Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CUOMO, ATTORNEY GENERAL OF NEW YORK *v.* CLEARING HOUSE ASSOCIATION, L. L. C., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 08–453. Argued April 28, 2009—Decided June 29, 2009

To determine whether various national banks had violated New York's fair-lending laws, the State's Attorney General, whose successor in office is the petitioner here, sent them letters in 2005 requesting "in lieu of subpoena" that they provide certain nonpublic information about their lending practices. Respondents, the federal Office of the Comptroller of the Currency (Comptroller or OCC) and a banking trade group, brought suit to enjoin the information request, claiming that the Comptroller's regulation promulgated under the National Bank Act (NBA) prohibits that form of state law enforcement against national banks. The District Court entered an injunction prohibiting the Attorney General from enforcing state fair-lending laws through demands for records or judicial proceedings. The Second Circuit affirmed.

Held: The Comptroller's regulation purporting to pre-empt state law enforcement is not a reasonable interpretation of the NBA. Pp. 2–15.

(a) Evidence from the time of the NBA's enactment, this Court's cases, and application of normal construction principles make clear that the NBA does not prohibit ordinary enforcement of state law. Pp. 2–11.

(i) The NBA provides: "No national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts . . . , or . . . directed by Congress." 12 U. S. C. §484(a). Among other things, the Comptroller's regulation implementing §484(a) forbids States to "exercise visitorial powers with respect to national banks, such as conducting examinations, inspecting or requiring the production of books or records," or, as here pertinent, "prosecuting enforcement actions" "except in limited circumstances authorized by

federal law." 12 CFR §7.4000(a)(1). There is some ambiguity in the NBA's term "visitorial powers," and the Comptroller can give authoritative meaning to the term within the bounds of that uncertainty. *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837. However, the presence of some uncertainty does not expand *Chevron* deference to cover virtually any interpretation of the NBA. Pp. 2–3.

(ii) When the NBA was enacted in 1864, scholars and courts understood "visitation" to refer to the sovereign's supervisory power over the manner in which corporations conducted business, see, *e.g., Guthrie* v. *Harkness*, 199 U. S. 148, 157. That power allowed the States to use the prerogative writs to exercise control if a corporation abused its lawful power, acted adversely to the public, or created a nuisance. Pp. 3–4.

(iii) This Court's consistent teaching, both before and after the NBA's enactment, is that a sovereign's "visitorial powers" and its power to enforce the law are two different things. See, *e.g., Trustees of Dartmouth College* v. *Woodward*, 4 Wheat. 518, 676, 681; *Guthrie, supra,* at 159, 157; *First Nat. Bank in St. Louis* v. *Missouri*, 263 U. S. 640, 660. *Watters* v. *Wachovia Bank, N. A.*, 550 U. S. 1, 21, distinguished. And contrary to the Comptroller's regulation, the NBA preempts only the former. Pp. 4–7.

(iv) The regulation's consequences also cast its validity into doubt: Even the OCC acknowledges that the NBA leaves in place some state substantive laws affecting banks, yet the Comptroller's rule says that the State may not *enforce* its valid, non-pre-empted laws against national banks. "To demonstrate the binding quality of a statute but deny the power of enforcement involves a fallacy made apparent by the mere statement of the proposition, for such power is essentially inherent in the very conception of law." *St. Louis, supra*, at 660. In contrast, channeling state attorneys general into judicial law-enforcement proceedings (rather than allowing them to exercise "visitorial" oversight) would preserve a regime of exclusive administrative oversight by the Comptroller while honoring in fact rather than merely in theory Congress's decision not to pre-empt substantive state law. This reading is also suggested by §484(a)'s otherwise inexplicable reservation of state powers "vested in the courts of justice." And on a pragmatic level, the difference between visitation and law enforcement is clear: If a State chooses to pursue enforcement of its laws in court, its targets are protected by discovery and procedural rules. Pp. 7–9.

(b) The Comptroller's interpretation of the regulation demonstrates its own flaw: the Comptroller is forced to limit the regulation's sweep in areas such as contract enforcement and debt collection, but those

exceptions rest upon neither the regulation's nor the NBA's text. Pp. 9–11.

(c) The dissent's objections are addressed and rejected. Pp. 11–13.

(d) Under the foregoing principles, the Comptroller reasonably interpreted the NBA's "visitorial powers" term to include "conducting examinations [and] inspecting or requiring the production of books or records of national banks," when the State conducts those activities as supervisor of corporations. When, however, a state attorney general brings suit to enforce state law against a national bank, he is not acting in the role of sovereign-as-supervisor, but rather sovereign-as-law-enforcer. Because such a lawsuit is not an exercise of "visitorial powers," the Comptroller erred by extending that term to include "prosecuting enforcement actions" in state courts. In this case, the Attorney General's threatened action was not the bringing of a civil suit, or the obtaining of a judicial search warrant based on probable cause, but the issuance of subpoena on his own authority if his request for information was not voluntarily honored. That is not the exercise of the law enforcement power "vested in the courts of justice," which the NBA exempts from the ban on the exercise of supervisory power. Accordingly, the injunction below is affirmed as applied to the Attorney General's threatened issuance of executive subpoenas, but vacated insofar as it prohibits the Attorney General from bringing judicial enforcement actions. Pp. 13–15.

510 F. 3d 105, affirmed in part and reversed in part.

SCALIA, J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed an opinion concurring in part and dissenting in part, in which ROBERTS, C. J., and KENNEDY and ALITO, JJ., joined.