



June 29, 2009

## **Supreme Court Says States May Enforce Fair Lending Laws in Court**

The U.S. Supreme Court today, in a 5-4 decision, ruled on an important case for the banking industry. The opinion expands the authority of states to enforce their own laws when they are not otherwise preempted. The case, *Cuomo v. The Clearing House Association, L.L.C. and Office of the Comptroller of the Currency*, arose out of Second Circuit decision that the New York Attorney General (AG) could not investigate and enforce New York's fair lending law against a group of national banks. CBA filed an amicus brief in the Supreme Court in support of the OCC.

As we noted in our brief, the National Bank Act provides that only the Office of the Comptroller of the Currency (OCC) may exercise "visitorial powers" over national banks. Justice Scalia, in his majority opinion, agreed. However, the Court held that the state's "visitorial powers" are distinct from its powers to enforce the law. Thus, though the state cannot exercise any administrative oversight that would allow it to conduct examinations, inspect books and records on demand or employ its own subpoena powers, it can enforce its own laws, such as fair lending laws, that are not preempted, by filing a lawsuit and taking the bank to court.

Justice Thomas, joined by Justices Alito and Kennedy and Chief Justice Roberts, dissented.

In addition, the White House plan to restructure the Financial Services industry would permit states to enact laws that would be applied to federally chartered banks and give them visitorial and enforcement authority. Barney Frank (D-MA), Chairman of the House Financial Services Committee, recently stated that he is concerned with the scope of the OCC preemption and plans to address preemption in the regulatory reform legislation.

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