) for failure to state a claim. Dismissal of a claim at the pleading stage is "disfavor[ed] . . . unless there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory." *United States ex rel. Adventist Health Sys. of W. v. AbbVie Inc.*, 169 F.4th 1137, 1142 (9th Cir. 2026) (citation modified).

In their Motion, Defendants do not challenge the Complaint's allegations that the Preemption Rule is contrary to law and exceeds the OCC's authority, *see* ECF No. 1 ¶¶ 14–16, 85–91, 94–101, or that the Preemption and Escrow Powers Rules are arbitrary and capricious in violation of the APA, *id.* ¶¶ 17, 79, 92, 102–107. They instead seek partial dismissal of Count I, arguing that the Complaint fails to adequately allege that the Escrow Powers Rule exceeds the OCC's powers or is contrary to law. ECF No. 16 at 28–32. These arguments ignore or misconstrue the Complaint's allegations and rely on legal arguments that are foreclosed by well-established precedent.

The APA requires a reviewing court to set aside agency action that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," 5 U.S.C. § 706(2)(C), or that is "not in accordance with the law." *Id.* § 706(2)(A). Federal agencies "'literally ha[ve] no power to act'—including under [their] regulations—unless and until Congress authorizes [them] to do so." *FEC v. Cruz*, 596 U.S. 289, 301 (2022). Agency regulations have preemptive effect "only when and if [the agency] is acting within the scope of its congressionally delegated authority." *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). Of course, because "[a]n agency may not confer power upon itself," the OCC cannot "override Congress" by "expand[ing] its power [to displace state law] in the face of . . . congressional limitation[s] on its jurisdiction." *Id.* at 375; *see also Adams Fruit Co. v. Barrett*, 494 U.S. 638, 650 (1990) ("It is fundamental 'that an agency may not bootstrap itself into an area in which it has no jurisdiction.'"). The Complaint plausibly alleges that Defendants seek to do just that through the unlawful Escrow Powers Rule.

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That Rule declares that the OCC has "codif[ied]" an express "Federal power" for national banks to have limitless "discretion" in setting "the terms and conditions of escrow accounts," including "whether and to what extent" to pay interest. ECF No. 1 ¶ 74; Escrow Powers Rule, 91 Fed. Reg. at 29345. The OCC issued the Escrow Powers Rule for the express purpose of manufacturing a "Federal regulation" that "directly conflict[s]" with state interest-on-escrow laws and "complement[s] the OCC's preemption determination." ECF No. 1 ¶ 76; Escrow Powers Rule, 91 Fed. Reg. at 29341. As such, the Escrow Powers Rule is subject to and "limited by" Dodd-Frank's "strict substantive and procedural limitations" that specifically address "preemption of state consumer financial laws" like those at issue here. ECF No. 1 ¶ 77 (citing 12 U.S.C. § 25b(b)–(c)). In addition, the Escrow Powers Rule must be read in light of Dodd-Frank's amendments to the Truth in Lending Act requiring national banks to "pay interest to the consumer . . . in the manner as prescribed by [an] applicable State or Federal law" for certain types of mortgages. ECF No. 1 ¶ 51 (quoting 15 U.S.C. § 1639d(g)(3)). As alleged in the Complaint, the Escrow Powers Rule violates these provisions in a host of ways.

First, the Escrow Powers Rule's categorical preemption of any state laws regulating "the terms and conditions of [escrow] accounts" violates the plain text of 12 U.S.C. § 25b(b), which defines consumer protection laws as those that "'directly and specifically regulate[] the manner, content, or terms and conditions' of a banking product and requires preemption of only a subset of those laws." *Conti*, 157 F.4th at 25 (quoting 12 U.S.C. § 25b(a)(2)); ECF No. 1 ¶ 15. *Second*, the Rules claim "unchecked authority to preempt any state consumer financial law" by bestowing unlimited discretion on national banks (through the Escrow Powers Rule), and then declaring all state laws that conflict with that discretion to be preempted (in the Preemption Rule). ECF No. 1 ¶ 77. Such roving preemption authority has no limiting principle and is antithetical to Dodd-Frank, which expressly "ruled out field preemption." *Cantero*, 602 U.S. at 213 (citing 12 U.S.C. § 25b(b)(4)). *Third*, the Escrow Powers Rule's blanket grant of "discretion" for national banks to violate state interest-on-escrow laws violates Congress's explicit instructions in § 1639d(g)(3) that

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national banks "shall" pay interest to consumers "as prescribed" by those laws for certain kinds of mortgages, ECF No. 1 ¶¶ 6, 51, and Congress's "view" as reflected in the provision "that [state interest-on-escrow] laws would not necessarily prevent or significantly interfere with a national bank's operations," *Lusnak*, 883 F.3d at 1194–95. And *fourth*, because the Escrow Powers Rule is devoid of supporting evidence, and purports to preempt conflicting state laws across-the-board, it violates Dodd Frank's requirement that the OCC preempt state laws only on a "case-by-case" basis when supported by "substantial evidence." ECF No. 1 ¶ 99.

The Motion does not engage with any of these allegations, which easily state a claim that the OCC exceeded its authority and acted contrary to Dodd-Frank's limitations by promulgating the Escrow Powers Rule for the purpose of preempting state law. Instead, Defendants appear to suggest that the Escrow Powers Rule does not address preemption at all. *See* ECF No. 16 at 30-31 (claiming the Escrow Powers Rule does not "contain a preemption analysis, nor did it conclude that any state laws were preempted," and reflected a "separate action[]" that was not taken "simply to preempt state laws."). This argument improperly disputes the Complaint's well-pled allegations that the OCC issued the Escrow Powers Rule for the "purpose of preempting state laws in the concurrently issued Preemption Rule." ECF No. 1 ¶ 13. Those allegations are supported by, among other things, the OCC's own press release announcing the rules, titled: "OCC Issues Two Final Rules on Preemption of State Interest-on-Escrow Laws," *id.* ¶ 72, and the OCC's own rule-making documents, which again, expressly state that the Escrow Powers Rule was issued to "complement the OCC's preemption determination," *id.* ¶ 76; Escrow Powers Rule, 91 Fed. Reg. at 29341; *see also* Preemption Rule, 91 Fed. Reg. at 29356 ("New York's interest-on escrow law creates a direct conflict with the broad Federally authorized powers expressly codified in the OCC's concurrent Escrow Powers Rule"). Thus, there can be no dispute (and the Complaint more than adequately pleads) that the OCC purported to exercise its preemption authority in simultaneously issuing the paired Rules, including the Escrow Powers Rule.

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Lastly, the Motion claims that, even if the OCC issued the Escrow Powers Rule "to preempt states' interest-on-escrow laws," Dodd-Frank's specific limitations on its preemption authority are irrelevant because the OCC relied on its "distinct" rulemaking authority under the National Bank Act. ECF No. 16 at 30–31. But it is well established that "the meaning of one statute may be affected by other Acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand." *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 121 (2000). It is equally "well established that an agency may not circumvent specific statutory limits on its actions by relying on separate, general rulemaking authority." *Air All. Houston v. Env't Prot. Agency*, 906 F.3d 1049, 1061 (D.C. Cir. 2018); *see also Or. Council for Humans.*, 794 F. Supp. 3d at 874 (citing "well established canon of statutory interpretation . . . that the specific governs the general"). Congress could hardly have been more specific in the later-enacted Dodd-Frank Act: It addressed the authority the OCC claims through the Rules (preemption), 12 U.S.C. § 25b, and also laws that the Rules purport to preempt (state interest-on-escrow requirements), 15 U.S.C. § 1639d(g)(3). In contrast, the general rulemaking authority on which Defendants rely does not mention preemption or state interest-on-escrow laws and authorizes the OCC only to "prescribe rules and regulations to carry out the responsibilities of the office" and impose "restrictions and requirements" on national banks' powers to "make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate." 12 U.S.C. §§ 93a, 371(a).

The OCC may not "escape Congress's clear intent to specifically limit the agency's authority under [Dodd-Frank] by grasping at its separate, more general authority under" the National Bank Act. *Air All. Houston*, 906 F.3d at 1061; *see also Louisiana Pub. Serv. Comm'n*, 476 U.S. at 377 (refusing to read general grant of power as overriding specific limit on preemption authority). That would "allow [the OCC] to avoid the restrictions of [Dodd-Frank] by simply" issuing twin regulations (1) conferring discretion and (2) declaring preemption, then "insisting it was invoking [general rule-making] authority" for the first rule. *Air All. Houston*, 906 F.3d at 1061. Such an "unreasonable interpretation would deprive the more specific [provisions in Dodd-Frank]

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of virtually all effect," *id.* and impermissibly "upend Dodd-Frank's carefully reticulated [preemption] scheme," ECF No. 1 ¶ 77 (quoting *Conti*, 157 F.4th at 21 n.8).

IV. CONCLUSION

For the reasons set forth above, the Court should deny Defendants' Motion to Dismiss or, in the Alternative, to Transfer.

DATED October 19, 2026.

Respectfully submitted,

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