

Banking and Finance Law Daily Wrap Up, INTEREST-USURY—10th Cir.: Bank trade groups seek en banc rehearing in Colorado interest-rate opt-out dispute, (Jan. 23, 2026)

Banking and Finance Law Daily Wrap Up

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By Shashi Kant, BALLB, LLM.

Competing briefs frame disagreements over circuit splits, preemption standards, and whether the panel decision merits rehearing by the full court.

Trade associations representing state-chartered banks submitted a [brief](#) in support of their petition for rehearing en banc, asking the U.S. Court of Appeals for the Tenth Circuit to grant rehearing *en banc* in litigation over Colorado's attempt to apply its interest-rate caps to loans made by out-of-state state banks to Colorado borrowers. Colorado Attorney General Philip J. Weiser and Colorado Uniform Consumer Credit Code Administrator Martha Fulford [oppose](#) rehearing, arguing the panel decision was routine statutory interpretation and does not meet the standards for *en banc* review (*National Association of Industrial Bankers v. Weiser*, No. 24-1293 (10th Cir.)).

The banking groups asserted three grounds for rehearing *en banc*. First, they stated that the panel majority created a circuit split with the Eighth Circuit's decision in *Jessup v. Pulaski Bank* (327 F.3d (8th Cir. 2003)) by adopting a different reading of similar statutory language. Second, the petition stated that the panel applied a presumption against preemption despite what the petition described as an express-preemption provision, citing Supreme Court and Tenth Circuit authority that the petition says forecloses a presumption against preemption where Congress included an express-preemption clause. Third, the petition stated the issue is critical to consumer lending and interstate banking for the proposition that uncertainty in interest-rate exportation threatens to "throw into confusion the complex system of modern interstate banking."

District Court. In June 2024, the U.S. District Court for the District of Colorado preliminarily enjoined Colorado from enforcing the Colorado Uniform Consumer Credit Code's interest-rate caps against loans made by the trade associations' members to the extent the loans were not "made in" Colorado and the applicable rate under 12 U.S.C. § 1831d(a) exceeded the rate Colorado would otherwise permit, according to prior reporting. The district court reasoned that the plain and ordinary answer to who "makes" a loan is the bank, not the borrower, and that where a loan is "made" depends on the location of the bank and where the bank takes certain actions rather than the borrower's location ([Banking and Finance Law Daily](#), Jun. 21, 2024).

Panel decision and opt-out interpretation. On Nov. 10, 2025, a divided Tenth Circuit panel reversed the preliminary injunction, concluding that the phrase "loans made in such State" under the opt-out provision of the Depository Institutions Deregulation and Monetary Control Act, encompasses loans in which either the lender or the borrower is located in the opt-out state. The panel's interpretation meant that, because Colorado opted out of 12 U.S.C. § 1831d(a), federal law no longer preempted Colorado's interest-rate caps for loans from out-of-state state banks to Colorado borrowers, and the district court's rationale for injunctive relief no longer applied ([Banking and Finance Law Daily](#), Nov. 12, 2025).

Petition arguments on circuit split and preemption. In the petition, the banking groups argued that the panel's interpretation of where loans are "made" conflicts with how courts and regulators have historically determined applicable interest-rate limits for interstate lending, and they relied on *Jessup* and related parity statutes to frame the asserted conflict. The petition also asserted that the panel improperly applied a presumption against preemption even though, in the petition's view, Section 521 contains express-preemption language.

State's response. In their response, Colorado's officials argued that *en banc* review is "disfavored" and reserved for issues of exceptional public importance or conflicts with Supreme Court or circuit precedent. They argued that the panel decision does not create a circuit split because it distinguished *Jessup* on the grounds that *Jessup* interpreted a different statute enacted nearly 20 years after DIDA, relied on an approach the panel characterized as outdated, and involved different statutory structure, purpose, and agency materials. Colorado further argued that the panel correctly applied Supreme Court precedent on express preemption by focusing on the plain language of the opt-out phrase "loans made in such State," and that any policy concerns raised by the banks and amici are for Congress and do not override statutory text.

The case is No: 24-1293.

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Companies: National Association of Industrial Bankers; American Financial Services Association

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