

## 05-1342 WATTERS V. WACHOVIA BANK

DECISION BELOW:431 F3d 556

LOWER COURT CASE NUMBER: 04-2257

### QUESTIONS PRESENTED:

1. 12 USC § 484(a) of the National Bank Act limits visitorial powers over "national banks" except as authorized by federal law . National banks are defined and created under the National Bank Act. State-chartered nonbank operating subsidiaries of national banks are created under State corporate law. The Comptroller of the Currency, by Rule 12 CFR 7.4006, made 12 USC § 484(a) equally applicable to State-chartered nonbank "operating subsidiaries" of national banks. Is the interpretation of the Comptroller of the Currency that 12 CFR 7.4006 preempts Michigan's laws regulating mortgage lending as applied to State chartered nonbank operating subsidiaries, entitled to judicial deference under *Chevron USA, Inc v Natural Resources Defense Council*, 467 US 837 (1984)?
2. A national bank has been declared to be a national corporation in *Guthrie v Harkness*, 199 US 148, 159 (1905). 12 CFR 7.4006 treats a State-chartered nonbank operating subsidiary of a national bank as equivalent to a national bank and, thus, as a national corporation. The Tenth Amendment to the United States Constitution is violated to the extent a statute permits the conversion of State corporations into federal ones in contravention of the laws of the place of their creation. *Hopkins v Federal Savings & Loan Ass'n v Cleary*, 296 US 315, 335 (1935). Does 12 CFR 7.4006, by equating a State-chartered nonbank operating subsidiary with a national bank for purposes of federal preemption of State regulation, violate the Tenth Amendment to the United States Constitution?

CERT. GRANTED 6/19/2006

JUSTICE THOMAS TOOK NO PART.