

08-453 CUOMO V. THE CLEARING HOUSE ASSOCIATION, L.L.C.

DECISION BELOW:510 F.3d 105

LOWER COURT CASE NUMBER: 05-5996, 05-6001

QUESTIONS PRESENTED:

12 U.S.C. § 484(a), a provision of the National Bank Act, prohibits the exercise of "visitorial powers" as to national banks, except where those powers are authorized by federal law, vested in the courts of justice, or exercised by Congress or a House or committee thereof. The Office of the Comptroller of the Currency has issued a regulation (12 C.F.R. § 7.4000) interpreting § 484(a) to preempt state enforcement of state laws against national banks, even when the state laws are not substantively preempted. The questions presented are:

1. Whether 12 C.F.R. § 7.4000 is entitled to judicial deference under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).
2. Whether 12 C.F.R. § 7.4000 is invalid because it is inconsistent with the authoritative construction of the National Bank Act by this Court in *First National Bank in St. Louis v. Missouri*, 263 U.S. 640 (1924).

CERT. GRANTED 1/16/2009

EXPEDITED BRIEFING SCHEDULE.