No. 25-1004

In the Supreme Court of the United States

CITIZENS BANK, N.A.,
Petitioner,

v.

JOHN CONTI, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF *AMICI CURIAE* THE BANK POLICY INSTITUTE, AMERICAN BANKERS ASSOCIATION, THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AND CONSUMER BANKERS ASSOCIATION IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF *AMICI CURIAE*

The Bank Policy Institute ("BPI"), the American Bankers Association ("ABA"), the Chamber of Commerce of the United States of America ("Chamber"), and the Consumer Bankers Association ("CBA"; collectively, "*Amici*") respectfully submit this brief as *Amici* in support of the Petitioner, Citizens Bank, N.A.[1]

BPI. BPI is a nonpartisan public policy, research, and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. BPI produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

ABA. Established in 1875, the ABA is the united voice of America's $23.4 trillion banking industry, comprised of small, regional, and large national and State banks that safeguard nearly $18.6 trillion in deposits, and extend more than $12.3 trillion in loans.

Chamber. The Chamber is the world's largest business federation. It represents approximately

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[1] Pursuant to Rules 37.2 and 37.6 of this Court, *Amici* affirm that no counsel for a party authored this brief in whole or in part, and that no party, counsel for a party, or any person or entity other than *Amici*, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of the brief, and affirm that counsel of record received the required 10 days' notice.

300,000 direct members and indirectly represents the interests of more than three million businesses and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts.

CBA. The CBA is the trade association for banking services geared toward consumers and small businesses. Its members include the nation's largest financial institutions, as well as many regional banks, which operate in all fifty States and collectively hold two-thirds of the country's total deposits.

Amici have a substantial interest in maintaining a predictable and uniform preemption framework under the National Bank Act of 1864. *Amici* possess institutional expertise on these issues and regularly appear as *amici curiae* in cases that concern questions critical to the U.S. banking system.

SUMMARY OF ARGUMENT

There are three reasons to grant this petition.

First, despite this Court's recent decision in *Cantero* v. *Bank of America, N.A.*, 602 U.S. 205 (2024), lower courts remain deeply divided over how to apply National Bank Act ("NBA") preemption, as the First Circuit's decision in *Conti* v. *Citizens Bank, N.A.*, 157 F.4th 10 (1st Cir. 2025) and the split decision in *Kivett* v. *Flagstar Bank, FSB*, 154 F.4th 640 (9th Cir. 2025)—

where the majority and dissent reached opposite conclusions on a materially identical statute—make plain. *See also, e.g.*, *Ill. Bankers Ass'n* v. *Raoul*, 2026 WL 371196 (N.D. Ill. Feb. 10, 2026) (allowing State regulation of interchange fees but only because the regulation directly applied to card networks and not national banks themselves); *In re Capital One 360 Sav. Acct. Int. Rate Litig.*, 779 F. Supp. 3d 666 (E.D. Va. 2024) (preempting State mandatory interest rates on saving accounts). And various States are considering further laws regulating bank pricing that could be subject to preemption challenges.[2] This Court should grant this petition to avoid years of further lower court confusion and the enactment of additional invalid State laws that will harm the national banking system and the individuals and businesses they serve.

Second, the issue presented—whether the NBA permits States to exercise substantial regulatory authority over nationally chartered banks by dictating the pricing or other means of their products and services—strikes at the foundation of the uniform federal banking system Congress established. Although the question arises in the context of mortgage escrow accounts, its implications reach

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[2] *See, e.g.*, N.Y. Banking Law Article 14-B (capping interest rates on certain buy-now-pay-later loans and imposing disclosure and record retention requirements); 6 R.I. Gen. Laws § 6-40.1-2 (prohibiting paper statement fees for senior citizens); 815 Ill. Comp. Stat. Ann. 151/150-10 (limiting interchange fees); S.B. 512, 158th Gen. Assemb., Reg. Sess. (Ga. 2026) (same); H.B. 8212, 2026 Leg. Sess. (R.I. 2026) (same).

every facet of national bank operations, and the consequences for national banks and consumers are immediate and severe.

Third, the First Circuit's analysis went astray in critical respects. It diminished key precedents—*Barnett Bank of Marion County, N.A.* v. *Nelson*, 517 U.S. 25 (1996), *Fidelity Federal Savings & Loan Ass'n* v. *de la Cuesta*, 458 U.S. 141 (1982), and *Franklin National Bank of Franklin Square* v. *New York*, 347 U.S. 373 (1954)—on the ground that these cases involved an express conflict or "textual hook" between federal and State law. *Conti*, 157 F.4th at 20, 23. But *Cantero*'s "significant interference" standard does not call for express conflicts or a "textual hook"—it calls for a "practical assessment of the nature and degree of the interference caused by a state law." *Cantero*, 602 U.S. at 219–20.

The First Circuit also failed to recognize that State interest-on-escrow laws fundamentally conflict with the federal statutory scheme set out by Congress. Congress has repeatedly considered and rejected a universal interest-on-escrow requirement; the Real Estate Settlement Procedures Act of 1974 ("RESPA") comprehensively regulates escrow accounts yet imposes no wholesale interest mandate for federal mortgages; and the Office of the Comptroller of the Currency ("OCC") has affirmatively listed State interest-on-escrow laws as preempted. Rather than grappling with these features of the federal scheme, the First Circuit pointed to the mere existence of twelve State interest-on-escrow laws and to Section

1639d of the Truth in Lending Act ("TILA")—a provision this Court has already deemed irrelevant to the issue, *Cantero*, 602 U.S. at 211 n.1—as evidence that such laws are consistent with the federal framework. Neither argument withstands scrutiny.

The First Circuit also severely underestimated the practical negative effects on national banks of State interest-on-escrow laws, contrary to the "common sense" inquiry *Cantero* demands. *Cantero*, 602 U.S. at 219–20 & n.3. Properly applied, *Cantero* leads to the conclusion that a State law dictating the pricing of a core banking product significantly interferes with national banks' exercise of their powers. The comparison to *Franklin* is instructive: if restricting the use of a single word in advertising constituted "[t]he paradigmatic example of significant interference," *id*. at 216, then compelling national banks to pay interest on escrow—which, as Justice Kavanaugh observed, is "almost putting a tax on the bank to sell the product," Cantero Tr. at 14—must *a fortiori* be preempted. Yet the First Circuit vacated and remanded without providing the district court any guidance on what constitutes "significant interference." *Conti*, 157 F.4th at 28. Only this Court can provide the necessary and authoritative clarification. This petition should be granted.

ARGUMENT

I. LOWER COURTS ARE DEEPLY DIVIDED OVER *CANTERO* AND IMMEDIATE REVIEW IS NEEDED BEFORE STATE PRICING SCHEMES PROLIFERATE.

Although this specific case concerns mortgage escrow accounts, the legal issue, at its core, is whether the NBA preempts the ability of States to impose price limitations and requirements on national banks' financial products and services. It does. Like "the power to tax," the power to set prices—whether by dictating rates that a bank must pay on deposits or by capping the amounts a bank may charge for services—"involves the power to destroy." *McCulloch* v. *Maryland*, 17 U.S. 316, 431 (1819). Courts have thus consistently held, except for mortgage escrow accounts, that the NBA preempts State laws that attempt to regulate the prices of and fees associated with national bank products and services.[3] But these results have not deterred States from continuing to encroach on the national banking power. *See, e.g.*, *supra* note 2.

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[3] *See, e.g.*, *Bank of Am.* v. *City & Cnty. of S.F.*, 309 F.3d 551 (9th Cir. 2002) (non-depositor ATM fees); *Baptista* v. *JPMorgan Chase Bank, N.A.*, 640 F.3d 1194 (11th Cir. 2011) (non-account holder check-cashing fees); *Corvallis Hosp., LLC* v. *Wilmington Trust*, 2025 WL 2624512 (D. Or. Sep. 11, 2025) (interest, fines, and fees on loans); *Deming* v. *Merrill Lynch & Co.*, 528 F. App'x 775 (9th Cir. 2013) (loan administrative and compliance fees); *Martinez* v. *Wells Fargo Home Mortg., Inc.*, 598 F.3d 549 (9th Cir.

The deepening division among the lower courts on mortgage escrow accounts underscores the need for this Court's immediate intervention. In *Kivett*, the Ninth Circuit issued a split decision in which the majority and dissent applied the *Cantero* framework in starkly divergent ways, reaching opposite conclusions on the preemptive effect of a similar State interest-on-escrow statute. The majority concluded that because its pre-*Cantero* precedent in *Lusnak* v. *Bank of America, N.A.*, 883 F.3d 1185, 1195 n.7 (9th Cir. 2018)—which held that interest-on-escrow laws may only be preempted by the NBA if they "set 'punitively high rates'"—is "not clearly irreconcilable with *Cantero*," it lacked the authority to overrule it and "*Lusnak* controls this case." *Kivett*, 154 F.4th at 643, 649. But the dissent viewed "*Cantero* as 'clearly irreconcilable' with *Lusnak*, since *Lusnak* did not apply the comparative analysis required by *Cantero*." *Id.* Applying that comparative analysis, the dissent concluded that the State interest-on-escrow law significantly interfered with national banks' exercise of their powers, reasoning that "[i]t is hard to see how

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2010) (underwriting and tax service fees); *Monroe Retail, Inc.* v. *RBS Citizens, N.A.*, 589 F.3d 274 (6th Cir. 2009) (account service fees); *Montgomery* v. *Bank of Am. Corp.*, 515 F. Supp. 2d 1106 (C.D. Cal. 2007) (non-sufficient funds and overdraft fees); *NNDJ, Inc.* v. *Nat'l City Bank*, 540 F. Supp. 2d 851 (E.D. Mich. 2008) (non-account-holder official check-cashing fees); *Pereira* v. *Regions Bank*, 918 F. Supp. 2d 1275 (M.D. Fla. 2013), *aff'd*, 752 F.3d 1354 (11th Cir. 2014) (check-cashing and settlement fees); *Powell* v. *Huntington Nat'l Bank*, 226 F. Supp. 3d 625 (S.D. W. Va. 2016) (payment ordering and late fees).

preventing national banks from setting their own prices is not a significant interference with their enumerated or incidental powers." *Id.* at 660.

Because *Lusnak* remains controlling in the Ninth Circuit, the standard for NBA preemption of interest-on-escrow laws in that Circuit is whether the State-mandated rate is "punitively high"—a threshold the Ninth Circuit has never defined and by its plain meaning is inconsistent with *Cantero*. *Lusnak*, 883 F.3d at 1195 n.7. As the *Kivett* dissent explained, that standard is not only wrong as a matter of law, but also deeply flawed in practice. *Kivett*, 154 F.4th at 649, 654–56. Indeed, the rate at issue in California—2%—was at that time "six times higher than the long-run average of .32% paid by FDIC-insured U.S. depository institutions on certificates of deposit." *Id.* at 657 n.2 (quoting Br. of *Amici Curiae* Bank Pol'y Inst. et al. at 12, *Bank of Am., N.A.* v. *Lusnak*, 139 S. Ct. 567 (2018) (No. 18-212)). If a six-times multiplier rate is not "punitive," it is difficult to conceive of what State-mandated rate would satisfy that threshold. That the same legal framework can yield such diametrically opposed results among jurists of the same court only underscores the urgent need for this Court's guidance to resolve the growing confusion and prevent further duplicative litigation and inconsistent results.[4]

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[4] A petition for rehearing *Kivett en banc* is pending, *see* Pet. for Reh'g *En Banc*, ECF No. 109 (Nov. 17, 2025), *Kivett* v. *Flagstar Bank, FSB*, No. 21-15667 (9th Cir.), and *Cantero* itself is pending on remand before the Second Circuit.

Leaving *Conti* intact would invite disparate State escrow interest mandates and, by extension, other pricing regulations on national bank products and services—fracturing the uniform federal banking system Congress established. Illinois, for instance, recently enacted the Interchange Fee Prohibition Act ("IFPA"), which, among other things, caps interchange fees by limiting the portion of a transaction on which banks, including national banks, can receive interchange fees. 815 Ill. Comp. Stat. Ann. 151/150-10. The Northern District of Illinois, citing *Conti*, held (incorrectly) that the NBA did not preempt this restriction as the statute directly regulated card networks rather than national banks themselves. *Ill. Bankers Ass'n*, 2026 WL 371196, at *9–13. With even more new laws that States are currently considering and courts are grappling with, *see, e.g.*, *supra* note 2, this Court's guidance is critical. A patchwork of State laws dictating the pricing of national banks' products and services is exactly the sort of fragmentation the NBA was enacted to avoid. *See Tiffany* v. *Nat'l Bank of Mo.*, 85 U.S. 409, 413 (1873) (noting that Congress enacted the NBA to avoid exposing national banks to "the hazard of unfriendly legislation by the States").

II. THE QUESTION PRESENTED IS OF EXCEPTIONAL IMPORTANCE AND WARRANTS THIS COURT'S IMMEDIATE REVIEW.

Mortgage escrow accounts are an illustrative example of why States should be preempted from imposing price limitations and requirements on

national banks' financial products and services. As set forth below, the concrete harms that inconsistent State escrow interest mandates impose on homeowners and lenders alike demonstrate why this issue is of exceptional importance and warrants this Court's immediate review. (*See also infra* Section III.C.)

To understand the significance of this issue, it is important to recognize the central role escrow accounts play in mortgage lending. Mortgage escrow accounts arose during the Great Depression, when many homeowners lost their homes through foreclosure because they could not make timely payments on their property. U.S. General Accounting Office, *Study of the Feasibility of Escrow Accounts on Residential Mortgages Becoming Interest Bearing* 6 (1973). Today, these accounts are ubiquitous. As recently as 2016, 79% of mortgage borrowers used an escrow account for tax or insurance purposes. *See* FHFA & CFPB, *A Profile of 2016 Mortgage Borrowers: Statistics from the National Survey of Mortgage Originations* 1, 27, 30 (2018).

Mortgage escrow accounts benefit both homeowners and lenders. *Cantero*, 602 U.S. at 210–11. Homeowners enjoy the predictability and convenience of making smaller periodic payments instead of incurring large, lump-sum expenses. *Id.* ("[Mortgage escrow accounts] help[] the borrower by simplifying expenses and budgeting."). And the guarantee of timely tax and insurance payments "protect[s] the loan collateral (the home) against tax

foreclosure or uninsured damage" and mitigates lending risk. *Id.* at 211. Without escrow accounts, lenders may have to charge elevated interest rates, require higher down payments, or decline loans to those with riskier credit profiles. The establishment of escrow accounts and the "flexibility to make informed business decisions about . . . the terms and conditions of [national banks'] escrow accounts," Preemption Determination: State Interest-on-Escrow Laws, 90 Fed. Reg. 61,093, 61,096 (proposed Dec. 30, 2025) (to be codified at 12 C.F.R. pt. 34), are thus part of national banks' lending powers and a "logical outgrowth" of their "longstanding permissible bank practices regarding collateral protection." Real Estate Lending Escrow Accounts, 90 Fed. Reg. 61,099, 61,101 (proposed Dec. 30, 2025) (to be codified at 12 C.F.R. pts. 34 & 160).

In light of their exceptional importance to mortgage markets, escrow accounts operated by national banks are "extensively regulate[d]" by RESPA. *Cantero*, 602 U.S. at 211. RESPA places certain limits on these escrow accounts, such as the amount banks can require borrowers to place in escrow. *Id.* Notably, however, RESPA "does not mandate that national banks pay interest to borrowers on the balances of their escrow accounts." *Id.* National banks need to price their products to "manage credit risk exposures," and the inability to do so "meaningfully interfere[s] with fundamental and substantial elements of the business of national banks." OCC, *Office of Thrift Supervision Integration;*

Dodd-Frank Act Implementation, 76 Fed. Reg. 43,549, 43,557 (July 21, 2011).

Amici's experience and empirical research confirm that even well-meaning price controls often harm the very consumers they purport to protect. *See, e.g.*, William F. Baxter, *Section 85 of the National Bank Act and Consumer Welfare*, 1995 Utah L. Rev. 1009, 1012, 1019–23 (1995) (explaining, based on empirical studies, how federal preemption of State-level price controls improves consumer welfare in competitive credit markets, particularly for the least well-off consumers).

Recent empirical evidence specific to interest-on-escrow laws confirms this pattern. In particular, BPI analyzed the effects of State interest-on-escrow laws on banks' mortgage lending practices by studying the impact of Iowa's 2022 repeal of its interest-on-escrow law. This empirical research demonstrates that, after the repeal, the chance a mortgage application ended in origination was higher in Iowa relative to comparison States. Laurence Bristow & Daniel Grodzicki, *Does Mandating Interest Payments on Mortgage Escrow Accounts Benefit Consumers?* 2, 8–11 (Bank Pol'y Inst., Working Paper 2026). The effect was concentrated among lower income borrowers. *Id.* Origination fees also dropped in Iowa relative to comparison States after the repeal, suggesting lenders had previously passed on most of the costs of escrow accounts to consumers, with lower-income consumers again bearing the brunt of the impact. *Id.* at 2, 10–11.

Congress's deliberate decision not to impose a universal interest-on-escrow requirement makes the threat posed by State laws even more acute. At least twelve States have enacted interest-on-escrow laws, *Conti*, 157 F.4th at 24, imposing a patchwork of conflicting requirements that—if not preempted—threatens the uniform national banking system the NBA contemplated. For example, Rhode Island requires lenders to pay interest on escrow funds "at a rate equal to" or "not less than" that on "regular savings accounts," 19 R.I. Gen. Laws § 19-9-2(a), while New York mandates a minimum rate of 2% "or a rate prescribed by the superintendent of financial services," N.Y. Gen. Oblig. Law § 5-601. If left to stand, decisions like the one below would invite even more States to impose varying mortgage escrow interest rates, further fracturing the national market, and could embolden States to extend similar pricing mandates to ATM fees, check deposit fees, interchange rates, and even transactional accounts and other core banking products. That is precisely the kind of regulatory fragmentation the NBA was enacted to prevent. *See Watters* v. *Wachovia Bank, N.A.*, 550 U.S. 1, 11 (2007) ("[The NBA] shields national banking from unduly burdensome and duplicative state regulation.").

Preemption serves as the essential safeguard against this fragmentation. It enables national banks operating across the United States to eliminate the barriers of conflicting State regulations and gain the efficiencies of one consistent set of national rules. *See*

OCC, Letter to Conference of State Bank Supervisors 2 (June 9, 2025), https://www.occ.gov/news-issuances/news-releases/2025/nr-occ-2025-52a.pdf. Indeed, "federal preemption has helped to foster the development of national products and services and multi-state markets, which have benefitted individuals and businesses in every state and powered this Nation's economy." *Id.* As part of this uniform system, the OCC can decide to establish rules governing the pricing of national bank products and services or leave such determinations to the business judgment of individual national banks. In either case, it is the federal framework, not a patchwork of State mandates, that governs.

III. THE FIRST CIRCUIT'S DECISION IS IRRECONCILABLE WITH *CANTERO*.

Under the NBA, national banks have the power to "administer home mortgage loans" and "all such incidental powers as shall be necessary to carry on the business of banking." *Cantero*, 602 U.S. at 210 (citing 12 U.S.C. §§ 24, 371(a)). The NBA preempts any State law that "prevent[s] or significantly interfere[s]" with the exercise of those powers. *Id.* at 215 (citing *Barnett Bank*, 517 U.S. at 33). In *Cantero*, this Court clarified the application of that standard: lower courts must undertake a "practical assessment of the nature and degree of the interference caused by a state law," guided by "the text and structure of the laws, comparison to other precedents, and common sense." *Id.* at 219–20 & n.3.

The First Circuit misapplied *Cantero*'s directive in three critical respects. *First*, it dismissed *Barnett Bank* and *Fidelity* as inapposite and distinguished *Franklin* on the ground that it turned on a "textual hook" not present here, failing to recognize that State interest-on-escrow laws interfere with national banking powers to a far greater degree. *Conti*, 157 F.4th at 20, 23. *Second*, it failed to recognize that State interest-on-escrow laws are inconsistent with the federal statutory scheme. *Id.* at 24, 27. *Third*, it severely underestimated the practical effects of such laws, contrary to the "common sense" inquiry *Cantero* demands. *Id.* at 25. Properly applied, *Cantero* compels the conclusion that Rhode Island's interest-on-escrow pricing law significantly interferes with national banks' exercise of their powers and is therefore preempted.

A. The First Circuit Erred by Dismissing Key Precedents.

Although the First Circuit correctly looked to this Court's precedents, its treatment of *Franklin*—which the Court cited as "[t]he paradigmatic example of significant interference," *Cantero*, 602 U.S. at 216—illustrates how its analysis went astray.

In *Franklin*, the Court struck down a New York law prohibiting national banks from using the word "saving" or "savings" in their advertising or business, even though the law did not prohibit national banks from actually receiving savings deposits "or even" from "advertising that fact." 347 U.S. at 374, 378. The Court found significant interference because the law

prevented banks from describing their services using the terminology Congress had chosen to identify the type of account national banks were empowered to offer. *Id.* at 375–76, 378. The First Circuit distinguished *Franklin* on the basis that Congress had had used the term "savings," which served as a "textual hook" in finding a "clear conflict" between federal and State law. *Conti*, 157 F.4th at 23.

The "textual hook" that the First Circuit purported to find in *Franklin* does not survive analysis. The NBA makes no reference to advertising or marketing of savings accounts. The Supreme Court found, instead, and in the "paradigmatic example of significant interference," *Cantero*, 602 U.S. at 216, that restrictions on marketing of a product that the NBA authorized constituted "significant inference." So too here, the inability of a national bank to price a product or service authorized by the NBA constitutes significant interference, and to an even greater extent. *Franklin*'s advertising restriction merely prevented national banks from using a single word to describe their products. Interest-on-escrow laws, by contrast, "raise[] the cost to national banks to use escrow accounts and may discourage them from issuing and servicing loans." *Kivett*, 154 F.4th at 648. As Justice Kavanaugh—who authored the unanimous Court opinion in *Cantero*—made clear at oral argument, "*a law that interferes with the pricing of a product almost by definition interfere[s] more with the operations of the bank than something that affects advertising*," and compelling a bank to pay interest on escrow is akin to

"*putting a tax on the bank to sell the product*"—a "*much more significant interference*" than the restriction in *Franklin*. *Cantero* Tr. at 13–14 (emphasis added); *see also Capital One 360*, 779 F. Supp. 3d at 691 ("[A] claim imposing a mandatory interest rate stands analogous to the preempted claims in *Franklin*, *Fidelity*, and *Barnett Bank*.").

Indeed, regulation of pricing directly constrains a national bank's ability to manage risk, capital, and profitability and to determine the best way to be compensated for its services—the very functions the NBA entrusts to federal oversight. And State-by-State interest-on-escrow mandates subject national banks to a patchwork of inconsistent pricing requirements, frustrating the uniform national system Congress intended. If *Conti* were left intact, States would be emboldened to extend its reasoning to ATM and other fees, overdraft charges, other deposit accounts, or other price controls that further erode national banks' ability to function as *national* institutions. Where, as here, the State law so directly regulates a national bank's pricing of core banking services, this Court's precedents compel the conclusion that the law is preempted. *See Capital One 360*, 779 F. Supp. 3d at 690–91.

The First Circuit's treatment of *Barnett Bank* and *Fidelity*—two of the precedents *Cantero* identified as anchoring the significant-interference framework—reflects a similar misstep. The First Circuit dismissed both as "inapposite." *Conti*, 157 F.4th at 20. As to *Barnett Bank*, it reasoned that preemption turned on

the fact that "the Federal Statute authorize[d] national banks to engage in activities that the State Statute expressly forb[ade]," and that "nothing in the National Bank Act expressly prohibits state interest-on-escrow laws." *Id.* But if the basis for preemption in *Barnett Bank* were simply that federal law permitted what State law prohibited, *Barnett Bank* would be a straightforward "prevention" case, and there would have been no occasion for this Court to articulate the "significantly interfere" standard at all, much less to describe *Franklin*, a significant-interference case, as "a case quite similar to this one." 517 U.S. at 33. Yet this Court in *Cantero* treated *Barnett Bank* as the very foundation of the significant-interference framework. *See Cantero*, 602 U.S. at 213–15.

As this Court explained in *Barnett Bank*, there are *two* distinct bases for preemption: a State law is preempted if it "prevents" a federally authorized activity, or if it "significantly interferes" with the exercise of that power. 517 U.S. at 33. The latter prong exists precisely to reach State laws that, while not expressly prohibiting a federally authorized activity, nonetheless burden its exercise to a degree Congress would not have countenanced. By finding *Barnett Bank* inapposite because there is no similar express conflict here, the First Circuit's reasoning collapses the significant-interference prong into the prevention prong, rendering the former superfluous. *See Ill. Bankers Ass'n*, 2026 WL 371196, at *11 ("The Supreme Court has explicitly highlighted that express

conflict is not a requirement for NBA preemption to apply.").

As to *Fidelity*, the First Circuit perceived the basis for preemption to be that "a federal regulation expressly granted banks unrestricted discretionary power which a California law then limited," and found no analogous express conflict here. *Conti*, 157 F.4th at 20. But in *Fidelity*, a federal regulation permitted savings and loan associations to enforce due-on-sale clauses in their contracts "solely 'at [their] option.'" 458 U.S. at 155. California law did not bar such clauses entirely; it merely "limited" the ability to enforce them by requiring a showing of necessity. *Id.* at 154–56. This Court held the California law preempted not because of any express textual prohibition, but because the State law interfered with "the flexibility" that federal law afforded the lender. *Cantero*, 602 U.S. at 217 (citing *Fidelity*, 458 U.S. at 155).

The parallel here is direct: the NBA allows national banks to "administer home mortgage loans" and exercise all incidental powers "necessary to carry on the business of banking," *Cantero*, 602 U.S. at 210 (citing 12 U.S.C. §§ 24, 371(a)). That is precisely the kind of federally preserved flexibility at stake in *Fidelity*. *See* OCC, *Interpretive Ruling Concerning National Bank Service Charges*, 48 Fed. Reg. 54,319, 54,319 (Dec. 2, 1983) ("[T]he safety and soundness of banks depends in significant part on their ability to devise price structures appropriate for their needs."). State interest-on-escrow laws override that discretion

no less than California's due-on-sale restriction overrode the flexibility at issue in *Fidelity*. A faithful application of *Cantero*'s comparative framework would not have found *Fidelity* inapposite; rather, it would have recognized *Fidelity* as directly relevant to the preemption inquiry here. *See Cantero*, 602 U.S. at 217.

B. The First Circuit Erred by Failing to Recognize that State Interest-On-Escrow Laws are Out-Of-Step with the Federal Statutory Scheme.

Perhaps the most telling indicator that State interest-on-escrow laws significantly interfere with national banks' exercise of their powers is the federal statutory scheme itself, which at every turn confirms that such laws are fundamentally at odds with the framework Congress established. The First Circuit acknowledged that the preemption inquiry may turn on whether the State law is inconsistent with the overall federal scheme. *Conti*, 157 F.4th at 23–24. Yet having recognized that broader inquiry, the First Circuit failed to conduct it faithfully, concluding that Citizens Bank "ha[d] not established that Rhode Island's statute is out of step with the federal statutory scheme in the mold of *First National Bank of San Jose* and *Franklin*." *Id.* at 24. That conclusion cannot be squared with the federal scheme Congress actually enacted.

The federal statutory scheme points decisively toward preemption. Congress has considered and

rejected a universal interest-on-escrow requirement multiple times. Bryce E. Foote, Cong. Rsch. Serv., *Mortgage Escrow Accounts: An Analysis of the Issues* 4 (1998) (detailing five instances as of 1998 where bills requiring lenders to pay interest on escrow accounts were introduced but no action was taken). The OCC has affirmatively listed State escrow laws as preempted. *See, e.g.*, Preemption Determination: State Interest-on-Escrow Laws, 90 Fed. Reg. 61,093, 61,093 (proposed Dec. 30, 2025) (to be codified at 12 C.F.R. pt. 34). And federal law, including RESPA—the comprehensive federal statute governing escrow accounts—permits an interest mandate for only a minority of mortgages, even as it extensively regulates other aspects of escrow administration. Br. for Resp't Opposing Cert. at 8, *Cantero* v. *Bank of Am., N.A.*, 602 U.S. 205 (2024) (No. 22-529) (describing how, in adopting RESPA, Congress considered mandating a study on the feasibility of requiring lenders to pay interest on escrow accounts but ultimately declined to do so).

Taken together, these features of the federal scheme demonstrate that State interest-on-escrow laws are fundamentally inconsistent with the regulatory framework Congress established. As this Court recognized in *Franklin*, a State law need not expressly contradict a specific statutory provision to be preempted—it is enough that the law is "incompatible" with the federal scheme as a whole. 347 U.S. at 374. And State interest-on-escrow laws, just as the law at issue in *First National Bank of San*

Jose, "qualify in an unusual way agreements between national banks and their customers long understood to arise when the former receive deposits under their plainly granted powers." *Conti*, 157 F.4th at 24 (quoting *First Nat'l Bank of San Jose* v. *California*, 262 U.S. 366, 370 (1923)). Here, Congress comprehensively regulated escrow accounts through RESPA, repeatedly declined to impose an interest mandate except in a single situation, and left national banks with discretion over escrow pricing. State laws that override that discretion and impose the very obligation Congress chose not to enact are not merely "out of step" with the federal scheme—they are irreconcilable with it.

The First Circuit offered two reasons for concluding otherwise. *First*, it pointed to the fact that "interest-on-escrow laws have been enacted by at least twelve states." *Conti*, 157 F.4th at 24. *Second*, it relied on Section 1639d of the TILA, reasoning that "Congress's decision to mandate compliance with state interest-on-escrow laws as to certain mortgages provides some evidence that such laws are not inconsistent with the federal-banking scheme." *Id.* Neither argument withstands scrutiny and both rely on superficial indicators that say nothing about the structure and design of the federal framework Congress established.

As to the first point, the mere fact that twelve out of fifty States have enacted interest-on-escrow laws—which many national banks have historically declined to comply with on the understanding that such laws

are preempted, and which plaintiffs have only recently begun bringing suit to enforce—says nothing about whether those laws comport with the federal statutory scheme. The relevant inquiry under *Cantero* is whether the State law significantly interferes with national banks' exercise of their federally authorized powers—not whether other States have enacted similar legislation. The First Circuit's reasoning would effectively immunize any State law from preemption so long as a handful of States act collectively, permitting precisely the kind of regulatory fragmentation the NBA was designed to prevent. That twelve States have imposed interest-on-escrow requirements neither sheds light on the federal statutory scheme nor diminishes the interference those laws cause.

As to the second, the First Circuit's reliance on Section 1639d of the TILA fares no better. This Court made clear that Section 1639d has no relevance to the preemption analysis since—as here—that provision does not cover the mortgages at issue. *Cantero*, 602 U.S. at 211 n.1. If anything, Section 1639d cuts the other way: Congress's decision to mandate compliance with State interest-on-escrow laws for only a narrow subset of mortgages confirms that, for all other mortgages, Congress left national banks with discretion over whether to pay escrow interest—discretion that State laws like Rhode Island's purport to override. The First Circuit's invocation of TILA thus does not support its conclusion; it undermines it.

C. The First Circuit Erred by Underestimating the Practical Effects of State Interest-On-Escrow Laws, Contrary to Common Sense.

Cantero instructs courts to conduct a "practical assessment of the nature and degree of the interference caused by a state law," guided by "common sense." 602 U.S. at 219–20 & n.3. Had the First Circuit faithfully applied that instruction, it would have recognized—as a matter of common sense—that State laws dictating the pricing of a core banking product significantly interfere with national banks' exercise of their powers. Instead, the First Circuit faulted Citizens Bank for not having "developed any substantial argument about the practical effects that arise from the enforcement of the Rhode Island statute on the exercise of the federal-banking power." *Conti*, 157 F.4th at 25. That reasoning suffers from two fatal flaws.

First, *Cantero* rejected the argument that a factual record needed to be developed to determine preemption. *See* 602 U.S. at 221 (rejecting petitioners' argument for a fact-intensive analysis). This rejection is consistent with this Court's precedent. For example, although the *Franklin* Court acknowledged that the trial court "accumulated a large record," 347 U.S. at 376, it found no need to take that record into account and decided the case based on the common-sense conclusion that the New York law interfered with a national bank's power to offer savings accounts and advertise them. As with the State law in

Franklin, it does not take an extensive factual record to conclude that State interest-on-escrow laws "interfere with the national bank's ability to [engage in a business] efficiently." *Cantero*, 602 U.S. at 216 (citing *Franklin*, 347 U.S. at 377–78).

Indeed, no Supreme Court case has required an extensive factual record to determine preemption. And for good reason. The First Circuit's demand for a bank-specific showing of practical effects would make preemption turn on the individual characteristics of each national bank—the size of its escrow portfolio, its balance sheet, and its borrower demographics—such that the same State law could be deemed to "significantly interfere" with one bank's powers but not another's. Or, the State law could be deemed to constitute significant interference at one point in the interest rate cycle, but not in another. Preemption is a question of law that turns on the relationship between the federal and State regulatory schemes, not on the particular financial profile of the bank before the court or the economic environment at the time. Although *Cantero* requires a "practical assessment," that assessment is guided by—not divorced from—"common sense." *Cantero*, 602 U.S. at 219 & 220 n.3.

Second, had the First Circuit heeded *Cantero*'s instruction to apply "common sense," it would not have so severely underestimated the practical effects of State interest-on-escrow laws—namely, the real economic burden they impose on national banks and consumers alike. Such laws undermine national banks' "flexibility to make business decisions about

how to effectively and efficiently set the terms and conditions of their escrow accounts, which allows them to appropriately balance the costs and benefits of these accounts and the risks and rewards of real estate lending more generally." Real Estate Lending Escrow Accounts, 90 Fed. Reg. 61,099, 61,100 (proposed Dec. 30, 2025) (to be codified at 12 C.F.R. pts. 34 & 160). It is thus indisputable that requiring interest to be paid on mortgage escrow accounts will drive up banks' costs of making mortgage loans. Unless banks absorb that cost (and the concomitant reduction in profitability), they "may reasonably decide, where practicable, to desist from using escrow accounts, implement fees, otherwise increase borrower costs to offset such los[s]es, or reduce their overall mortgage lending due to decreased profitability." *Id*. at 61,103.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of *certiorari*.

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