



**Conference of State Bank Supervisors
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35 STATES FILE AMICUS BRIEF IN WACHOVIA V. BURKE CASE

States: Federal law does not preempt state authority to license and regulate mortgage lenders for purposes of consumer protection

WASHINGTON, D.C. August 26 -- The Conference of State Bank Supervisors (CSBS) announced today that 35 attorneys general and 43 state bank commissioners have filed an amicus brief in support of Connecticut Banking Commissioner John P. Burke in *Wachovia Bank N.A. and Wachovia Mortgage Corporation v. John P. Burke*, Civil Action No. 303 CV 070738 (JCH). The suit is pending in U.S. District Court for the District of Connecticut.

Wachovia has challenged Connecticut's authority to license and supervise Wachovia Mortgage Corporation, a state-chartered mortgage lender. More generally, the case raises the issue of whether states have authority to license and regulate state-chartered nonbank subsidiaries of national banks. Wachovia claims in its suit that federal law preempts the authority of state officials to regulate their mortgage subsidiary.

The state group's amicus brief contends that state-chartered operating subsidiaries of national banks do not possess any blanket immunity from state regulation.

New York Attorney General Eliot Spitzer said: "This case is another illustration of the unrelenting efforts by federal regulators to undermine the states' ability to protect their citizens from fraudulent and deceptive corporate practices. Protecting consumers from such practices has always been a priority for state regulators, and today consumers need more protection, not less."

"This case is part of a campaign by the Comptroller of the Currency to craft through the courts a new body of law and a new regulatory structure to shield national banks and their non-banking subsidiaries from state law and state law enforcement. The Comptroller's efforts are undermining our nation's long history of cooperative federalism in the regulation of financial services providers," noted CSBS Chairman Mick Thompson.

"The breadth of preemption through regulation that the OCC is pursuing through court decisions is dangerous for both consumers and financial institutions. The check on abusive practices that state law and state law enforcement have provided has created a confidence in our financial system that has allowed that system to thrive," said Iowa Attorney General Tom Miller.

The amicus curiae brief contends: "Under our system of corporate governance, each state has the unquestioned authority to exercise comprehensive supervision over the corporations it charters and to license and regulate corporations chartered by other states that transact business within its borders. In addition the courts have repeatedly upheld the authority of state-chartered providers of financial services, particularly in the area of mortgage lending."

In their amicus filing, the states also noted that in recently enacted federal banking laws, particularly the 1994 Riegle-Neal Banking and Branching Efficiency Act, Congress reaffirmed the states' authority to apply consumer protection laws to all financial institutions engaging in business with their citizens.

“In the specific field of mortgage lending, the business in which Wachovia Mortgage engages – both federal and state courts have upheld the validity of state laws designed to prevent lenders from engaging in fraud, predatory lending, redlining and other unconscionable practices,” the brief states.

“As a matter of law as well as of public policy, the Comptroller of the Currency is on shaky ground. We hope that this court turns the tide of excessively deferential decisions in favor of OCC interpretations of federal law. Otherwise, we fear that a void is being created that could provide a breeding ground for consumer abuses,” observed Alaska Attorney General Gregg Renkes.

Signing on to the amicus brief are attorneys general from: Alabama, Alaska, Arizona, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Vermont, Washington, West Virginia, Wisconsin, Wyoming.

The Conference of State Bank Supervisors is the professional association of state officials responsible for chartering, supervising, and regulating the nation’s 6,000-plus state-chartered commercial and savings banks, and more than 400 state-licensed foreign banking offices nationwide.

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To access the amicus brief, click here:

http://www.csbs.org/temp/br_attachment_082203-b.pdf

To access the list of state officials signing onto the brief, click here:

http://www.csbs.org/temp/br_attachment_082203-a.pdf

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