RECENT CASES

FEDERAL PREEMPTION — STATE ATTORNEY GENERAL POWER — SOUTHERN DISTRICT OF NEW YORK REBUFFS NEW YORK ATTORNEY GENERAL'S BID TO REGULATE NATIONAL BANKS. — *Office of the Comptroller of the Currency v. Spitzer*, 396 F. Supp. 2d 383 (S.D.N.Y. 2005).

State attorneys general have been wielding increasing power in recent years, regulating everything from tobacco to pollution to the financial sector. Often, the attorneys general seek to regulate areas ostensibly already regulated by the federal government, but the exact degree to which they may do so is undetermined. Recently, in *Office of the Comptroller of the Currency (OCC) v. Spitzer*,[1] a federal district court held that federal law regulating national banks preempted New York's attorney general from investigating consumer lending practices.[2] Because the decision was grounded upon the unique history of banking regulation, specifically the 200 years of precedent affirming that national banks are the concern of the federal government, it is only an isolated setback to the expansion of the power of state attorneys general.

On January 13, 2004, the OCC issued regulations[3] that, to the dismay of state attorneys general,[4] denied them "visitorial powers" over national banks and their subsidiaries.[5] Nevertheless, in April 2005, New York Attorney General Eliot Spitzer subpoenaed four national banks to investigate whether they priced residential mortgages in a racially discriminatory fashion and thus violated state and federal fair lending laws.[6] The OCC sought to enjoin this investigation.[7]

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[1] 396 F. Supp. 2d 383 (S.D.N.Y. 2005).

[2] *Id.* at 407.

[3] Bank Activities and Operations, 69 Fed. Reg. 1895 (Jan. 13, 2004) (codified at 12 C.F.R. § 7.4000 (2006)).

[4] *See* Press Release, Office of the N.Y. Attorney Gen., Statement by Attorney General Eliot Spitzer Regarding Preemption of State Consumer Protection Laws (Jan. 6, 2004), *available at* http://www.oag.state.ny.us/press/2004/jan/jan07a_04.html (noting that all fifty state attorneys general opposed these OCC regulations).

[5] The text of 12 U.S.C. § 484(a) states: "No national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress . . . ." The OCC, which is part of the Treasury Department charged with ensuring a healthy national banking system by chartering, regulating, and supervising national banks, interpreted "visitorial powers" to mean that it has exclusive authority to examine banks and bank records, regulate banking activities permitted by federal law, and enforce state and federal law regulating such activities. 12 C.F.R. § 7.4000(a).

[6] *See Spitzer*, 396 F. Supp. 2d at 387–88. The target banks included Citibank, JP Morgan Chase Bank, HSBC Bank USA, and Wells Fargo Bank. *Id.* at 387.

[7] *Id.* at 387.

The OCC claimed that its regulations interpreting § 484 of the National Bank Act[8] denied Spitzer authority to exercise visitorial powers over national banks.[9] It argued that this interpretation of the National Bank Act was reasonable and therefore entitled to *Chevron*[10] deference.[11] In response, Spitzer made two main arguments. First, he interpreted § 484's "in the courts of justice" language[12] as "unambiguously permitting state officials to bring enforcement actions in the courts to enforce applicable state or federal laws."[13] Second, he claimed that the federal Fair Housing Act[14] created an exception to section 484's general restriction on states' visitorial powers.[15]

Judge Stein of the Southern District of New York, in upholding the OCC's interpretation of § 484, rejected Spitzer's claim that the Fair Housing Act created an exception,[16] and enjoined Spitzer from subpoenaing the banks or otherwise demanding to inspect their records in connection with his investigation.[17] First, the court rejected Spitzer's claim that a clear congressional statement is required to preempt states' visitorial authority.[18] Next, the court proceeded to the *Chevron* analysis. It found statutory ambiguity in the two terms the OCC had interpreted: the exclusivity of federal "visitorial powers" and the existence of a "courts of justice" exception to such exclusivity.[19] The court found nothing in the "courts of justice" language or surrounding provisions that unambiguously permitted states to exert visitorial authority over national banks.[20]

Having concluded that the statute was ambiguous and that regulatory clarification was therefore presumptively permissible, the court turned to the reasonableness of the regulation. Supreme Court prece-

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[8] 12 U.S.C. § 484 (2000).

[9] *Spitzer*, 396 F. Supp. 2d at 385.

[10] Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984).

[11] *Spitzer*, 396 F. Supp. 2d at 391; Reply Memorandum in Support of Motion for Injunctive and Declaratory Relief by Plaintiff at 2–3, *Spitzer*, 396 F. Supp. 2d 383 (No. 05 Civ. 5636 (SHS)), 2005 WL 2582241.

[12] "No national bank shall be subject to any visitorial powers except as . . . vested in the courts of justice . . . ." 12 U.S.C. § 484(a).

[13] *Spitzer*, 396 F. Supp. 2d at 394. The OCC, in contrast, interpreted "in the courts of justice" to preclude state regulators from exercising visitorial powers in court. *See* 12 C.F.R. § 7.4000(a) (2006).

[14] 42 U.S.C.A. §§ 3601–3631 (West 1999 & Supp. 2006).

[15] *See Spitzer*, 396 F. Supp. 2d at 388.

[16] *Id.* at 407.

[17] *Id.* at 407–08.

[18] *Id.* at 391 (citing Wachovia Bank v. Burke, 414 F.3d 305 (2d Cir. 2005)). The court found in *Wachovia Bank* a parallel to the instant case, in that state law stood as an obstacle to the accomplishment of federal objectives and that federal law had long occupied the field before state authorities became involved. *Id.* at 391–92.

[19] *See id.* at 393–94.

[20] *Id.* at 394.

dent,[21] the history of the National Bank Act,[22] and congressional positions elucidated by recent banking laws[23] all indicated that the OCC's interpretive regulations were reasonable and hence entitled to deference.[24] The Fair Housing Act did not override this conclusion: the Act instructed the OCC to collaborate with the Secretary of Housing and Urban Development and the U.S. Attorney General, but it never "expressly grant[ed] state Attorneys General the power to enforce the law."[25] Accordingly, the court declined to "presume that Congress intended to implicitly modify the longstanding limitation on the exercise of visitorial authority over national banks."[26]

Finally, the court upheld the OCC's interpretation of the "courts of justice" language of § 484. Though the OCC's interpretation constituted a departure from its previous position,[27] the court determined that the change was both adequately explained and reasonable under the *Chevron* framework because it tracked Supreme Court precedent and other portions of the National Bank Act.[28] The court also agreed with the OCC that, in contrast to Spitzer's broadly interpreted "courts of justice" exception, other exceptions in the language of section 484 were drawn narrowly, suggesting an overall scheme of exclusive federal visitorial power.[29]

Spitzer presents a rare instance in which a court rebuffed an attempt by an attorney general to expand his regulatory power. Wield-

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[21] *See id.* at 400–01 (citing Guthrie v. Harkness, 199 U.S. 148, 158–59 (1905)).

[22] *See id.* at 401–02. The court determined that the OCC's regulations were consistent with the policies behind the National Bank Act, especially the curtailment of state banking regulation in order to promote a stable national economy. Since 1864, Congress has denied states visitorial powers over national banks, and the Supreme Court has affirmed that policy choice. *See* Easton v. Iowa, 188 U.S. 220, 229–30 (1903) (suggesting that the purpose of federal banking legislation is to preserve national banks' "national character," a policy with which state regulation of national banks would interfere).

[23] *Spitzer*, 396 F. Supp. 2d at 402–03 (citing the Riegle-Neal Interstate Banking and Branch Efficiency Act of 1994, 12 U.S.C. § 36(f)(1)(A)–(B) (2000)). The Act allows the OCC to exempt a national bank from a variety of state laws upon a determination that application of the state law would have a discriminatory impact on the national bank as compared to a state bank. 12 U.S.C. § 36(f)(1)(A)(ii). It also gives the OCC authority to enforce state community reinvestment, consumer protection, fair lending, and intrastate branch establishment laws against national banks. *See id.* § 36(f)(1)(B).

[24] *See Spitzer*, 396 F. Supp. 2d at 399.

[25] *Id.* at 404.

[26] *Id.*

[27] The OCC had previously acquiesced to the holding in *First Union National v. Burke*, 48 F. Supp. 2d 132, 135 (D. Conn. 1999), which allowed state regulators to use the courts to enforce state law against national banks. *See Spitzer*, 396 F. Supp. 2d at 404–05.

[28] *Spitzer*, 396 F. Supp. 2d at 405–06 (citing 12 U.S.C. § 484(a)–(b) (2000); Guthrie v. Harkness, 199 U.S. 148, 158–59 (1905)).

[29] For example, 12 U.S.C. § 484(b) allows state regulators to inspect bank records "solely to ensure compliance with applicable State unclaimed property or escheat laws." *Spitzer*, 396 F. Supp. 2d at 406.

ing powers that are often not explicitly defined by statute or constitution,[30] attorneys general have made claims of authority that typically have been indulged by the courts. To a significant extent, state attorneys general have begun replacing federal actors as the regulators of the national economy. Those that object to this development should not put too much hope in *Spitzer*: the peculiar history of national banking regulation, on which the court relied heavily, makes it unlikely that the decision signals a larger shift against rising attorney general power.[31]

State attorneys general first became national policymakers by enforcing federal antitrust laws against national corporations in the 1970s.[32] State enforcement of such laws became prominent during the presidency of Ronald Reagan, who took a laissez-faire approach to market regulation, leaving the states to pick up the slack.[33] In response, states pooled their resources to take on corporate giants via a novel strategy: multistate litigation. Faced with expensive litigation in a number of states, corporations found it cheaper to change their behavior nationally. The first multistate action in the Reagan era was *In re Mid-Atlantic Toyota Antitrust Litigation*,[34] in which six states, as *parens patriae*, sued Toyota dealers and distributors for conspiring to inflate the price of a finish to their cars in violation of the Hart-Scott-Rodino Antitrust Improvements Act of 1976.[35] The attorneys general recovered several million dollars in refunds for their constituents.[36]

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[30] *See* James E. Mountain, Jr., *Common Law Powers*, *in* STATE ATTORNEYS GENERAL: POWERS AND RESPONSIBILITIES 27 (Lynne M. Ross ed., 1990); John Ben Shepperd, *Common Law Powers and Duties of the Attorney General*, 7 BAYLOR L. REV. 1 (1955).

[31] Furthermore, the Supreme Court recently granted certiorari to decide whether OCC regulations can preempt state banking laws regulating national banks' operating subsidiaries. Watters v. Wachovia Bank, 126 S. Ct. 2900 (2006), *granting cert. to* Wachovia Bank v. Watters, 431 F.3d 556 (6th Cir. 2005). Given that only courts of appeals to have addressed the question have unanimously answered in the affirmative, this grant bodes ill for the OCC's authority. *Watters*, 431 F.3d 556; Wells Fargo Bank v. Boutris, 419 F.3d 949 (9th Cir. 2005); Wachovia Bank v. Burke, 414 F.3d 305 (2d Cir. 2005).

[32] *See, e.g.*, Hawaii v. Standard Oil Co., 405 U.S. 251 (1972); Shevin v. Exxon Corp., 526 F.2d 266 (5th Cir. 1976); *In re* Multidistrict Motor Vehicle Air Pollution Control Litig., 481 F.2d 122 (9th Cir. 1973); Illinois v. Bristol-Myers Co., 470 F.2d 1276 (D.C. Cir. 1972); West Virginia v. Chas. Pfizer & Co., 440 F.2d 1079 (2d Cir. 1971); Illinois v. Associated Milk Producers, Inc., 351 F. Supp. 436 (N.D. Ill. 1972); Derryberry v. Kerr-McGee Corp., 516 P.2d 813 (Okla. 1973).

[33] *See* David J. Morrow, *Transporting Lawsuits Across State Lines*, N.Y. TIMES, Nov. 9, 1997, § 3, at 16; *see also* William H. Pryor, Jr., *A Comparison of Abuses and Reforms of Class Action and Multigovernment Lawsuits*, 74 TUL. L. REV. 1885, 1899–1900 (2000). For example, President Reagan slashed the staff of the FTC in half. *See* Morrow, *supra*.

[34] 516 F. Supp. 1287 (D. Md. 1981), *modified*, 541 F. Supp. 62 (D. Md. 1981), *aff'd in part sub nom.* Pennsylvania v. Mid-Atl. Toyota Distribs., Inc., 704 F.2d 125, 129–30 (4th Cir. 1983) (holding that the states could sue as *parens patriae*).

[35] 15 U.S.C. §§ 15c–15h (2000).

[36] *See In re* Mid-Atl. Toyota Antitrust Litig., 585 F. Supp. 1553, 1557–58 (D. Md. 1984) (noting that some defendants agreed to an injunction against price-fixing); *In re* Mid-Atl. Toyota Anti-

In the 1990s, state attorneys general made headlines by setting national tobacco policy with their multistate (and multibillion-dollar) lawsuit against the tobacco industry. Some have bemoaned the tobacco settlement as usurping federal authority.[37]

Another area in which attorneys general began displacing federal power was consumer protection, with the FTC essentially deputizing state attorneys general to enforce federal consumer protection laws[38] as part of a broader trend of cooperation between federal and state regulators.[39] For example, the FTC tapped state attorneys general to look into possible gasoline price fixing and stated that the FTC might coordinate enforcement efforts with the attorneys general of affected states.[40] The FTC also worked with thirty state attorneys general and other consumer protection agencies to fight Internet fraud.[41]

Multistate litigation even proved a viable strategy for state attorneys general to challenge federal regulators directly.[42] In the 1980s, attorneys general sued federal agencies to compel performance of their statutory duties.[43] Recently, however, the conflict has centered on the interpretation of federal statutes. Ten states have sued the EPA for failing to issue sufficient regulations concerning carbon dioxide emissions from new power plants, among other pollutants, and for not doing enough to combat global warming.[44] A similar consortium of

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trust Litig., 564 F. Supp. 1379, 1382 (D. Md. 1983) (granting all consumers who purchased one of the finishes in question a coupon exchangeable for a cash payment or goods and services from one of the Toyota dealers).

[37] *See, e.g.*, Christopher Schroeder, *The Multistate Settlement Agreement and the Problem of Social Regulation Beyond the Power of State Government*, 31 SETON HALL L. REV. 612, 612 (2001). *But cf., e.g.*, Wendy E. Parmet, *Stealth Preemption: The Proposed Federalization of State Court Procedures*, 44 VILL. L. REV. 1, 4 (1999) (calling the tobacco settlement an example of cooperative federalism).

[38] *See* Morrow, *supra* note 33. The FTC relied on state attorneys general to prosecute credit reporting abuses, telemarketing fraud, and home equity loan fraud. *See id.*

[39] *See* Pryor, *supra* note 33, at 1900; *see also* David Zimmerman, Comment, *Why State Attorneys General Should Have a Limited Role in Enforcing the Federal Antitrust Law of Mergers*, 48 EMORY L.J. 337, 345 n.43 (1999) (collecting cases).

[40] *See Antitrust Enforcement Agencies: The Antitrust Division of the Department of Justice and the Bureau of Competition of the Federal Trade Commission: Hearing Before the Task Force on Antitrust of the H. Comm. on the Judiciary*, 108th Cong. 24–25 (2003) (statement of Timothy J. Muris, Chairman, Federal Trade Commission).

[41] *See* Timothy J. Muris, Prepared Statement of the Federal Trade Commission Before the Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies of the Committee on Appropriations, United States House of Representatives (Apr. 10, 2002), *available at* http://www.ftc.gov/os/2002/04/041002budgettestimony.htm.

[42] *See* Cornell Clayton, *Law, Politics and the New Federalism: State Attorneys General as National Policymakers*, 56 REV. POL. 525, 533–34 (1994) (describing relevant cases).

[43] *See, e.g.*, New York v. Ruckelshaus, No. 84-0853, 1984 WL 13953, at *4–5 (D.D.C. Oct. 5, 1984) (holding that the EPA violated the Clean Air Act in refusing to rule on plaintiff states' petitions concerning interstate pollution).

[44] Petition for Review, New York v. EPA, No. 06-1148 (D.C. Cir. Apr. 26, 2006), *available at* http://www.oag.state.ny.us/press/2006/apr/Petition_for_Review.pdf (seeking review of 71 Fed. Reg.

states has sued the National Highway Traffic Safety Administration over its new fuel economy standards for SUVs and light trucks, claiming that the agency failed to account for global warming in its rulemaking.[45] Sixteen states have sued the EPA, challenging its "cap-and-trade" program for mercury emissions.[46]

Over the last ten years, state attorneys general have experimented with a new tactic: pressuring — rather than suing — the appropriate federal regulator to take a favored regulatory action.[47] This move suggests newfound confidence in the power of attorneys general over federal regulators: they no longer feel they need the courts to sign off on their authority.

Banking has been insulated from this power because the clear trend in Supreme Court precedent has been to block state regulation of national banks. The trend first appeared in the Court's early-nineteenth-century holdings.[48] Following the chartering of the first national banks under the National Bank Act, the Court explicitly endorsed federal regulatory supremacy over those banks.[49] In addition,

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9866 (Feb. 27, 2006)); *see also* Press Release, Office of the N.Y. Attorney Gen., States Sue EPA for Violating Clean Air Act and Refusing To Act on Global Warming (Apr. 27, 2006), *available at* http://www.oag.state.ny.us/press/2006/apr/apr27a_06.html.

45 Petition for Review, California v. Nat'l Highway Traffic Safety Admin. (NHTSA), No. 06-72317 (9th Cir. May 2, 2006), *available at* http://ag.ca.gov/newsalerts/cms06/06-046_0a.pdf (seeking review of 71 Fed. Reg. 17566 (Apr. 6, 2006)); *see also* Press Release, Office of the Cal. Attorney Gen., Attorney General Lockyer Challenges Federal Fuel Standards for Failing To Increase Fuel Efficiency, Curb Global Warming Emissions (May 2, 2006), *available at* http://ag.ca.gov/newsalerts/release.php?id=1299.

46 Petition for Review, New Jersey v. EPA, No. 06-1211 (D.C. Cir. June 16, 2006), *available at* http://ag.ca.gov/newsalerts/cms06/06-059_0a.pdf (seeking review of 71 Fed. Reg. 33388 (June 9, 2006)); *see also* Press Release, Office of the Cal. Attorney Gen., Attorney General Lockyer Announces California and 15 Other States File Court Petition Challenging U.S. EPA's Weak Mercury Emissions Rules (June 19, 2006), *available at* http://ag.ca.gov/newsalerts/release.php?id=1314.

47 *See, e.g.*, Petition of New York et al. Requesting That the United States Environmental Protection Agency Amend Its Rules Governing the Disclosure of "Inert" Ingredients on Pesticide Product Labels To Require the Disclosure of Ingredients for Which Federal Determinations of Hazard Have Already Been Made (Aug. 1, 2006), *available at* http://www.oag.state.ny.us/press/2006/aug/Petition.As%20Submitted.%208_1_06.pdf; Letter from Steven K. Galson, Dir., Ctr. for Drug Evaluation & Research, to Richard Blumenthal, Attorney General of the State of Connecticut (May 25, 2006), *available at* http://www.ct.gov/ag/lib/ag/departments/thalomid_citizen_petition_response.pdf (granting in part the Conn. Attorney Gen.'s petition to change FDA regulations of the drug thalomide); Press Release, Office of the Conn. Attorney Gen., Blumenthal Calls on FDA To Ban Nestle Magic; Chocolate-Covered Disney Toy Risks Child Safety (Aug. 27, 1997), *available at* http://www.ct.gov/ag/cwp/view.asp?A=1772&Q=282364.

48 *See* Osborn v. Bank of the U.S., 22 U.S. (9 Wheat.) 738 (1824) (holding that federal marshals acted constitutionally in recovering money that a state tax collector had seized from the Bank of the United States pursuant to state statute); McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 436–37 (1819) (holding that a state could not tax the Bank of the United States because to do so would violate the Supremacy Clause).

49 In *Davis v. Elmira Savings Bank*, 161 U.S. 275 (1896), the Court wrote:

> National banks are instrumentalities of the Federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United

the Court has repeatedly refused to allow states to impose taxes on national banks, except as authorized by Congress.[50] Thus, even forty years ago the Court was able to say confidently that "[t]he paramount power of the Congress over national banks has . . . been settled for almost a century and a half."[51]

Congress, as well, has seen to it that the states play a limited role in national banking. The National Bank Act of 1864 contemplated that only the OCC and courts would have visitorial authority over national banks.[52] Section 104 of the Gramm-Leach-Bliley Act of 1999[53] prohibits states from preventing national bank–affiliated firms from selling insurance on an equal basis with other insurance agents. Likewise, the Riegle-Neal Interstate Banking and Branch Efficiency Act of 1994 allows the OCC to exempt national banks from some state laws.[54]

Conversely, Congress has solicited state involvement in regulating other areas. Congress's first attempts to regulate air pollution emphasized state and local control, even giving states the authority to enter into compacts to keep pollution in check.[55] That trend remains operative today: the current air pollution statute, the Clean Air Act,[56] allows some state regulation of air pollution.[57] A comparison of the National Bank Act with the Federal Trade Commission Act[58] is also illustrative: the section of the latter outlining the FTC's visitorial powers does not limit those of other bodies.[59] Indeed, Congress allowed the states to enforce federal antitrust law in the Clayton Act,[60] making clear that

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> States. It follows that an attempt, by a State, to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority . . . impairs the efficiency of these agencies of the Federal government to discharge the duties, for the performance of which they were created.

Id. at 283.

50 *See, e.g.*, First Agric. Nat'l Bank v. State Tax Comm'n, 392 U.S. 339, 340 (1968); Iowa–Des Moines Nat'l Bank v. Bennett, 284 U.S. 239, 245 (1931); First Nat'l Bank of Hartford, Wis. v. City of Hartford, 273 U.S. 548, 550 (1927); First Nat'l Bank of Gulfport, Miss. v. Adams, 258 U.S. 362, 364 (1922); Owensboro Nat'l Bank v. Owensboro, 173 U.S. 664, 668 (1899); Talbott v. Silver Bow County, 139 U.S. 438, 440 (1891); Mercantile Bank v. New York, 121 U.S. 138, 154 (1887); Rosenblatt v. Johnston, 104 U.S. 462, 463 (1882); People v. Weaver, 100 U.S. 539, 543 (1880).

51 First Nat'l Bank of Logan v. Walker Bank & Trust Co., 385 U.S. 252, 256 (1966).

52 Act of June 3, 1864, ch. 106, § 54, 13 Stat. 99, 116.

53 15 U.S.C. § 6701 (2000).

54 12 U.S.C. § 36(f)(1)(A)–(B) (2000); *see also supra* note 23.

55 Air Quality Act of 1967, Pub. L. No. 90-148, sec. 2, §§ 101(a)(3), 102, 81 Stat. 485, 485–86 (codified as amended at 42 U.S.C. §§ 7401(a)(3), 7402(a)-(b) (2000)); Clean Air Act of 1963, Pub. L. 88-206, §§ 1(a)(3), 2, 77 Stat. 392, 392–93 (same).

56 42 U.S.C. §§ 7401–7671q (2000).

57 Section 209(b)(1) of the Clean Air Act, 42 U.S.C. § 7543(b)(1) (2000), gives the EPA the authority to waive federal preemption for vehicle emissions, and § 7543(e)(2) contemplates such a waiver for California. Such a provision is not found in the National Bank Act.

58 15 U.S.C. §§ 41–58 (2000).

59 *Id.* § 49.

60 *Id.* § 15c.

federal agencies did not have the exclusive ability to prevent unfair competition.

The *Spitzer* court was not blind to this history. For example, the court noted that Congress intended the National Bank Act to preempt state regulation of national banks.[61] Even when Congress allowed states to pass laws regulating national banks, the court noted, it was careful to reserve to the OCC the power to enforce those laws.[62] Finally, as the Supreme Court has held, those state laws apply only if they do not "prevent or significantly interfere with the national bank's exercise of its powers."[63]

Spitzer is merely an interesting counterpoint to a three-decades-long accumulation of regulatory power by state attorneys general; banking presented a special case in which federal regulators had overpowering history and precedent on their side. The new strategy of attorneys general — pressuring regulators rather than risking unfavorable judgments in court — will not be an effective workaround; the OCC has already proven resistant to such pressure.[64] Still, depending on the outcome of *Watters v. Wachovia Bank*,[65] there may yet be a role for attorneys general in the regulation of national banks.

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[61] *See Spitzer*, 396 F. Supp. 2d at 402.

[62] *Id.* at 402–03.

[63] *Id.* at 389 (quoting Barnett Bank v. Nelson, 517 U.S. 25, 33 (1996)) (internal quotation marks omitted).

[64] *See* Press Release, Office of N.Y. Attorney Gen., Statement by Attorney General Eliot Spitzer Regarding Preemption of State Consumer Protection Laws (Jan. 6, 2004), *available at* http://www.oag.state.ny.us/press/2004/jan/jan07a_04.html (noting that the OCC gave itself exclusive visitorial authority over national banks despite objections from state attorneys general).

[65] Watters v. Wachovia Bank, 126 S. Ct. 2900 (2006), *granting cert. to* Wachovia Bank v. Watters, 431 F.3d 556 (6th Cir. 2005).