ADAM J. COHEN, DC Bar #1619684
Chief Counsel
BRIAN P. HUDAK, DC Bar #90034769
Deputy Chief Counsel
PETER C. KOCH, IL Bar #6225347
Director for Litigation
ASHLEY W. WALKER, DC Bar #488126
Special Counsel
KRISTIN M. MCMANUS, MD Bar #2211290050
Attorney
Office of the Comptroller of the Currency
400 Seventh Street, SW
Washington, DC 20219
(202) 649-5400
kristin.mcmanus@occ.treas.gov
Attorneys for the Comptroller of the Currency

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

EUGENE DIVISION

NATIONAL ASSOCIATION OF INDUSTRIAL BANKERS, et al., Plaintiffs, v. SEAN O'DAY, Director of Oregon Department of Consumer and Business Services, Defendant.	Case No. 6:26-cv-01201-AA BRIEF OF AMICUS CURIAE THE OFFICE OF THE COMPTROLLER OF THE CURRENCY IN SUPPORT OF NEITHER PARTY

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Other Authorities

INTRODUCTION

With the passage of the National Bank Act over 150 years ago, Congress established a dual banking system in which national banks "co-exist and compete" with state banks. *Cantero v. Bank of Am., N.A.*, 602 U.S. 205, 209-10 (2024). In the ensuing years, Congress has, on occasion, adjusted the competitive balance within this system to ensure that both national banks and state banks are well positioned to meet the financial needs of consumers and business in every community and to fuel the American economy.

At issue in this case is a law that Congress enacted in 1980 to equalize state banks and national banks' ability to lend at competitive interest rates. Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA"), Pub. L. No. 96-221, § 521, 94 Stat. 132, 164-65 (1980) ("Section 521") (codified at 12 U.S.C. § 1831d); *see also* 12 U.S.C. § 85 ("Section 85") (setting permissible rates for national banks). Section 521, enacted by Congress "to prevent discrimination against State-chartered insured banks," *id.*, put state banks on equal footing with national banks regarding their interest rate authority and expressly preempted contrary state law. *See Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 981 (9th Cir. 2005) ("Congress may state its intent through an express preemption statutory provision." (citing *English v. Gen. Elec. Co.,* 496 U.S. 72, 78-79 (1990))); *see also Bank of Am. v. City of San Francisco*, 309 F.3d 551, 558 (9th Cir. 2002) (same; citing *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977)). At the same time, and consistent with the principles of federalism, Congress included in DIDMCA a narrow exception that allows a state to forgo Section 521's parity provision for "loans made in such State." DIDMCA § 525 (reproduced at 12 U.S.C. § 1831d, "Effective Date" note) ("Section 525" or "opt-out").

On June 5, 2026, Oregon exercised its opt-out authority by enacting Oregon House Bill 4116, amending § 725.015 of the Oregon Revised Statutes (the "Oregon Law"). The Oregon Law purports to apply the state's thirty-six percent interest rate cap (or a cap of thirty percentage points in excess of the applicable discount window credit rate, whichever is greater) in the Oregon Consumer Finance Act (Or. Rev. Stat. § 725.340(1)(a)(A)) to all consumer finance loans of $50,000 or less to borrowers who reside or maintain a domicile, and engage in certain loan-related activities, in Oregon. In doing so, Oregon interpreted its opt-out authority to apply not only to state banks located in Oregon but also to state banks located across the country based on the borrower's nexus to Oregon. By focusing on the borrower's location, the state law diverges from Section 521's focus on the bank's location—effectively undermining the competitive equality goals of Section 521—and far exceeds the narrow exception that Congress has provided in Section 525. If allowed to stand, the Oregon Law would enable Oregon to foist the effects of its opt-out decision onto state banks across the country, creating destabilizing confusion as to the permitted rates of interest for state banks under DIDMCA.

The OCC respectfully submits this brief to inform the Court's consideration of the contours of the federal interest-rate framework created under the National Bank Act and DIDMCA to assist the Court in assessing the Plaintiffs' likelihood of success on the merits of their claim that the Oregon Law exceeds the narrow opt-out permitted in Section 525 and is preempted by federal law.

STATEMENT OF INTEREST

The Office of the Comptroller of the Currency ("OCC") is an independent bureau of the U.S. Department of the Treasury. The OCC has chartering and supervisory responsibility for national banks under the National Bank Act of 1864, 12 U.S.C. § 1 *et seq.*, as amended, and for Federal savings associations under the Home Owners' Loan Act of 1933, 12 U.S.C. § 1461 *et seq.*, as amended.[1] Among other purposes, these acts address the rate of interest that OCC-chartered banks may charge. *See* 12 U.S.C. § 85; *see also id.* § 1463(g); 12 C.F.R. §§ 7.4001, 160.110. State banks have parallel interest-rate authority pursuant to Section 521.

The Comptroller of the Currency is also a member of the Board of Directors of the Federal Deposit Insurance Corporation ("FDIC"). 12 U.S.C. § 1812(a). The FDIC is the primary federal regulator of state banks that are not members of the Federal Reserve System. *See* 12 U.S.C. § 1813(q). The FDIC also administers the Federal Deposit Insurance Act, where Section 521 is codified. In each of his roles, the Comptroller has an interest in ensuring that the federal interest-rate framework in DIDMCA is appropriately understood and applied. Doing so ensures that state banks receive the full benefits of federal law, thereby enhancing parity between state banks and OCC-chartered banks and strengthening the dual banking system.

BACKGROUND

I. Prior to Congress's Enactment of DIDMCA, National Banks Enjoyed a Competitive Advantage Over State Banks as to Permissible Interest Rates.

In the National Bank Act, Congress vested national banks with authority to charge "interest at the rate allowed by the laws of the State . . . where the bank is located[.]" 12 U.S.C. § 85. During the Great Depression, Congress amended the statute to also allow national banks to charge an alternative reference rate set at one percent above a certain Federal Reserve discount rate in effect where the bank is located. *See* Banking Act of 1933, Pub. L. No. 73-66 § 25, 48 Stat. 162, 191 (1933). Section 85 also permits a national bank to export a permissible interest rate when lending to a borrower located in another state, regardless of the state usury limits in the state where the

[1] While DIDMCA Sections 522 and 523 gave comparable authority to insured savings and loan associations and insured credit unions, respectively, this brief focuses on the authority granted to state banks.

borrower is located. *See Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp.*, 439 U.S. 299, 313-14 (1978).

While this authority has evolved over time, it remains a core feature of the federal banking system. Its clarity and certainty have permitted national banks to effectively engage in interstate lending, meeting the credit needs of borrowers in communities throughout the Nation unencumbered by a complex patchwork of state usury laws. *See Smiley v. Citibank (S.D.), N.A.*, 517 U.S. 735, 745 (1996). Because there was no comparable federal authority for state banks, Section 85 gave "advantages to National banks over their State competitors" for over a century. *Marquette*, 439 U.S. at 314 (citation omitted).

II. Congress Passed DIDMCA to Level the Playing Field.

Soaring inflation in the late-1970s exacerbated the competitive disadvantage in interest-rate authority faced by state banks. In certain states, the relevant usury cap meant that state banks could not lend without losing money. In contrast, national banks could continue to lend profitably by relying on the alternative reference rate in Section 85 based on the Federal Reserve discount rate, which at the time was often higher than the rates permitted under state usury laws. *See Greenwood Tr. Co. v. Massachusetts*, 971 F.2d 818, 826 (1st Cir. 1992).

To address this "insuperable competitive disadvantage" during "a devastating credit crunch," *id.*, Congress enacted DIDMCA in 1980. Its purpose was "to prevent discrimination against State-chartered insured banks" by providing state banks with interest rate authority modeled on Section 85. *See* DIDMCA § 521 (12 U.S.C. § 1831d). As a result, state banks, like national banks, were then and remain authorized to charge interest at the rate permitted by the laws of the state in which they are located or the alternative reference rate and to export this rate to borrowers in any state, subject to a state's exercise of its opt-out authority. *See Greenwood Tr.*, 971 F.2d at 827.

ARGUMENT

I. Congress Borrowed Well-Understood National Bank Act Terms in Adopting DIDMCA Section 521.

The interest rate permitted under Section 85 is based on "where the bank is located." Consistent with Congress's goal of ensuring competitive equality for state banks, DIDMCA incorporated this same focus. *Compare* DIDMCA § 521 (12 U.S.C. § 1831d) (a state bank may charge the greater of the permissible interest "rate allowed by the laws of the State . . . where the bank is located" or the alternative reference rate in effect "where such State bank . . . is located"), *with* 12 U.S.C. § 85 (a national bank may charge the greater of the permissible interest "rate allowed by the laws of the State . . . where the bank is located" or the alternative reference in effect "where the bank is located"). By using the same operative language, Congress imported Section 85's long history and well-established meaning. *Greenwood Tr.*, 971 F.2d at 827 ("when Congress borrows language from one statute and incorporates it into a second statute, the language of the two acts should be interpreted the same way"; National Bank Act "precedents must inform our interpretation of words and phrases that were lifted from [that Act] and inserted into [DIDMCA's] text"; language from the original statute carries "portable soil" that "includes prior judicial interpretations of the transplanted language" (citations omitted)).

Of note here, the 1980 enactment of DIDMCA occurred against the backdrop of a seminal 1978 Supreme Court case on interest rate exportation under Section 85. The case recognized that a national bank is "located" in, and may export from, the state where its main office is located (its home state). Thus, a national bank with a main office in Nebraska could charge interest to borrowers in Minnesota at the rate allowed in Nebraska, even if that rate exceeded the Minnesota usury cap. *See Marquette*, 439 U.S. at 313-14. The Court looked to the bank's home state for its location, not where the bank solicited customers or where the customers were located. *Id.* at 309-11 (a bank "cannot be deprived of this location merely because it is extending credit to residents of a foreign State").

The question of where a national bank is located for purposes of Section 85 became the subject of further discourse with the interstate branching permitted by the Riegle-Neal Interstate Banking and Branching Act of 1994. Pub. L. No. 103-328, 108 Stat. 2338 (1994). In grappling with how to determine the location of an interstate national bank for purposes of Section 85, the OCC has concluded that the bank may be located both in its home state and in any state where it has branches (host state) with no consideration of the borrower's location. *See, e.g.*, OCC Intr. Ltr. 822, 1998 WL 126800, at *2 (Feb. 17, 1998). And, when considering whether the home state or a host state's interest rate applies to a particular loan, the OCC has focused on where the bank conducts certain lending functions, "regardless of the state of residence of the borrower." OCC Intr. Ltr. 822, at *5. *See also* OCC Intr. Ltr. 1171, 2020 WL 8176065 (June 1, 2020). The FDIC has adopted an equivalent framework for determining where a bank is located, interpreting Section 521 *in pari materia* with Section 85—its "direct lineal ancestor." *See* FDIC General Counsel's Opinion No. 11, Interest Charges by Interstate Banks, 63 Fed. Reg. 27282, 27283-86 (May 18, 1998) (citing *Greenwood Tr.*, 971 F.2d at 830).

Due to its essential importance to a safe and sound national banking system, the OCC has assiduously guarded the authority of national banks to extend credit nationwide at rates permissible under Section 85. *See, e.g.*, OCC Final Rule: Permissible Interest on Loans that Are Sold, Assigned, or Otherwise Transferred, 85 Fed. Reg. 33530 (June 2, 2020); *California v. OCC*, 584

F. Supp. 3d 844 (N.D. Cal. 2022) (upholding rule as valid). Congress has also taken care to protect the interest rate exportation scheme for national banks based on "where the bank is located," for example, as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 1044, 124 Stat. 1376, 2017 (2010) (codified at 12 U.S.C. § 25b(f)).

These authorities and long-standing interpretations have shaped the Nation's banking system for decades. The consistent feature of these authorities through time and tests is the location of the bank, not the borrower. It is through this lens that the Court should interpret Section 525.

II. The Scope of the Opt-Out Should Be Read Consistently with DIDMCA's Section 521 Preemption Provision.

The historical and legal context of DIDMCA's interest rate provisions informs the proper reading of its statutory text. Properly informed, the unambiguous text of DIDMCA prompts the conclusion that the scope of Oregon's opt-out authority must turn on the location of the bank, not the location of a borrower.

With DIDMCA's statutory text as the Court's starting point, Section 521 establishes a general rule focused on a bank's location. The broad intent and preemptive effect of this general rule is evident from the statutory language:

> In order to prevent discrimination against State-chartered insured depository institutions . . . [a] State bank . . . may, notwithstanding any State [law] which is hereby preempted . . . charge on any loan . . . interest at a rate [based on a Federal Reserve] discount rate . . . where such State bank . . . is located or at the rate allowed by the laws of the State . . . where the bank is located, whichever may be greater.

DIDMCA § 521 (12 U.S.C. § 1831d). Section 525 creates a narrow exception to this general rule:

> [Section 521] . . . shall apply only with respect to loans made in any State [until such time as] such State adopts a law . . . which states explicitly . . . that such State does not want [Section 521] . . . to apply with respect to loans made in such State[.]

DIDMCA § 525. As an exception, the scope of Section 525 is necessarily informed and limited by the structure and meaning of Section 521. *Nat'l Ass'n of Indus. Bankers v. Weiser*, 737 F. Supp. 3d 1113, 1128 (D. Colo. 2024) (Section 525 should not be analyzed "in isolation—'the text of the whole statute gives instruction as to its meaning,' and courts should 'look to the provisions of the whole law' to determine the meaning of the section at issue." (citing *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405, 414 (2017))), *rev'd and remanded*, 159 F.4th 694 (10th Cir. 2025), *reh'g en banc granted, opinion vacated*, 171 F.4th 1203 (10th Cir. 2026) (vacating panel decision that reversed district court decision). The exception cannot be read broadly to displace the general rule or create an analytical framework distinct from Section 521.[2] Because the application of Section 521 hinges on the location of the bank—not the borrower—so too should the interpretation of Section 525. Indeed, when read in context, Section 525 is unambiguous and only permits a state to opt out of Section 521's terms, which turn on the location of the lending bank. *See Greenwood Tr.*, 971 F.2d at 831 ("section 521 provides with undeniable clarity that usury laws in effect in the borrower's state may be preempted as applied to federally insured banks chartered in other states").

[2] Similarly, given the express preemptive intent codified in Section 521, the Court should not apply the presumption against preemption when interpreting Section 525. *See Puerto Rico v. Franklin Cal. Tax-free Tr.*, 579 U.S. 115, 125 (2016) (citing *Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 594 (2011)) (confirming that when a statute "'contains an express pre-emption clause,' we do not invoke any presumption against pre-emption but instead 'focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent."); *see also generally Bank of Am.*, 309 F.3d at 559 ("because there has been a 'history of significant federal presence' in national banking, the presumption against preemption of state law is inapplicable") (citations omitted).

III. An Interpretation of Section 525 that Permits One State to Regulate the Activities of State Banks Located in Other States Is Not Supported by the Statute's Purpose or History.

Congress's purpose in enacting DIDMCA further supports a narrow interpretation of the scope of Oregon's opt-out authority. The purpose of Section 521 was to put state banks on par with national banks regarding interest rate authority, including the ability to export the rates permitted where a bank is located. Because Section 525 is an exception that allows a state to restore pre-DIDMCA competitive inequality, it should be interpreted narrowly, lest the exception swallow the rule and undermine congressional intent. Otherwise, an opt-out state—Oregon, in this case—could effectively dictate the interest rate that a state bank located outside of Oregon may charge, thereby extending the reach of the opt-out far beyond Oregon's borders.

In the late 1970s, some states' usury caps fell below the soaring interest rates. The effect was to cripple state banks' ability to lend profitably, while national banks benefited from the interest rate options afforded to them by Section 85. 125 Cong. Rec. 30655 (1979). In December 1979, Arkansas Senators David Pryor and Dale Bumpers introduced a bill, which was later incorporated into DIDMCA, with the overarching purpose of "equaliz[ing] competition between State and national banks." S. 1988, 96th Cong. (1979); S. Rep. No. 96-640 (1980) (Conf. Rep.). *See also Usury Lending Limits: Hearing on S. 1988 Before the Sen. Comm. on Banking, Housing, & Urban Affairs*, 96th Cong. 19 (1979) (statement of Sen. Pryor; "many people believe that . . . competitive equality is violated by the double standard applied to national banks . . . Our bill simply seeks to put all financial institutions on equal footing"). Once incorporated in DIDMCA, the statutory text introduced by Senators Pryor and Bumpers retained an express purpose to promote competitive equality by "prevent[ing] discrimination against State-chartered insured banks[.]" DIDMCA § 521 (12 U.S.C. § 1831d(a)).

Section 525 must be read in light of this purpose and history and interpreted narrowly to avoid unduly frustrating Congress's goal of competitive equality. Consistent with this reasoning and following a plain and logical reading of Section 525, recently, the U.S. District Court for the District of Colorado in *Weiser* held that the "plain meaning of [DIDMCA's] opt-out provision is that what state a loan 'is made in' depends on where the bank is located and performs its-loan making functions and does not depend on the location of the borrower." 737 F. Supp. 3d at 1133, *reh'g en banc granted*. The district court in Colorado reasoned based on common sense that "Congress's use of 'made' puts the focus on the act of making a loan. In plain parlance, it is the lender who *makes* a loan; nobody thinks of themselves as 'making a loan' when they borrow money from a family member or put a charge on a credit card." *Id.* at 1129 (emphasis in original).

IV. <u>In Any Event, the Meaning of Section 521 Is Clear.</u>

Notwithstanding the above, if the Court were to agree that the enactment of the Oregon Law is consistent with Section 525, this Court should not disturb or otherwise question the longstanding interpretation of the phrase "where a bank is located" in Section 521, as its meaning is clear. Doing so could generate destabilizing confusion in the Nation's banking system as to the permitted rates of interest for state banks under DIDMCA. This destabilizing effect may extend to national banks, given that the language in Section 521 is interpreted *in pari materia* with Section 85. This approach would preserve our robust system of interstate lending, which has provided borrowers across the country with access to credit. *See generally Marquette*, 439 U.S. at 312 (rejecting an overly "elastic" interpretation of the word "located" to avoid "throw[ing] into confusion the complex system of modern interstate banking").

* * *

CONCLUSION

While the OCC takes no position on the ultimate merits of Plaintiffs' request for a preliminary injunction (and offers no discussion regarding irreparable harm or the balance of equities), the Court should be guided by the above discussion in determining the permissible scope of a state's opt-out under DIDMCA.

Dated: July 28, 2026

Respectfully submitted,

ADAM J. COHEN, DC Bar #1619684
Senior Deputy Comptroller and Chief Counsel

BRIAN P. HUDAK, DC Bar #90034769
Deputy Chief Counsel

PETER C. KOCH, IL Bar #6225347
Director for Litigation

ASHLEY W. WALKER, DC Bar #488126
Special Counsel

By: *________/s/ Kristin M. McManus________*
KRISTIN M. MCMANUS, MD Bar #2211290050
Attorney
Office of the Comptroller of the Currency
400 Seventh Street, SW
Washington, DC 20219
(202) 649-5400
kristin.mcmanus@occ.treas.gov

Attorneys for the Comptroller of the Currency

CERTIFICATE OF COMPLIANCE

This brief complies with applicable word-count limitations because it contains 3,346 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and certificates of counsel, which is less than half of the words allowed under this Court's local rules for non-discovery motions. Or. R. 7-2 (b); *see also* Fed. R. App. P. 29 ("Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief.").

Dated: July 28, 2026

/s/ Kristin M. McManus
KRISTIN M. MCMANUS, MD Bar #2211290050

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2026, I electronically filed the foregoing with the Clerk of the Court of the United States District Court for the District of Oregon by using the CM/ECF system and that a true and correct copy of the foregoing was served on counsel of record via the CM/ECF system.

/s/ Kristin M. McManus
KRISTIN M. MCMANUS