

21-400, 21-403

Cantero v. Bank of America, N.A., Hymes v. Bank of America, N.A.

**United States Court of Appeals
For the Second Circuit**

August Term 2024

Argued: March 3, 2025

Decided: May 5, 2026

Nos. 21-400, 21-403

ALEX CANTERO,
individually and on behalf of all others similarly situated,
Plaintiff-Appellee,

v.

BANK OF AMERICA, N.A.,
Defendant-Appellant.

SAUL R. HYMES, ILANA HARWAYNE-GIDANSKY,
on behalf of themselves and all others similarly situated,
Plaintiffs-Appellees,

v.

BANK OF AMERICA, N.A.,
Defendant-Appellant.

On Appeal from the United States District Court
for the Eastern District of New York

Before: LIVINGSTON, *Chief Judge*, and PARK and PÉREZ, *Circuit Judges*.

Plaintiffs deposited money in mortgage-escrow accounts with Bank of America (“BOA”), which refused to pay the two-percent interest rate required by New York General Obligations Law (“GOL”) § 5-601. BOA argued that New York’s interest-on-escrow requirement is preempted by federal banking law, which authorizes federally chartered national banks to offer mortgage-escrow accounts without requiring them to pay interest.

We previously concluded that GOL § 5-601 is preempted because it exercises “control over a banking power granted by the federal government.” *Cantero v. Bank of Am., N.A.*, 49 F.4th 121, 125 (2d Cir. 2022). But the Supreme Court vacated that decision and instructed us to conduct a “nuanced comparative analysis” of New York’s interest-on-escrow law and the Court’s banking preemption precedents. *Cantero v. Bank of Am., N.A.*, 602 U.S. 205, 220 (2024).

Having done so, we again conclude that GOL § 5-601 is preempted. First, New York’s interest-on-escrow requirement affects a national banking *power*: the power to offer mortgages. Second, it targets banks and limits their broad power to set the terms of mortgage-escrow accounts, so it is similar in nature to the preempted laws in *Fidelity Federal Savings and Loan Ass’n v. de la Cuesta*, 458 U.S. 141 (1982), and *Barnett Bank of Marion County v. Nelson*, 517 U.S. 25 (1996). Finally, its degree of interference on banks’ ability to make real-estate loans efficiently is similarly severe to the interference

created by the preempted advertising law in *Franklin National Bank of Franklin Square v. New York*, 347 U.S. 373 (1954).

The nature and degree of GOL § 5-601's interference with federal law is "more akin" to the cases in which state laws were preempted than those in which state laws were not. *Cantero*, 602 U.S. at 220. We thus **REVERSE** the orders of the district court denying BOA's motions to dismiss and **REMAND** the cases for further proceedings consistent with this opinion.

Judge Pérez dissents in a separate opinion.

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Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington, and Wyoming, and the District of Columbia, in support of Plaintiffs-Appellees in Hymes v. Bank of America.

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PARK, *Circuit Judge:*

Plaintiffs deposited money in mortgage-escrow accounts with Bank of America (“BOA”), which refused to pay the two-percent interest rate required by New York General Obligations Law (“GOL”) § 5-601. BOA argued that New York’s interest-on-escrow requirement is preempted by federal banking law, which authorizes

federally chartered national banks to offer mortgage-escrow accounts without requiring them to pay interest.

We previously concluded that GOL § 5-601 is preempted because it exercises “control over a banking power granted by the federal government.” *Cantero v. Bank of Am., N.A.*, 49 F.4th 121, 125 (2d Cir. 2022). But the Supreme Court vacated that decision and instructed us to conduct a “nuanced comparative analysis” of New York’s interest-on-escrow law and the Court’s banking preemption precedents. *Cantero v. Bank of Am., N.A.*, 602 U.S. 205, 220 (2024).

Having done so, we again conclude that GOL § 5-601 is preempted. First, New York’s interest-on-escrow requirement affects a national banking *power*: the power to offer mortgages. Second, it targets banks and limits their broad power to set the terms of mortgage-escrow accounts, so it is similar in nature to the preempted laws in *Fidelity Federal Savings and Loan Ass’n v. de la Cuesta*, 458 U.S. 141 (1982), and *Barnett Bank of Marion County v. Nelson*, 517 U.S. 25 (1996). Finally, its degree of interference on banks’ ability to make real-estate loans efficiently is similarly severe to the interference created by the preempted advertising law in *Franklin National Bank of Franklin Square v. New York*, 347 U.S. 373 (1954).

The nature and degree of GOL § 5-601’s interference with federal law is “more akin” to the cases in which state laws were preempted than those in which state laws were not. *Cantero*, 602 U.S. at 220. We thus reverse the orders of the district court denying BOA’s motions to dismiss and remand the cases for further proceedings consistent with this opinion.

I. BACKGROUND¹

A. Legal Context

1. *National Banking System*

Federal banking law authorizes national banks to exercise express and incidental powers. Express powers are specifically granted to national banks by statute. They include the powers to “make contracts,” to “sue and be sued,” to “loan[] money on personal security,” and, as relevant here, to “make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate.” 12 U.S.C. §§ 24, 371(a). National banks also have “all such incidental powers as shall be necessary to carry on the business of banking.” *Id.* § 24 (Seventh).

Together, the powers to make “loans . . . secured by liens on interests in real estate” and to exercise necessary “incidental powers” allow national banks to offer and set the terms of mortgage-escrow accounts. *Id.* §§ 24 (Seventh), 371(a). A mortgage-escrow account requires a borrower to set aside money for tax and insurance payments on a home. The bank then uses that money to make payments on the borrower’s behalf, reducing the possibility of default and protecting the property from uninsured damage. Mortgage-escrow accounts are a “crucial risk mitigation tool that supports safe and sound mortgage lending,” Real Estate Lending Escrow Accounts, 90 Fed. Reg. 61099, 61100 (proposed Dec. 30, 2025), without which there is a “higher probability of foreclosure,” Escrow Requirements

¹ The background is set out more fully in *Cantero*, 49 F.4th at 125-29. We summarize it here as necessary to explain our decision.

Under the Truth in Lending Act, 78 Fed. Reg. 4726, 4735 (Jan. 22, 2013). A national bank's ability to decide "how to structure its escrow operations and whether and what extent to offer any compensation to customers" is thus "a clear logical outgrowth of national banks' other powers to manage and protect collateral." Real Estate Lending Escrow Accounts, 90 Fed. Reg. at 61102.

"In the 1970s, Congress found that some national banks were engaging in 'certain abusive practices' and that 'significant reforms' were necessary to protect borrowers." *Cantero*, 602 U.S. at 211 (quoting 12 U.S.C. § 2601(a)). Congress thus passed the Real Estate Settlement Procedures Act of 1974 ("RESPA"), which "extensively regulates national banks' operation of escrow accounts." *Id.* RESPA requires national banks to "promptly return[] to the borrower" any "balance" left over in escrow accounts after a loan is paid, 12 U.S.C. § 2605(g), and limits the amounts banks can require borrowers to deposit in mortgage-escrow accounts, *id.* § 2609(a). But RESPA "does not mandate that national banks pay interest to borrowers on the balances of their escrow accounts." *Cantero*, 602 U.S. at 211.²

² Another federal statute, the Truth in Lending Act ("TILA"), "requires national banks to operate escrow accounts for certain mortgages," but it "does not apply to the mortgages in this case." *Cantero*, 602 U.S. at 211 n.1. TILA expressly incorporates state interest-on-escrow requirements for those mandatory accounts: national banks "must pay interest to the borrower in the manner as prescribed by an applicable State or Federal law." *Id.* (cleaned up).

2. *Preemption Framework*

The Dodd-Frank Wall Street Reform and Consumer Protection Act establishes the “controlling legal standard for when a ‘State consumer financial law,’ like New York’s interest-on-escrow law, is preempted with respect to national banks.” *Cantero*, 602 U.S. at 213 (quoting 12 U.S.C. § 25b(b)(1)). It states that state laws are preempted “only if . . . in accordance with the legal standard for preemption in the decision of the Supreme Court of the United States in *Barnett Bank* . . . the State consumer financial law prevents or significantly interferes with the exercise by the national bank of its powers.” 12 U.S.C. § 25b(b)(1)(B).

Barnett Bank requires us to survey prior Supreme Court cases “to demarcate when a state law significantly interferes with [a] national bank’s exercise of its powers.” *Cantero*, 602 U.S. at 215 (cleaned up). Those cases establish that “some (but not all) non-discriminatory state laws that regulate national banks are preempted.” *Id.* at 221.

On one hand, *National Bank v. Commonwealth*, 76 U.S. 353 (1869); *McClellan v. Chipman*, 164 U.S. 347 (1896); and *Anderson National Bank v. Lockett*, 321 U.S. 233 (1944), upheld state laws regulating national banks. *National Bank* concerned a Kentucky tax on bank stock. *McClellan* involved a generally applicable Massachusetts law that prohibited banks from receiving preferential transfers. And *Anderson* dealt with a Kentucky escheat law that presumed inactive deposits were abandoned. The Court concluded that these laws were not preempted because they did not “prevent or significantly interfere

with the national bank's exercise of its powers." *Barnett Bank*, 517 U.S. at 33.

On the other hand, *First National Bank of San Jose v. California*, 262 U.S. 366 (1923); *Franklin National Bank of Franklin Square v. New York*, 347 U.S. 373 (1954); *Fidelity Federal Savings and Loan Ass'n v. de la Cuesta*, 458 U.S. 141 (1982); and *Barnett Bank of Marion County v. Nelson*, 517 U.S. 25 (1996), struck down state laws. In *First National Bank of San Jose*, California escheated all deposits that were inactive for over twenty years. In *Franklin*, New York barred bank advertisements from using the word "savings." In *Fidelity*, California restricted the use of due-on-sale clauses. And in *Barnett Bank*, Florida prevented banks from selling insurance. The Supreme Court concluded that these laws were preempted.

3. *New York's Interest-on-Escrow Requirement*

GOL § 5-601 is a consumer financial law requiring "mortgage investing institution[s]" to credit escrow accounts for certain residences in New York "with dividends or interest at a rate of not less than two per centum per year." GOL § 5-601. It allows New York's Superintendent of Financial Services to prescribe a higher minimum interest rate after "consider[ing] pertinent economic and cost factors." N.Y. Banking L. § 14-b(2).

GOL § 5-601 was enacted in 1974, but no court has enforced compliance with its interest-on-escrow requirement. As early as 2004, the Office of the Comptroller of the Currency ("OCC") advised that banks may "make real estate loans . . . without regard to state law limitations." Bank Activities and Operations; Real Estate Lending and Appraisals, 69 Fed. Reg. 1904, 1917 (Jan. 13, 2004).

In December 2025, the OCC issued a notice proposing a rule that would “expressly codify [national] banks’ power to establish and maintain escrow accounts” and “clarify that the terms and conditions of escrow accounts, including the extent of any compensation paid to customers, are business decisions to be made by each bank.” Real Estate Lending Escrow Accounts, 90 Fed. Reg. at 61103. It simultaneously proposed a “preemption determination” concluding that “the National Bank Act preempts New York’s Gen. Oblig. Law section 5-601” and eleven other similar state laws. Preemption Determination: State Interest-on-Escrow Laws, 90 Fed. Reg. 61093, 61094 (proposed Dec. 30, 2025).

B. Facts and Procedural History

Plaintiffs Alex Cantero, Saul Hymes, and Ilana Harwayne-Gidansky took out mortgage loans from BOA, which required Plaintiffs to make deposits in mortgage-escrow accounts. But BOA refused to pay the two-percent interest required by GOL § 5-601. So Plaintiffs filed two putative class actions, alleging breach of contract and other claims.

BOA moved to dismiss the complaints, arguing that it did not need to pay interest because GOL § 5-601 is preempted by federal banking law. The district court disagreed. It denied BOA’s motions to dismiss, *see Hymes v. Bank of Am., N.A.*, 408 F. Supp. 3d 171 (E.D.N.Y. 2019), and certified the preemption question for interlocutory appeal, *see Hymes v. Bank of Am., N.A.*, No. 18-cv-2352, 2020 WL 9174972 (E.D.N.Y. Sept. 29, 2020).

On appeal, we reversed the district court’s denial of BOA’s motions. We concluded that federal banking law preempts GOL § 5-

601 because an interest-on-escrow requirement “would exert control over a banking power—and thus, if taken to its extreme, threaten to ‘destroy’ the grant made by the federal government.” *Cantero*, 49 F.4th at 132 (quoting *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 431 (1819)). But we did “not endeavor to assess whether the degree of the state law’s impact on national banks would be sufficient to undermine that power.” *Id.*

The Supreme Court vacated our decision and remanded for us to conduct the “kind of nuanced comparative analysis” that the *Barnett Bank* standard requires. *Cantero*, 602 U.S. at 220. In “*Barnett Bank* and each of the earlier [banking preemption] precedents, the Court [assessed] the nature and degree of the state laws’ alleged interference.” *Id.* at 220 n.3. So rather than focus only on whether a state law “controls” a national bank’s powers, we should make a “practical assessment of the nature and degree of the interference” based on “the text and structure of the laws, comparison to other precedents, and common sense.” *Id.* at 219, 220 n.3.

With this instruction in mind, we revisit whether, under the *Barnett Bank* standard, federal banking law preempts New York’s interest-on-escrow requirement.

II. DISCUSSION

A. Legal Standard

To determine whether a state law is preempted, we first ask whether the state law affects “the exercise by the national bank of its powers.” 12 U.S.C. § 25b(b)(1)(B). If it does, we then consider whether the state law “prevents or significantly interferes” with those

powers by analyzing two factors: (1) the “nature” of the state law’s interference, and (2) the “degree” of interference. *Cantero*, 602 U.S. at 220 & n.3.

We assess these factors in a “nuanced comparative analysis” in light of the Supreme Court’s preemption cases. *Id.* at 220. If the nature and degree of a state law’s interference with national bank powers “is more akin to the interference in cases like *Franklin*, *Fidelity*, *First National Bank of San Jose*, and *Barnett Bank* itself, then the state law is preempted.” *Id.* Conversely, if the nature and degree of the state law’s interference with national bank powers “is more akin to the interference in cases like *Anderson*, *National Bank v. Commonwealth*, and *McClellan*, then the state law is not preempted.” *Id.*

1. *The Banking Power at Issue*

The National Bank Act authorizes national banks to exercise express and incidental powers. Historically, “grants of both enumerated and incidental ‘powers’ to national banks [have been interpreted] as grants of authority not normally limited by, but rather ordinarily pre-empting, contrary state law.” *Barnett Bank*, 517 U.S. at 32.

But state laws that do not affect a national bank’s “exercise . . . of its powers” are not preempted. 12 U.S.C. § 25b(b)(1)(B). Consider Kentucky’s tax on “bank stock” in *National Bank*. 76 U.S. at 354. That law affected—indeed, targeted—banks. But the Court held the tax was not preempted because it was “no great[] interference with the functions of the bank” and “in no manner hinder[ed] it from performing all the duties of financial agent of the government.” *Id.* at

362-63. State laws that merely affect banks, rather than banking powers, are not typically preempted.

2. *Nature of the Interference*

If a state law affects a banking power, we must identify the “nature” of the interference by analyzing the “text and structure” of the relevant state and federal laws. *Cantero*, 602 U.S. at 220 n.3. Two principles emerge from this analysis. First, generally applicable state laws are unlikely to be preempted. Second, state laws that prohibit a bank from exercising express or broad powers are likely to be preempted.

a. Generally Applicable Laws

“[N]ational banks . . . remain subject to state law governing ‘their daily course of business’ such as generally applicable state contract, property, and debt-collection laws.” *Cantero*, 602 U.S. at 219 (quoting *National Bank*, 76 U.S. at 361-62). So even when a generally applicable state law has some effect on a bank’s exercise of its powers, it is ordinarily not preempted. That was the case in *McClellan*, in which the Court upheld Massachusetts’s generally applicable fraudulent transfer law because it subjected banks to “the same conditions and restrictions to which all the other citizens of the state are subjected.” 164 U.S. at 358. The Court explained that “in the broadest sense, any limitation by a state on the making of contracts is a restraint upon the power of a national bank within the state” but that “the purpose and object of congress in enacting the national bank law was to leave such banks, as to their contracts in general, under the operation of the state law.” *Id.* at 358-59. So it concluded that “the general and indiscriminating law of the state of Massachusetts

subjecting the taking of real estate to certain restrictions” was not preempted by federal law “permit[ting] national banks to take real estate for given purposes.” *Id.* at 358, 361.

Even state laws that target banks or banking powers are unlikely to be preempted if they are part of a generally applicable scheme. This principle helps to explain the diverging results in *First National Bank of San Jose* and *Anderson*, which both addressed state laws requiring banks to escheat abandoned deposits to the state. California’s law created a *non-rebuttable* presumption that deposits unclaimed for 20 years were abandoned, but Kentucky’s law created a *rebuttable* presumption that deposits unclaimed for 10 years were abandoned. *See First Nat’l Bank of San Jose*, 262 U.S. at 366-67; *Anderson*, 321 U.S. at 236-37. The Court struck down California’s law but upheld Kentucky’s. It emphasized that it could not “discern any greater or different effect [of the Kentucky law] . . . from the application of the ancient law of escheat or forfeiture of goods,” which allowed the state to appropriate “abandoned personal property.” *Anderson*, 321 U.S. at 240, 252. But California’s non-rebuttable presumption of “seizure and escheat . . . for mere dormancy” was an “unusual” variation on the common-law doctrine. *Id.* at 251. Even though both laws targeted banks, only Kentucky’s was consistent with the generally applicable common-law escheat rule, so it was not preempted.³

³ This principle explains why fair-lending and false-advertising laws are unlikely to be preempted. *See, e.g., Cuomo v. Clearing House Ass’n, LLC*, 557 U.S. 519, 522-23, 536 (2009) (permitting enforcement of New York fair-

b. Prohibitions on Express and Broad Powers

The text and structure of the relevant laws also bear on the nature of interference by illuminating how *directly* they conflict.

Of course, when state and federal laws “impose directly conflicting duties on national banks,” the state law is always preempted. *Barnett Bank*, 517 U.S. at 31. But when federal statutes grant permissive powers, as opposed to imposing mandatory duties, “compliance with both” state and federal law is not “a physical impossibility,” because a bank can choose not to exercise its power in the manner prohibited by state law. *Fidelity*, 458 U.S. at 155 (citation omitted). In those cases, the Court has found state laws preempted when federal law grants a “broad, not a limited, permission.” *Barnett Bank*, 517 U.S. at 32.

That was the case in *Fidelity* and *Barnett Bank*, where the text and structure of federal law indicated that Congress granted banks broad authority to exercise express powers, such that state limits on those powers were preempted. In *Fidelity*, the Court emphasized that a federal regulation granted a federal savings-and-loan association the power to include due-on-sale clauses in contracts “at its option,” so California’s law prohibiting some due-on-sale clauses impermissibly deprived banks of the “flexibility” the regulation granted. 517 U.S. at 155. Likewise, in *Barnett Bank*, a federal statute providing, “without relevant qualification, that national banks may act as the agent for insurance sales” suggested “a broad, not a limited,

lending law against national banks). Such laws typically apply generally applicable rules to banks, so they are similar to the escheat rule in *Anderson*.

permission.” *Barnett Bank*, 517 U.S. at 32 (cleaned up). So a Florida law prohibiting banks from acting as insurance agents was preempted. *Id.*⁴

3. *Degree of Interference*

The Court has relied on “common sense” to assess *how severely* a state law interferes with a banking power. *Cantero*, 602 U.S. at 220 n.3. It has suggested that a state law’s interference is severe when it prevents a bank from efficiently exercising its powers or makes a bank’s product undesirable to consumers.

The first consideration led the Court in *Franklin* to conclude that New York’s law prohibiting banks from using the word “savings” in advertisements was preempted by federal law permitting banks to receive savings accounts. *See Cantero*, 602 U.S. at 216. There, “the Court determined that the New York law significantly interfered with the banks’ power because the banks could not advertise effectively” their power to receive savings deposits without using the word “savings.” *Id.* (citing *Franklin*, 347 U.S. at 377-78). “[S]tate law could not interfere with the national bank’s ability to [advertise savings accounts] *efficiently*,” so it was preempted. *Id.* (emphasis added).

⁴ To be sure, not all state laws that limit broad grants of power are preempted. For example, the fraudulent transfer law in *McClellan* interfered with national banks’ broad express power to take real estate, but the law was not preempted because it was generally applicable and restricted banks in only “particular and exceptional circumstances.” 164 U.S. at 358. A “nuanced comparative analysis” must balance the different attributes of a state law that favor preemption against those that do not. *Cantero*, 602 U.S. at 220.

Similarly, the absence of an impact on a bank's ability to exercise its powers efficiently supported the Court's conclusion in *McClellan*. There, Massachusetts's fraudulent conveyance law was not preempted because it affected banks in only "particular and exceptional circumstances," and thus did not "impair[] the efficiency of national banks." *McClellan*, 164 U.S. at 358. These cases highlight that a state law's impact on a national bank's efficiency informs the *degree* of the state law's interference with federal law.

The second consideration—that a state law's interference is more severe if it makes a bank's services less desirable to consumers—undergirded the Court's conclusions in *First National Bank of San Jose* and *Anderson*. In *First National Bank of San Jose*, California's law imposing a non-rebuttable presumption that unclaimed deposits were abandoned, was preempted because consumers "might well hesitate to subject their funds to possible confiscation." 262 U.S. at 370. But in *Anderson*, Kentucky's similar law imposing a rebuttable presumption was not preempted because it "may operate for the benefit and security of depositors" and would not "deter them from placing their funds in national banks." 321 U.S. at 252. The Court's expectations about whether California's and Kentucky's escheat laws would deter customers thus supported the different outcomes in these cases.⁵

⁵ Plaintiffs argue that BOA must *prove* that a "state law posed a significant practical impediment to the exercise of an express power" with "evidence." Appellees' Supp. Br. at 8. In support, they argue that the "Court in *Franklin* . . . had the benefit of a 'large record' documenting the [New York] law's real-world 'consequences upon banks.'" *Id.* at 7 (quoting

B. Application

New York’s interest-on-escrow law is preempted because it affects a broad federal grant of power to set the terms of mortgage-escrow accounts and it impedes national banks’ ability to offer those accounts efficiently. These characteristics make GOL § 5-601 more like the laws in *Franklin*, *Fidelity*, *First National Bank of San Jose*, and *Barnett Bank*, in which the Supreme Court found preemption, than those in *Anderson*, *National Bank*, and *McClellan*, in which the Court did not.

1. *The Banking Power at Issue*

New York’s interest-on-escrow requirement does not merely affect BOA, it affects BOA’s “exercise of its powers.” *Barnett Bank*, 517 U.S. at 33 (emphasis added). Federal law gives national banks the power to “make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate,” 12 U.S.C. § 371(a), which, in conjunction with their “incidental powers,” *id.* § 24 (Seventh), authorizes them to offer mortgage-escrow accounts, *see* Real Estate Lending Escrow Accounts, 90 Fed. Reg. at 61102. New York’s law interferes with that power by limiting the terms on which banks may offer these accounts—specifically, by requiring them to pay at least two percent interest to customers. In short, banks may offer

Franklin, 347 U.S. at 376). But *Franklin* never discussed that record, nor has the Court in any other preemption case considered record evidence of a state law’s “real-world consequences upon banks.” Following the Court’s instruction to ground our analysis in “the text and structure of the laws, comparison to other precedents, and common sense,” we do not require record evidence of a law’s real-world effects. *Cantero*, 602 U.S. at 220 n.3.

mortgage-escrow accounts without interest under federal law, but under New York law, they may not.

2. *Nature of the Interference*

We analyze the nature of New York's interference with federal law by considering the text and structure of the state and federal laws. New York's law is not generally applicable, like the fraudulent conveyance law in *McClellan*, nor does it apply a generally applicable rule to banks, like the escheat law in *Anderson*. Rather, GOL § 5-601 targets banks. That characteristic differentiates it from the non-preempted laws in *McClellan* and *Anderson*.

We also consider whether New York's law involves a prohibition on an expressly- or broadly-granted power, as in *Fidelity* and *Barnett Bank*. GOL § 5-601 does not limit an express power because national banks' power to set interest rates on mortgage-escrow accounts is *incidental* to the power to extend "credit secured by liens on interests in real estate." 12 U.S.C. § 371(a). But other federal laws governing mortgage accounts suggest that Congress granted this incidental power broadly.

First, the Real Estate Settlement Procedures Act "extensively regulates national banks' operation of escrow accounts." *Cantero*, 602 U.S. at 211. "But as relevant to this case, RESPA . . . does not mandate that national banks pay interest to borrowers on the balances of their escrow accounts." *Id.* The omission of an interest rate requirement from RESPA, a statute regulating many other aspects of escrow accounts, suggests that national banks have a broad power to set those rates. As the OCC explained, "RESPA, in legislating a system of escrow account disclosures and amount limits, implicitly

recognizes the flexibility banks have in deciding . . . whether and to what extent to pay interest on escrowed funds.” Real Estate Lending Escrow Accounts, 90 Fed. Reg. at 61102.

Second, the Truth in Lending Act requires national banks to “pay interest to the borrower in the manner as prescribed by an applicable State or Federal law” for certain mortgage-escrow accounts, but not those at issue here. *Cantero*, 602 U.S. at 211 n.1 (cleaned up). The Court has relied on statutes that, like TILA, expressly incorporated some state laws to conclude that federal law preempted other state laws regulating the same or similar activities. In *Barnett Bank*, for example, the Court inferred that federal law granted national banks a “broad, not a limited, permission” to sell insurance because federal law “specifically refer[red] to state regulation, while limiting that reference to licensing—not of banks or insurance agents, but of the insurance companies whose policies the bank, as insurance agent, will sell.” 517 U.S. at 32. Similarly, in *Franklin*, the Court found “no indication that Congress intended to make this phase of national banking [*i.e.*, advertising savings accounts] subject to local restrictions, as it has done by express language in several other instances,” thus inferring preemption in part from statutory silence. 347 U.S. at 378. Finally, in *Fidelity*, the Court concluded that “provisions incorporating specific aspects of state law [would be] needlessly repetitive” if similar state laws were not preempted and thus “declin[ed] to construe the Act so as to render these provisions nugatory.” 458 U.S. at 163. Congress’s decision to adopt specific state interest-on-escrow requirements in TILA thus also suggests that similar state laws—like GOL § 5-601—are preempted.

To be sure, the breadth of the federal grant of power here is not express, as in *Fidelity* and *Barnett Bank*, where federal statutes “explicitly” granted an express power. *Barnett Bank*, 517 U.S. at 34. But the clear implication from RESPA and TILA—that national banks have broad power to set interest rates for most mortgage-escrow accounts—makes the nature of interference in this case “akin” to that in *Fidelity* and *Barnett Bank*. *Cantero*, 602 U.S. at 220.

3. *Degree of Interference*

Next, we turn to the “degree” of New York’s interference by considering whether GOL § 5-601 interferes with banks’ ability to offer mortgage-escrow accounts efficiently and to attract customers.

The “vast majority of home mortgages come with escrow accounts.” *Cantero*, 602 U.S. at 211. Banks administering these accounts incur operational and compliance costs, which they may recover by investing escrow funds or through other means, depending on their “business strategy, costs, market demand, [and] competition.” Real Estate Lending Escrow Accounts, 90 Fed. Reg. at 61100. But on each account associated with certain residences in New York, GOL § 5-601 requires banks to pay at least two percent interest. This requirement “raises the cost to national banks to use escrow accounts” for residences in New York. *Kivett v. Flagstar Bank, FSB*, 154 F.4th 640, 648 (9th Cir. 2025). New York’s mandated interest rate may cause national banks to “offer escrow accounts on fewer real estate loans; attempt to recoup costs in other ways; or even reduce lending.”

Preemption Determination: State Interest-on-Escrow Laws, 90 Fed. Reg. at 61097.

This interference is similar in degree to that of New York’s advertising law in *Franklin*. Both laws restrict an incidental power that is essential to banks’ exercise of an express power. The law in *Franklin* limited national banks’ ability to advertise savings accounts, and advertising was “one of the most usual and useful of weapons” to solicit and receive savings deposits. 347 U.S. at 377. Likewise, GOL § 5-601 limits banks’ ability to set the terms of mortgage-escrow accounts when the ability “to effectively and efficiently set the terms and conditions of their escrow accounts . . . is a core component of banks’ mortgage lending powers.” Real Estate Lending Escrow Accounts, 90 Fed. Reg. at 61100. Both laws also restrict banks’ ability to exercise that incidental power—the *Franklin* law, by prohibiting all advertisements with the word “savings,” and GOL § 5-601, by prohibiting all mortgage-escrow accounts with interest rates below two percent.⁶

If anything, GOL § 5-601 involves a more severe limit than the *Franklin* law. A “state law that alters a national bank’s pricing almost

⁶ The two percent floor is much higher than the prevailing interest rate on certificates of deposit, which ranged from 0.16% to 0.91% between 2010 and 2020. Fed. Deposit Ins. Corp., *National Rate on Non-Jumbo Deposits (less than \$100,000): 12 Month CD*, <https://perma.cc/Y4GA-97E8> (last visited Apr. 29, 2026); see also Fed. Deposit Ins. Corp., *National Rate on Non-Jumbo Deposits (greater or equal to \$100,000): 12 Month CD*, <https://perma.cc/7W8X-J36L> (last visited Apr. 29, 2026) (similar range for higher-value deposits). And GOL § 5-601 authorizes the Superintendent of Financial Services to raise the minimum interest rate even higher. See *supra* at 11.

by definition interferes more with the bank’s powers than a simple advertising restriction.” *Kivett*, 154 F.4th at 660 (Nelson, J., dissenting); see also *In re Cap. One 360 Sav. Acct. Int. Rate Litig.*, 779 F. Supp. 3d 666, 691 (E.D. Va. 2024) (A “requirement to impose a specific interest rate . . . would constitute an even more severe interference with national banks’ fundamental power to receive deposits” than the law in *Franklin.*); cf. *Ill. Bankers Ass’n v. Raoul*, 760 F. Supp. 3d 636, 656 (N.D. Ill. 2024) (Law regulating interchange fees was “facially more extreme than the sort of state laws that the Supreme Court intended for national banks to be subject to.”).⁷

Finally, the state law’s likely effect on the attractiveness of a bank’s products and services is inconclusive here. It is conceivable that GOL § 5-601 could make mortgage-escrow accounts more attractive if consumers are influenced by higher interest rates on their escrow accounts. But forcing banks to pay customers interest may cause them to “desist from using escrow accounts, implement fees, otherwise increase borrower costs to offset [their] losses, or reduce their overall mortgage lending due to decreased profitability,” ultimately deterring consumers. Real Estate Lending Escrow Accounts, 90 Fed. Reg. at 61103; see also U.S. GEN. ACCT. OFF., B-114860, STUDY OF THE FEASIBILITY OF ESCROW ACCOUNTS ON RESIDENTIAL MORTGAGES BECOMING INTEREST BEARING 14 (1973) (“Most lending institutions reported that maintaining escrow

⁷ The interference with banks’ efficiency here is also unlike that in *McClellan*. Massachusetts’s fraudulent-transfer law affected banks in only “particular and exceptional circumstances,” so it did not “in any way impair[] the efficiency of national banks.” *McClellan*, 164 U.S. at 358. In contrast, GOL § 5-601 affects mortgage-escrow accounts for a broad swath of properties in New York.

accounts was costly and that it was not feasible to pay interest on them.”). We cannot predict with confidence whether GOL § 5-601 would attract or deter customers, so we do not view New York’s law as comparable to the state laws at issue in either *First National Bank of San Jose* or *Anderson* in this respect.

* * *

In summary, New York’s law affects a banking power, so we consider the nature and degree of its interference. As to the nature of its interference, we conclude that it is more like that of the laws in *Barnett Bank* and *Fidelity*, which affected broad grants of federal power—here, national banks’ power to set interest rates for mortgage-escrow accounts—than the interference caused by the generally applicable law in *McClellan* or the common-law escheat rule in *Anderson*. As to the degree of its interference, we conclude that the impact on national banks’ ability to offer mortgage-escrow accounts is at least as severe as the interference that New York’s advertising law had in *Franklin*. GOL § 5-601’s interference with federal law thus resembles other preempted state laws’ interference in both “nature and degree,” so it is preempted too. *Cantero*, 602 U.S. at 220 n.3.

The dissent reaches the opposite conclusion by divining four preemption fact patterns from the Court’s precedents and then concluding that New York’s law fits none of them. For instance, it writes off *Franklin* because New York’s law does not “drive a wedge into national banks’ and consumers’ abilities to transact,” like the advertising law in that case. *Infra* at 13. That approach offers little guidance for evaluating state laws that affect banks in ways that differ from the limited preemption caselaw. Indeed, it effectively guarantees the dissent’s conclusion by reasoning that New York’s law is preempted *only* upon proof that it “will materially disincentivize

banks from offering escrow accounts—or from offering mortgages altogether—or if banks will materially distort other mortgage terms.” *Infra* at 14.

The First Circuit also reached the opposite conclusion and held that a Rhode Island law requiring “all banks operating within the state to pay mortgage borrowers interest on the funds they deposit into mortgage-escrow accounts” was not preempted by the National Bank Act. *Conti v. Citizens Bank, N.A.*, 157 F.4th 10, 12 (1st Cir. 2025). We disagree with that conclusion for two main reasons. First, *Conti* disregarded RESPA and TILA in summarily concluding that *Barnett Bank* and *Fidelity* were “generally inapposite” to its analysis. *Id.* at 20 & n.7. But federal statutes like RESPA and TILA were relevant in the Court’s preemption precedents, including *Barnett Bank*, *Franklin*, and *Fidelity*. Second, *Conti* failed to acknowledge the practical reality that a state law restricting the pricing of a bank’s product would have a “material impact . . . on banking operations.” 157 F.4th at 23-24. We thus decline to follow the First Circuit’s analysis here.

IV. CONCLUSION

New York’s interest-on-escrow law is preempted because it is “akin to” the laws the Supreme Court has struck down for significantly interfering with a national bank’s powers. *Cantero*, 602 U.S. at 220. As a result, BOA was not required to pay interest on Plaintiffs’ escrowed funds. We thus reverse the orders of the district court denying BOA’s motions to dismiss and remand the cases for further proceedings consistent with this opinion.