

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 24-cv-812-DDD-KAS

NATIONAL ASSOCIATION OF INDUSTRIAL BANKERS, AMERICAN FINANCIAL SERVICES ASSOCIATION, and AMERICAN FINTECH COUNCIL,

Plaintiffs,

v.

PHILIP J. WEISER, Attorney General of the State of Colorado, and
MARTHA FULFORD, Administrator of the Colorado Uniform Consumer Credit Code,

Defendants.

**DECLARATION OF DAVID M. GOSSETT IN SUPPORT OF
PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR STAY OF THE
PRELIMINARY INJUNCTION PENDING APPEAL**

I, David M. Gossett, do hereby declare and state as follows:

1. I am one of the attorneys of record for Plaintiffs National Association of Industrial Bankers and American Financial Services Association. I make this declaration in support of Plaintiffs' Response to Defendants' Motion for Stay of the Preliminary Injunction Pending Appeal. This declaration is based on my personal knowledge, and I could and would competently testify to its contents if called to do so.

2. Attached as **Exhibit A** is a true and correct copy of excerpts from the reporter's transcript of the May 16, 2024 hearing on Plaintiffs' Motion for Preliminary Injunction.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and accurate.

Executed this 9th day of August, 2024, at Washington, DC.

s/ David M. Gossett
David M. Gossett

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of August, 2024, I filed a true and correct copy of the foregoing document via CM/ECF, which will generate notice by electronic mail to all counsel who have appeared via CM/ECF.

/s/ David M. Gossett
David M. Gossett

Exhibit A

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NATIONAL ASSOCIATION OF INDUSTRIAL BANKERS, AMERICAN FINANCIAL SERVICES ASSOCIATION, and AMERICAN FINTECH COUNCIL,

Plaintiffs,

v.

PHILIP J. WEISER, Attorney General of the State of Colorado,

and MARTHA FULFORD,

Administrator of the Colorado Uniform Consumer Credit Code,

Defendants.

REPORTER'S TRANSCRIPT
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Proceedings before the HONORABLE DANIEL D. DOMENICO, Judge, United States District Court for the District of Colorado, commencing at 9:30 a.m., on the 16th day of May, 2024, in Courtroom A1002, United States Courthouse, Denver, Colorado.

APPEARANCES

David Morris Gossett, Chava Brandriss, Davis Wright Tremain LLP, 1301 K Street NW, Suite 500 East, Washington, DC 20005, Edwin G. Perlmutter, Leah E. Capritta, Holland & Knight LLP, 1801 California Street, Suite 5000, Denver, CO 80202, appearing for the Plaintiffs.

Brian J. Urankar and Philip Michael Sparr, Colorado Department of Law, 1300 Broadway, Ralph Carr Judicial Center, Denver, CO 80203. Kevin James Burns and Nikolai N. Frant, Colorado Attorney General's Office, Ralph L. Carr Colorado Judicial Center, 1300 Broadway, Denver, CO 80203. Michael K. Morelli, James Scott Watson, Federal Deposit Insurance Corporation, Legal Division - Appellate Litigation Unit, 3501 North Fairfax Drive, Suite D-7016, Arlington, VA 22226, appearing

1 for the Defendants.

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4 TAMMY HOFFSCHILDT, FCRR, CRR, RMR Official Reporter
5 901 19th Street, Denver, Colorado 80294
6 Proceedings Reported by Mechanical Stenography
7 Transcription Produced via Computer

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P R O C E E D I N G S

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(In open court at 9:37 a.m.)

9

THE COURT: Good morning. Please take your seats.

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We're here for a hearing on a preliminary injunction motion in

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case number 24-cv-812, National Association of Industrial

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Bankers, et al versus Philip Weiser, et al.

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Why don't I begin by asking counsel to introduce

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yourselves for the record. For the plaintiffs?

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MR. GOSSETT: David Gossett, Your Honor, for the

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plaintiffs, National Association of Industrial Bankers and

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American Financial Services Associations; though, I will be

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arguing on behalf of all of the plaintiffs.

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THE COURT: All right. Thank you.

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MR. PERMUTTER: Your Honor, Ed Perlmutter, here on

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behalf of plaintiffs as local counsel, for Davis, Wright,

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Tremaine, Solomon Cromwell, The American Fintech Counsel, and

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with me is Leah Capritta, from the firm of Holland & Knight.

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MS. BRANDRISS: Chava Brandriss, for National

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Association of Industrial Bankers and American Financial

1 loan, the agreement may have been entered into in a particular
2 place, but that's not what the statute said. Talks about loans
3 being made in a particular place. And I guess I don't know
4 that I would think that the loan was made when I signed the
5 agreement, rather than when I got the money, even accepting
6 your position that the borrower's action is part of the making
7 of the loan.

8 *MR. MORELLI:* A loan, at a fundamental level, again,
9 is a transaction, and that loan and that lending transaction
10 can't come into existence without that agreement, without that
11 offer and acceptance and without that meeting of the minds.
12 So, we think it's entirely consistent with the plain language
13 of the word *made* when coupled with the term *loan*, to have that
14 view, as to when that loan comes into existence.

15 *THE COURT:* Let me ask you just two quick questions.
16 One is extremely quick, I hope, which is, has the FDIC ever
17 taken enforcement action against a state?

18 *MR. MORELLI:* I'm not aware of any, Your Honor, no.
19 The FDIC's enforcement authority under the FDI Act is limited
20 to banks and those who work for them.

21 *THE COURT:* All right. Then, more broadly, would you
22 just respond, if you would, to the argument of the American
23 Bankers Association amicus, that this would expand -- adopting
24 your interpretation here would have all sorts of implications
25 outside the context that we're talking about.

1 statutory interpretation?

2 MR. GOSSETT: I do not think that is correct in the
3 statutory interpretation matter. It's not what the statute
4 says, and that trenches on the rights of the other 49 states.

5 THE COURT: But do you concede that that was the
6 status quo ante; that states could and did act in the way that
7 Colorado is proposing to act with this law?

8 MR. GOSSETT: With respect to state-chartered banks.
9 The reality is at that point, that out of state,
10 state-chartered banks didn't do much interstate banking. It
11 was only in the 70s that interstate banking was really taking
12 off, which is why we have the *Marquette* case, which was 1978,
13 where someone first sent a credit card from Nebraska into
14 Minnesota. So that's why this was active. It certainly -- the
15 DIDMCA does address that, but the reality -- the legislative
16 history has all of this material from the Arkansas senators,
17 and actually from then Governor Clinton, who are all concerned
18 about Arkansas state banks not being able to lend at the
19 federal rate in their state, because while the national banks
20 are lending at that fed regulatory state, that's what they were
21 focused on.

22 THE COURT: I agree with you, for the most part, and
23 this is really not our problem, but why doesn't the governor of
24 Arkansas and everybody else just fix their law?

25 MR. GOSSETT: It was a state constitutional provision

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REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated at Denver, Colorado, this 4th day of June, 2024.

s/Tammy Hoffschildt

Tammy Hoffschildt, FCRR, RMR, CRR