

SCOTUS Agrees to Hear Case Concerning State Regulation of Federal Banks

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The Supreme Court of the United States has agreed to hear *Cantero v. Bank of America, N.A.*, a case that concerns the power of states to regulate federally-chartered banks. The Court has granted review of the case despite the Solicitor General arguing that the Justices should wait to consider the issue.

As we summarized [in a prior alert](#), the matter involves the interplay between federal and state banking regulations governing mortgage escrow accounts. The law in *Cantero* concerns escrow accounts for mortgages on any one to six-family residence occupied by the owner. As many readers are aware, lenders commonly require that borrowers escrow a sufficient amount of funds to cover both property taxes and home-insurance payments during the loan term. In the past, some banks required escrow amounts that were grossly disproportionate to the funds needed to cover taxes and insurance. This amounted to an essentially interest free deposit with or loan to the bank. In response, some states passed laws requiring that lenders pay interest on the funds held in these escrow accounts. Thirteen states currently require some form of interest payment on mortgage escrows.

In *Cantero*, the Second Circuit ruled that Bank of America was not required to comply with New York's law imposing a 2% interest payment on the escrow account. The Court reasoned that the creation and administration of mortgage escrows implicate one of a national bank's core powers under the National Banking Act and related federal laws and that New York's interest payment law, if applied to a national bank, could infringe on that power and potentially "destroy" it. Under those circumstances, the Court held that federal law preempted New York law pursuant to traditional preemption analysis, as well as the Dodd-Frank standard for determining when state consumer financial laws apply to federally-chartered banks.

The Second Circuit's opinion in *Cantero* directly conflicts with the Ninth Circuit's decisions in *Lusnak v. Bank of America* from 2018, and, more recently, *Flagstar Bank v. Kivett* in 2022, both of which held that California laws similar to New York's law imposing interest payments on mortgage escrows were consistent with the National Banking Act and Dodd-Frank and do apply to national banks. The petition in *Flagstar* is still pending before the Court.

The application of state financial consumer laws to national banks is a perennial issue of national concern, stretching back to some of the oldest and most important Supreme Court decisions and touching upon some of the nation's most turbulent times, such as the 2008 Financial Crisis.

The Court's decision in *Cantero* will have an impact on the interests of lenders, borrowers, the federal government, and state governments throughout the country.