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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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WATTERS, COMMISSIONER, MICHIGAN OFFICE OF INSURANCE AND FINANCIAL SERVICES *v.* WACHOVIA BANK, N. A., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 05–1342. Argued November 29, 2006—Decided April 17, 2007

National banks' business activities are controlled by the National Bank Act (NBA), 12 U. S. C. §1 *et seq*., and regulations promulgated thereunder by the Office of the Comptroller of the Currency (OCC), see §§24, 93a, 371(a). OCC is charged with supervision of the NBA and, thus, oversees the banks' operations and interactions with customers. See *NationsBank of N. C., N. A.* v. *Variable Annuity Life Ins. Co.*, 513 U. S. 251, 254, 256. The NBA grants OCC, as part of its supervisory authority, visitorial powers to audit the banks' books and records, largely to the exclusion of other state or federal entities. See §484(a); 12 CFR §7.4000. The NBA specifically authorizes federally chartered banks to engage in real estate lending, 12 U. S. C. §371, and "[t]o exercise . . . such incidental powers as shall be necessary to carry on the business of banking," §24 Seventh. Among incidental powers, national banks may conduct certain activities through "operating subsidiaries," discrete entities authorized to engage solely in activities the bank itself could undertake, and subject to the same terms and conditions as the bank. See §24a(g)(3)(A); 12 CFR §5.34(e).

Respondent Wachovia Bank is an OCC-chartered national banking association that conducts its real estate lending business through respondent Wachovia Mortgage Corporation, a wholly owned, North Carolina-chartered entity licensed as an operating subsidiary by OCC, and doing business in Michigan and elsewhere. Michigan law exempts banks, both national and state, from state mortgage lending regulation, but requires their subsidiaries to register with the State's Office of Insurance and Financial Services (OIFS) and submit to state supervision. Although Wachovia Mortgage initially complied with

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Michigan's requirements, it surrendered its Michigan registration once it became a wholly owned operating subsidiary of Wachovia Bank. Subsequently, petitioner Watters, the OIFS Commissioner, advised Wachovia Mortgage it would no longer be authorized to engage in mortgage lending in Michigan. Respondents sued for declaratory and injunctive relief, contending that the NBA and OCC's regulations preempt application of the relevant Michigan mortgage lending laws to a national bank's operating subsidiary. Watters responded that, because Wachovia Mortgage was not itself a national bank, the challenged Michigan laws were applicable and were not preempted. She also argued that the Tenth Amendment to the U. S. Constitution prohibits OCC's exclusive regulation and supervision of national banks' lending activities conducted through operating subsidiaries. Rejecting those arguments, the Federal District Court granted the Wachovia plaintiffs summary judgment in relevant part, and the Sixth Circuit affirmed.

Held:

1. Wachovia's mortgage business, whether conducted by the bank itself or through the bank's operating subsidiary, is subject to OCC's superintendence, and not to the licensing, reporting, and visitorial regimes of the several States in which the subsidiary operates. Pp. 5–17.

(a) The NBA vests in nationally chartered banks enumerated powers and all "necessary" incidental powers. 12 U. S. C. §24 Seventh. To prevent inconsistent or intrusive state regulation, the NBA provides that "[n]o national bank shall be subject to any visitorial powers except as authorized by Federal law . . . ." §484(a). Federally chartered banks are subject to state laws of general application in their daily business to the extent such laws do not conflict with the letter or purposes of the NBA. But when state prescriptions significantly impair the exercise of authority, enumerated or incidental under the NBA, the State's regulations must give way. *E.g., Barnett Bank of Marion Cty., N. A.* v. *Nelson*, 517 U. S. 25, 32–34. The NBA expressly authorizes national banks to engage in mortgage lending, subject to OCC regulation, §371(a). State law may not significantly burden a bank's exercise of that power, see, *e.g., Barnett Bank*, 517 U. S., at 33–34. In particular, real estate lending, when conducted by a national bank, is immune from state visitorial control: The NBA specifically vests exclusive authority to examine and inspect in OCC. 12 U. S. C. §484(a). The Michigan provisions at issue exempt national banks themselves from coverage. This is not simply a matter of the Michigan Legislature's grace. For, as the parties recognize, the NBA would spare a national bank from state controls of the kind here involved. Pp. 5–10.

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(b) Since 1966, OCC has recognized national banks' "incidental" authority under §24 Seventh to do business through operating subsidiaries. See 12 CFR §5.34(e)(1). That authority is uncontested by Michigan's Commissioner. OCC licenses and oversees national bank operating subsidiaries just as it does national banks. See, *e.g.,* §5.34(e)(3); 12 U. S. C. §24a(g)(3)(A). Just as duplicative state examination, supervision, and regulation would significantly burden national banks' mortgage lending, so too those state controls would interfere with that same activity when engaged in by a national bank's operating subsidiary. This Court has never held that the NBA's preemptive reach extends only to a national bank itself; instead, the Court has focused on the exercise of a national bank's *powers*, not on its corporate structure, in analyzing whether state law hampers the federally permitted activities of a national bank. See, *e.g.*, *Barnett Bank*, 517 U. S., at 32. And the Court has treated operating subsidiaries as equivalent to national banks with respect to powers exercised under federal law (except where federal law provides otherwise). See, *e.g., NationsBank*, 513 U. S., at 256–251. Security against significant interference by state regulators is a characteristic condition of "the business of banking" conducted by national banks, and mortgage lending is one aspect of that business. See, *e.g.*, 12 U. S. C. §484(a). That security should adhere whether the business is conducted by the bank itself or by an OCC-licensed operating subsidiary whose authority to carry on the business coincides completely with the bank's.

Watters contends that if Congress meant to deny States visitorial powers over operating subsidiaries, it would have written §484(a)'s ban on state inspection to apply not only to national banks but also to their affiliates. She points out that §481, which authorizes OCC to examine "affiliates" of national banks, does not speak to state visitorial powers. This argument fails for two reasons. *First*, any intention regarding operating subsidiaries cannot be ascribed to the 1864 Congress that enacted §§481 and 484, or the 1933 Congress that added the affiliate examination provisions to §481 and the "affiliate" definition to §221a, because operating subsidiaries were not authorized until 1966. *Second*, Watters ignores the distinctions Congress recognized among "affiliates." Unlike affiliates that may engage in functions not authorized by the NBA, an operating subsidiary is tightly tied to its parent by the specification that it may engage only in "the business of banking," §24a(g)(3)(A). Notably, when Congress amended the NBA to provide that operating subsidiaries may "engag[e] solely in activities that national banks are permitted to engage in directly," *ibid.,* it did so in an Act providing that other affiliates, authorized to engage in nonbanking financial activities, *e.g.*, securi-

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ties and insurance, are subject to state regulation in connection with those activities. See, *e.g.*, §§1843(k), 1844(c)(4). Pp. 10–15.

(c) Recognizing the necessary consequence of national banks' authority to engage in mortgage lending through an operating subsidiary "subject to the same terms and conditions that govern the conduct of such activities by national banks," §24a(g)(3)(A), OCC promulgated 12 CFR §7.4006: "Unless otherwise provided by Federal law or OCC regulation, State laws apply to national bank operating subsidiaries to the same extent that those laws apply to the parent national bank." Watters disputes OCC's authority to promulgate this regulation and contends that, because preemption is a legal question for determination by courts, §7.4006 should attract no deference. This argument is beside the point, for §7.4006 merely clarifies and confirms what the NBA already conveys: A national bank may engage in real estate lending through an operating subsidiary, subject to the same terms and conditions that govern the bank itself; that power cannot be significantly impaired or impeded by state law. Though state law governs incorporation-related issues, state regulators cannot interfere with the "business of banking" by subjecting national banks or their OCC-licensed operating subsidiaries to multiple audits and surveillance under rival oversight regimes. Pp. 15–17.

2. Watters' alternative argument, that 12 CFR §7.4006 violates the Tenth Amendment, is unavailing. The Amendment expressly disclaims any reservation to the States of a power delegated to Congress in the Constitution, *New York* v. *United States*, 505 U. S. 144, 156. Because regulation of national bank operations is Congress' prerogative under the Commerce and Necessary and Proper Clauses, see *Citizens Bank* v. *Alafabco, Inc.*, 539 U. S. 52, 58, the Amendment is not implicated here. P. 17.

431 F. 3d 556, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which KENNEDY, SOUTER, BREYER, and ALITO, JJ., joined. STEVENS, J., filed a dissenting opinion, in which ROBERTS, C. J., and SCALIA, J., joined. THOMAS, J., took no part in the consideration or decision of the case.