Made In…*Where Exactly?* The 10th Circuit Opens the DIDMCA Door

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The 10th Circuit's recent decision in *National Association of Industrial Bankers, et al. v. Weiser, et al.* (24-1293) marks the first major judicial interpretation of a state's ability to "opt out" of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA *or* DIDA) in over 40 years and it's a striking departure from some long-held (and well-cemented) industry assumptions.

For several decades, state-chartered banks relied on DIDMCA's "rate-exportation" framework, which allowed them to charge interest based on the laws of the state where the bank is located (which, in this context, has historically been interpreted to mean something broader than where its main offices are located by the FDIC in the past).

Colorado's 2023 Opt-Out Law disrupted that model, but few expected the court to go further and hold that a loan is made wherever either the lender or the borrower is located – or, more specifically, that "loans made in such State" refers to "loans in which either the lender or the borrower is located in the opt-out state."

While the district court initially blocked Colorado's law, the 10th Circuit reversed, concluding that DIDMCA's "loans made in such State" language gives opt-out states authority over loans tied to their residents. The ruling also emphasized that, absent clear congressional intent, courts should not presume DIDMCA continues to preempt state rate caps once a state opts out. As a result, state-chartered banks located outside Colorado may no longer export their home-state interest rates when lending to Colorado consumers (a move that many believe will significantly limit many fintech partnership programs).

The decision triggers several immediate and longer-term considerations: (1) an appeal, either en banc or to the Supreme Court, is likely but will take time; (2) bank-fintech programs must immediately remove Colorado residents from eligible lending populations unless their products comply with Colorado's rate caps; (3) the relative value of partnering with national banks has now increased because national banks are not subject to DIDMCA opt-outs; and (4) other states, especially those within the 10th Circuit, may now pursue similar opt-outs, empowered by the Weiser rationale and longstanding concerns about "rent-a-bank" arrangements.

On that latter point, a handful of states (including Maryland, Nevada, Minnesota, Rhode Island, and D.C.) have already introduced opt-out bills in prior sessions, making them early favorites to re-engage. However, arguably, the broader risk may lie with states governed by a "Democratic trifecta" (states with Democratic governors in which both houses of the legislature are also controlled by the Democrats) that also maintain strict usury ceilings; roughly ten such jurisdictions remain, including major markets like California, New York, New Jersey, and Massachusetts.

Legal opinions and case law are not everyone's cup of tea, so if you take away nothing else, perhaps it should be this - the 10th Circuit has likely opened the door for states to exert far more control over interest-rate limits applied to their residents - and that door may be swung wide enough open for a wave of new opt-out laws to follow. For any of you whose cup of tea *actually happens to be* appellate reasoning, the full opinion can be found here: 24-1293 - National Association of Industrial Bankers, et al. v. Weiser, et al. [11230236]