

Courts have consistently recognized the unique status of the national banking system and the limits placed on states by the National Bank Act. The Supreme Court stated in one of the first cases to address the role of the national banking system that “[t]he national banks organized under the [National Bank Act] are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end.” *Farmers’ and Mechanics’ National Bank v. Dearing*, 91 U.S. 29, 33 (1875).

Subsequent opinions of the Supreme Court have been equally clear about national banks’ unique role and status. See *Marquette National Bank v. First of Omaha Service Corp.*, 439 U.S. 299, 314–315 (1978) (“Close examination of the National Bank Act of 1864, its legislative history, and its historical context makes clear that, * * * Congress intended to facilitate * * * a ‘national banking system’.” (citation omitted)); *Franklin National Bank of Franklin Square v. New York*, 347 U.S. 373, 375 (1954) (“The United States has set up a system of national banks as Federal instrumentalities to perform various functions such as providing circulating medium and government credit, as well as financing commerce and acting as private depositories.”); *Davis v. Elmira Savings Bank*, 161 U.S. 275, 283 (1896) (“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 States.”).

In *Guthrie v. Harkness*, 199 U.S. 148 (1905), the Supreme Court recognized how the National Bank Act furthered the objectives of Congress:

Congress had in mind, in passing this section [*i.e.*, section 484] that in other sections of the law it had made full and complete provision for investigation by the Comptroller of the Currency and examiners appointed by him, and, authorizing the appointment of a receiver, to take possession of the business with a view to winding up the affairs of the bank. It was the intention that this statute should contain a full code of provisions upon the subject, and that no state law or enactment should undertake to exercise the right of visitation over a national corporation. Except in so far as such corporation was liable to control in the courts of justice, this act was to be the full measure of visitatorial power.

Id. at 159.

The Supreme Court also has recognized the clear intent on the part of Congress to limit the authority of states over national banks precisely so that the nationwide system of banking that was created in the Currency Act

could develop and flourish. For instance, in *Easton v. Iowa*, 188 U.S. 220 (1903), the Court stated that Federal legislation affecting national banks—

has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the States. * * * It thus appears that Congress has provided a symmetrical and complete scheme for the banks to be organized under the provisions of the statute. * * * [W]e are unable to perceive that Congress intended to leave the field open for the States to attempt to promote the welfare and stability of national banks by direct legislation. If they had such power it would have to be exercised and limited by their own discretion, and confusion would necessarily result from control possessed and exercised by two independent authorities.

Id. at 229, 231–232 (emphasis added). The Court in *Farmers’ and Mechanics’ Bank*, after observing that national banks are means to aid the government, stated—

Being such means, brought into existence for this purpose, and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Any thing beyond this is “an abuse, because it is the usurpation of power which a single State cannot give.”

Farmers’ and Mechanics’ Bank, 91 U.S. at 34 (citation omitted).

Consistent with the need for a uniform system of laws and uniform supervision that would foster the nationwide banking system, courts have interpreted the OCC’s visitatorial powers expansively. The Supreme Court in *Guthrie* noted that the term “visitatorial” as used in section 484 derives from English common law, which used the term “visitation” to refer to the act of a superintending officer who visits a corporation to examine its manner of conducting business and enforce observance of the laws and regulations (citing *First National Bank of Youngstown v. Hughes*, 6 F. 737, 740 (6th Cir. 1881), *appeal dismissed*, 106 U.S. 523 (1883)). *Guthrie*, 199 U.S. at 158. “Visitors” of corporations “have power to keep them within the legitimate sphere of their operations, and to correct all abuses of authority, and to nullify all irregular proceedings.” *Id.* (citations omitted). The *Guthrie* Court also noted that visitatorial powers include bringing “judicial proceedings” against a corporation to enforce compliance with applicable law. *Id.*¹⁵ See

also *Peoples Bank v. Williams*, 449 F. Supp. 254, 259 (W. D. Va. 1978) (visitatorial powers involve the exercise of the right of inspection, superintendence, direction, or regulation over a bank’s affairs). Thus, section 484 establishes the OCC as the exclusive regulator of the business of national banks, except where otherwise provided by Federal law.

The OCC’s exclusive visitatorial authority complements principles of Federal preemption, to accomplish the objectives of the National Bank Act. The Supremacy Clause of the United States Constitution¹⁶ provides that Federal law prevails over any conflicting state law. An extensive body of judicial precedent has developed over the nearly 140 years of existence of the national banking system, explaining and defining the standards of Federal preemption of state laws as applied to national banks.¹⁷ Visitatorial power is a closely

compliance with applicable law at the time section 484 was enacted into law. Administrative actions were not widely used until well into the 20th century. Thus, by vesting the OCC with exclusive visitatorial power, section 484 vests the OCC with the exclusive authority to enforce, whether through judicial or administrative proceedings—except where otherwise provided by Federal law.

¹⁶ U.S. Const. Art. VI, cl. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).

¹⁷ See, e.g., *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 26, 32, 33 (1996) (“grants of both enumerated and incidental ‘powers’ to national banks [are] grants of authority not normally limited by, but rather ordinarily pre-empting, contrary state law.” States may not “prevent or significantly interfere with the national bank’s exercise of its powers.”); *Franklin National Bank*, 347 U.S. at 378–379 (1954) (federal law preempts state law when there is a conflict between the two; “The compact between the states creating the Federal Government resolves them as a matter of supremacy. However wise or needful [the state’s] policy, * * * it must give way to contrary federal policy.”); *Anderson National Bank v. Luckett*, 321 U.S. 233, 248, 252 (1944) (state law may not “infringe the national banking laws or impose an undue burden on the performance of the banks’ functions” or “unlawful[ly] encroach[on] the rights and privileges of national banks”); *First National Bank v. Missouri*, 263 U.S. 640, 656 (1924) (Federal law preempts state laws that “interfere with the purposes of [national banks’] creation, tend to impair or destroy their efficiency as federal agencies or conflict with the paramount law of the United States.”); *First National Bank of San Jose v. California*, 262 U.S. 366, 368–369 (1923) (“[National banks] are instrumentalities of the federal government. * * * [A]ny attempt by a state to define their duties or control the conduct of their affairs is void whenever it conflicts with the laws of the United States or frustrates the purposes of the national legislation, or impairs the efficiency of the bank to discharge the duties for which it was created.”); *McClellan v. Chipman*, 164 U.S. 347, 358 (1896) (application to national banks of state statute forbidding certain real estate transfers by insolvent transferees would not “destroy[ly] or hamper[ly]”

¹⁵ Enforcement through judicial proceedings was the most common—and perhaps exclusive—means of exercising the visitatorial power to enforce