

## COA Opinion: National Bank Act and federal regulations preempt state action arising out of conduct by independent agents working for a national bank

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For purposes of preemption, “it is the activity being regulated rather than the actor who is being regulated that matters ...” On May 25, 2010, the Court of Appeals published its opinion in [Patterson v Citifinancial Mortgage Corp, No. 287370](#), affirming the trial court’s decision that plaintiffs’ claims against a national bank regarding mortgage transactions were preempted under federal law. The Court of Appeals concluded that the National Bank Act, 12 USC § 1 *et seq.*, and corresponding federal regulations, preempts this action even though it arises out of conduct by independent agents working for the national bank that were not licensed or registered under state law. The Court of Appeals rejected plaintiffs’ argument that preemption protection was not available to the national bank because the allegations were based on the actions of a third party. The regulations at issue, promulgated by the Office of the Comptroller of the Currency (OCC), allows national banks to make real estate loans without regard to state law. Following the Supreme Court’s decision in *Watters v Wachovia Bank, NA*, 550 US 1 (2000), the Court of Appeals focused on the exercise of the national bank’s power to make real estate transactions. Here, the independent agents’ conduct was done in furtherance of the national bank’s power to make real estate loans.