IN THE
SUPREME COURT OF FLORIDA

SUPREME COURT NO: SC11-312
DISTRICT COURT NO: 5D10-835
CIRCUIT COURT NO: 09-CA-17734

LEAH BRITT, for herself,
and on behalf of all others similarly situated,

Appellant,

vs.

BANK OF AMERICA, N.A.,

Appellee.

Initial Brief of Appellant

Appeal from the District Court of Appeal
for the Fifth District

Counsel for Appellant
CPLS, P.A.
201 East Pine St., Suite 445
Orlando, FL 32801
(T)407-647-7887/(F)407-647-5396

Samuel A. Walker, Esq.
USVI Bar No. 633
Alberto E. Lugo-Janer, Esq.
Florida Bar No. 0972592
Tee Persad, Esq.
Florida Bar No. 0045594

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STATEMENT OF THE CASE AND FACTS

Britt received a paycheck from her employer. The check was payable in cash, on demand, without discount, from an account at Bank of America. Britt presented her check to Bank of America for payment. Bank of America deducted a check-cashing fee from Britt's paycheck.

Britt sued. She alleged a violation of Florida Statutes, section 655.85 (hereinafter, "section 655.85") in Count I; and a violation of Florida Statutes, sections 532.01 (hereinafter, "section 532.01") in Count II. Section 655.85 provides in part: "an institution may not settle any check drawn on it otherwise than at par." Section 532.01 provides in part:

> Any . . . check . . . issued in payment of wages . . . must be . . . payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument . . . .

The trial court dismissed Count I on the grounds that section 655.85 is preempted by 12 U.S.C. section 24(Seventh) (hereinafter, "section 24(Seventh)") and 12 C.F.R. section 7.4002(a) (hereinafter, "section 7.4002(a)"); and it dismissed Count II on the grounds that section 532.01 does not apply to the facts of this case. Britt appealed. The Fifth District held that section 655.85 is preempted. It did not address the dismissal of Count II. Britt appealed.

SUMMARY OF THE ARGUMENT

There are 4 reasons why section 655.85 is not preempted: 1) Florida is an independent sovereign State; 2) States have traditionally regulated national banks; 3) the police power of Florida is not to be superseded by section 7.4002(a) unless that is the manifest purpose of Congress; and 4) Bank of America was free to charge the fee to the account of the customer who wrote Britt's check. The first 3 reasons give rise to a presumption that section 655.85 is enforceable against Bank of America. In order to overcome this presumption, Bank of America must show that section 655.85 conflicts with the purpose of Congress. The purpose of Congress, vis-à-vis section 7.4002(a), is to enable national banks to charge fees. Section 655.85 did not prevent Bank of America from charging a fee for cashing Britt's check, because Bank of America was free to charge the fee to the account of the customer who wrote Britt's check. Because Bank of America was free to charge the fee to the account of the customer who wrote Britt's check, section 655.85 is enforceable against Bank of America.

STANDARD OF REVIEW

The standard of review is *de novo*. See D'Angelo v. Fitzmaurice, 863 So.2d 311 (Fla. 2003).

ARGUMENT

I. SECTION 655.85 DOES NOT CONFLICT WITH THE PURPOSE OF SECTION 7.4002(a).

Britt received a paycheck from her employer. The paycheck was drawn on an account at Bank of America. Britt presented her check to Bank of America, and Bank of America charged Britt a fee for cashing the check. Britt sued Bank of America alleging a violation of section 655.85. Bank of America argued that section 655.85 is preempted by section 7.4002(a).

Section 7.4002(a) allows any national bank to "charge its customers non-interest charges and fees." Section 655.85 provides in part: "an institution may not settle any check drawn on it otherwise than at par." The Fifth District held:

> Federal law allows national banks to charge convenience fees when cashing checks drawn on the bank. See 12 C.F.R. § 7.4002 (2008); see also OCC, Interpretive Letter No. 932 (Aug. 17, 2001); OCC, Interpretive Letter No. 933 (Aug. 17, 2001); OCC, Interpretive Letter 934 (Aug. 20, 2001); OCC, Interpretive Letter No. 1094 (Feb. 27, 2008). Thus, even assuming *arguendo* that section 655.85 of the Florida Statutes prohibits the Bank from charging convenience fees, said prohibition would be pre-empted by federal law.

First, this holding is based on an incorrect assumption. Section 655.85 did not prohibit Bank of America "from charging convenience fees," because Bank of America could have charged the convenience fee to the

account of the customer who wrote Britt's check. Section 655.85 only prohibited Bank of America from charging the convenience fee, *to Britt*. Second, the United States Supreme Court is *the* authority on federal preemption. However, the Fifth District did not apply the preemption analysis that has been established by the United States Supreme Court. See Wyeth v. Levine, 129 S.Ct. 1187 (2009).

In Wyeth the United States Supreme Court said that there are two **CORNERSTONES** in its preemption jurisprudence. The first cornerstone provides that "in all pre-emption cases, and particularly in those in which Congress has 'legislated . . . in a field which the States have traditionally occupied,' . . . we 'start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." The second cornerstone provides that "the purpose of Congress is the ultimate touchstone in every pre-emption case." Id. at 1195.

The first cornerstone indicates that there is a presumption **AGAINST** preemption. Wyeth identified three circumstances that give rise to this presumption. See id. First, States are **independent sovereigns**. See id. Second, States have **traditionally** regulated national banks. See id. In Cuomo v. Clearing House Association, L.L.C., 129 S.Ct. 2710 (2009) the

Court noted that "[s]tates . . . have always enforced their **GENERAL LAWS** against national banks – **AND** have enforced their **BANKING-RELATED LAWS** against national banks for at least 85 years . . . ." (emphasis supplied) Third, the police powers of States are not to be superseded by any federal law unless that is the manifest purpose of Congress. By requiring that payroll checks be payable in cash without discount at the banks on which they are drawn, and that the banks cash checks drawn on them at par, Florida evidenced a clear intention to protect consumers from having to pay a fee for cashing their payroll checks. Furthermore, the legislative history of Florida Statutes, Chapter 655 states: "[i]n view of the threat of potential harm absent regulation, the state's use of the **police power** is appropriate for the protection of the public welfare." Fla. H.R. Committee on Com. Bill Analysis and Econ. Impact Statement, H.B. 55-H at 3 (May 28, 1992). (emphasis supplied) See Appendix, at page 43. Thus, section 655.85 was enacted pursuant to Florida's police power. Since Florida is an independent sovereign State; since States have traditionally regulated national banks; and since Florida's police power is not to be superseded by section 7.4002(a) unless that is the manifest purpose of Congress, this Court must presume that section 655.85 is enforceable against Bank of America.

The second cornerstone tells us what Bank of America must do in order to overcome this presumption. It indicates that "**THE PURPOSE OF CONGRESS** is the ultimate touchstone in every pre-emption case." Id. at 1194. (emphasis supplied) Thus, in order to overcome the presumption that section 655.85 is enforceable against Bank of America, Bank of America must show that section 655.85 conflicts with **THE PURPOSE** of section 7.4002(a). The purpose of section 7.4002(a) is to enable national banks to charge fees. Thus, in order to overcome the presumption, Bank of America must show that section 655.85 prevented it from charging a fee for cashing Britt's check. Section 655.85 did not prevent Bank of America from charging a fee for cashing Britt's check, because Bank of America was free to charge the fee to the account of the customer who wrote Britt's check.

In Wyeth, Levine alleged that Wyeth failed to provide an "adequate" warning regarding the use of one of its drugs. Wyeth argued that the State action was preempted because the FDA had authorized it to use the warning that it had provided. Although the FDA had, in fact, authorized Wyeth to use the warning in question, the Court focused on whether the State action conflicted with **the purpose of the federal law**. The purpose of the federal law was to ensure that drug manufacturers provide "adequate" warnings. Thus, in order to overcome the presumption that the State law was

enforceable against Wyeth, Wyeth's had to show that the State law prevented it from providing an adequate warning. The State law did not prevent Wyeth from providing an adequate warning. In fact, the State law encouraged adequate warnings. Thus, the State law was not preempted. See id., at 1204.

In this case, the purpose of section 7.4002(a) was to enable Bank of America to charge a fee for cashing Britt's check. Section 655.85 did not prevent Bank of America from charging a fee for cashing Britt's check, because Bank of America was free to charge the fee to the account of the customer who wrote Britt's check. Therefore, section 655.85 did not conflict with the purpose of section 7.4002(a).

Bank of America and the lower court cited certain letters from the Office of the Comptroller of the Currency (hereinafter, "the OCC") which indicate that national banks are authorized to charge convenience fees.[1] However, these letters are irrelevant.

In Mann v. TD Bank, 2009 WL 3818128 (D.N.J.) certain State laws prohibited national banks from charging a dormancy fee, if the gift card had been marketed as "free." Mann, at *2. The bank argued that the State laws were preempted because federal law authorized it to charge dormancy fees.

[1] For the Court's convenience, copies of these letters are included in the Appendix at pages 4 – 42.

See id. The court rejected this argument. See id., at *5. The court acknowledged that the "OCC clearly considers dormancy and replacement fees to fall within the ambit of authorized fees." Id., at 4. But this fact was irrelevant. The issue was whether the State laws conflicted with **the purpose** of the federal law. The purpose of the federal law was to enable national banks to charge dormancy fees. However, the State laws did not prohibit national banks from charging dormancy fees. They only prohibited national banks from charging dormancy fees under certain circumstances, i.e., *if the gift cards had been marketed as "free."* See id., at *5. National banks were free to charge dormancy fees, if the gift cards had not been marketed as "free." Thus, the State laws did not conflict with the purpose of Congress, and they were not preempted. See id.

As in Mann, here, the OCC clearly considers convenience fees to fall within the ambit of authorized fees. However, the OCC letters express no view as to whether section 655.85, or similar statutes, conflict with the purpose of section 7.4002(a). In other words, the OCC letters express no view as to whether section 655.85, or similar statutes, prevents national banks from charging convenience fees. In fact, in one letter, the OCC "invited the California Attorney General to provide the views of his office on whether these laws [California laws] prevented the imposition of such a

fee." OCC Letter to Bank of America (October 8, 2002); Appendix, at page 35. As far as the preemption issue was concerned, this was the critical question. However, the California Attorney General did not respond. Therefore, that letter, like all the other OCC letters, is irrelevant to the preemption issue here.

Let us suppose, for example, that Bank of America wrote to the OCC and said: "We would like to begin building banks in residential neighborhoods, but a State zoning law prohibits us from doing so. Please advise as to whether we are authorized to build banks in residential neighborhoods." Suppose the OCC wrote back and said: "Yes, you are authorized to build banks in residential neighborhoods pursuant to section 24(seventh), but we express no view as to whether the zoning law you referred to is preempted." Then, suppose that Bank of America presented the OCC letter to this Court claiming that the zoning law was preempted because the OCC had said that it was authorized to build banks in residential neighborhoods. Would the zoning law be preempted? Of course not! The zoning law would not be preempted because national banks would remain free to build their banks in business districts.

This is precisely the situation here. Bank of America wrote the OCC and informed the OCC that it wanted to begin charging a convenience fee to

payees, but that there was a State statute that prohibited it from doing so. See OCC Letter to Bank of America; Appendix, at page 35. Bank of America asked the OCC whether it was authorized to charge a convenience fee to payees. See id. The OCC told Bank of America that it was authorized to charge convenience fees to payees, pursuant to section 24(Seventh), but that the OCC was expressing no view as to whether the State law was preempted. See id., at footnote 3. In other words, the OCC told Bank of America that the State statute might be enforceable against it. See id. Bank of America then presented the letter to the trial court claiming that section 655.85 is preempted because the OCC had said that it was authorized to charge a convenience fee to payees. Preposterous! Furthermore, section 655.85 is not preempted because Bank of America was free to charge the fee to the account of the customer who wrote Britt's check.

II. STATE LAWS ARE ENFORCEABLE AGAINST NATIONAL BANKS IF THEY DO NOT CONFLICT WITH THE PURPOSE OF ANY FEDERAL LAW.

In McClellan v. Chipman, 164 U.S. 347 (1896), a State law prohibited national banks from taking a security interest in real estate, if the bank knew that the owner was bankrupt. The bank argued that the State law was preempted because federal law authorized it to take a security interest in

real estate. The Court rejected this argument. See id. The Court said that this argument "amounts to asserting that in every case where a national bank is empowered to make a contract, such contract is not subject to the state law." Id. at 358. **The purpose of the federal law** was to enable national banks to take a security interest in real estate. The State law did not prohibit national banks from taking a security interest in real estate. It only prohibited national banks from taking a security interest in real estate under certain limited circumstances, i.e., *if they knew that the owner was bankrupt*. National banks were free to take a security interest in real estate, if the owner was not bankrupt. Thus, the State law did not conflict with the purpose of the federal law, and it was not preempted. See id.

In Mwantembe v. TD Bank, 669 F.Supp.2d 545 (E.D. Pa. 2009), certain State laws prohibited national banks from charging dormancy fees, if the gift card had been marketed as "free." The bank argued that the State laws were preempted because federal law authorized it to charge dormancy fees. Mwantembe, at 548. The court rejected this argument. See id. at 554. The court said that the bank had read its federal authorization too broadly. See id. at 553. It said that the bank's argument sounded more like "field preemption," than like "conflict preemption." See id. **The purpose of the federal law** was to enable national banks to charge dormancy fees. The

State laws did not prohibit national banks from charging dormancy fees. They only prohibited national banks from charging dormancy fees under certain limited circumstances, *if the gift cards had been marketed as "free."* See id. at 554. National banks were free to charge dormancy fees, if the gift cards had not been marketed as "free." Thus, the State laws did not conflict with the purpose of the federal law, and they were not preempted.

In First National Bank in St. Louis v. Missouri, 263 U.S. 213 (1924), a State law prohibited national banks from carrying on the business of banking, with multiple branches in that State. St. Louis, at 659. The bank argued that the State law was preempted because federal law authorized national banks to carry on the business of banking. The Court rejected this argument. See id. **The purpose of the federal law** was to enable national banks to carry on the business of banking. The State law did not prohibit national banks from carrying on the business of banking. It only prohibited national banks from carrying on the business of banking in a certain manner, i.e., *with multiple branches in that State*. National banks were free to carry on the business of banking with one branch. Thus, the State law did not conflict with the purpose of the federal law, and it was not preempted.

In Anderson National Bank v. Luckett, 321 U.S. 233 (1944), a State law prohibited national banks from holding deposits, if they had been

abandoned. The bank argued that the State law was preempted because federal law authorized it to hold deposits. See id. The Court rejected this argument. See id. **The purpose of the federal law** was to enable national banks to hold deposits. The State law did not prohibit national banks from holding deposits. It only prohibited national banks from holding deposits under certain limited circumstances, i.e., *if they had been abandoned*. National banks were free to hold deposits if they had not been abandoned. Thus, the State law did not conflict with the purpose of the federal law, and it was not preempted. See id.

The issue here is similar. Section 655.85 prohibited Bank of America from charging a fee, to Britt. Bank of America argues that section 655.85 is preempted because section 7.4002(a) authorized it to charge fees. Bank of America reads its federal authorization too broadly. Its argument sounds more like "field preemption" than like "conflict preemption." It must be rejected. **The purpose** of section 7.4002(a) was to enable Bank of America to charge a fee. Section 655.85 did not prevent Bank of America from charging a fee. Bank of America was free to charge a fee to the account of the customer who wrote Britt's check. Section 655.85 only prohibited Bank of America from charging a fee in a certain manner, i.e., *deducting it from Britt's check*. Thus, section 655.85 does not conflict with the purpose of

section 7.4002(a), and it is not preempted.

III. STATE LAWS ARE NOT ENFORCEABLE AGAINST NATIONAL BANKS IF THEY CONFLICT WITH THE PURPOSE OF ANY FEDERAL LAW.

In Franklin National Bank v. New York, 347 U.S. 373 (1954), a State law prohibited national banks from advertising their savings accounts, using the word "savings." The bank argued that the State law was preempted because federal law authorized it to advertise its savings accounts, using the word "savings." See id. The Court agreed. The Court noted that Congress had "specifically selected" the word "savings" in authorizing national banks to maintain savings accounts. See id. The Court also noted the importance of advertising to the business of banking. See id. **The purpose of the federal law** was to enable national banks to advertise their savings accounts, using the word "savings." The State law prohibited the bank from advertising its savings accounts, using the word "savings." Thus, the State law conflicted with the purpose of the federal law, and it was preempted. See id.

In Barnett Bank v. Nelson, 517 U.S. 25 (1996), a State law prohibited national banks from selling certain kinds of insurance. The bank argued that

the State law was preempted because federal law had authorized it to sell those very kinds of insurance. See id. The Court agreed. **The purpose of the federal law** was to enable national banks to sell certain kinds of insurance. The State law prohibited national banks from selling those very kinds of insurance. Thus, the State law conflicted with the purpose of the federal law, and it was preempted. See id.

In Watters v. Wachovia Bank, 550 U.S. 1 (2007), a State law prohibited a national bank from engaging in mortgage lending. The bank argued that the State law was preempted because federal law had authorized it to engage in mortgage lending. Watters, at 12. The Court agreed. **The purpose of the federal law** was to enable national banks to engage in mortgage lending. The State law prohibited the bank from engaging in mortgage lending. Thus, the State law conflicted with the purpose of the federal law, and it was preempted. See id.

This case is different. **The purpose** of section 7.4002(a) was to enable Bank of America to charge a fee for cashing Britt's check. Section 655.85 did not prohibit Bank of America from charging a fee for cashing Britt's check. Bank of America was free to charge the fee to the account of the customer who wrote Britt's check. Section 655.85 only prohibited Bank of America from charging the fee, *to Britt*. Because Bank of America was

free to charge the fee to the account of the customer who wrote Britt's check, section 655.85 did not conflict with the purpose of section 7.4002(a), and it was not preempted.

IV. NO EXISTING PRECEDENT DISCUSSES WHETHER PAR VALUE STATUTES CONFLICT WITH THE PURPOSE OF SECTION 7.4002(a).

In Baptista v. JP Morgan Chase Bank, N.A., 2010 WL 2342436 (M.D. Fla.), Baptista alleged that Chase Bank had violated section 655.85 by charging her a fee for cashing a Chase Bank check. The court began its analysis of the preemption issue with the following statement: "[a]lthough a presumption against preemption normally exists, the regulation of national banks is one area where **the opposite holds true**." See id. (emphasis supplied) Thus, according to Baptista, State laws that regulate national banks are presumed to be preempted. This is a "field preemption" notion, and it is patently wrong. In "conflict preemption" cases, a State law is only preempted if it conflicts with **the purpose** of the federal law at issue. The purpose of section 7.4002(a) is to enable national banks to charge fees. Thus, the preemption issue in Baptista was whether section 655.85 prevented

Chase Bank from charging a fee.[2] See Wyeth. Baptista did not address this issue. Therefore, Baptista should not be followed.

In Wells Fargo v. James, 321 F.3d 488 (5th Cir. 2003) a State statute provided that "a payor bank shall pay a check drawn on it against an account with a sufficient balance at par without regard to whether the payee holds an account at the bank."[3] Wells Fargo sued the State for a declaratory judgment on the issue of preemption. The court said, "where a state statute **interferes** with a power which national banks are authorized to exercise, the state statute irreconcilably conflicts with the federal statute and is preempted by the Supremacy Clause." Id., at 491. (emphasis supplied). This is a "field preemption" notion. It suggests that **any State interference** with a power that national banks are authorized to exercise, is preempted. In "conflict preemption" cases, a State law is only preempted if it conflicts with **the purpose** of the federal law at issue. The purpose of section 7.4002(a) was to enable national banks to charge fees. Thus, the preemption issue in

[2] Note that this is the same question that the OCC had asked the California Attorney General in response to an inquiry by Bank of America about par value statutes. See OCC Letter to Bank of America; Appendix, at page 35.

[3] Texas noted that its par value statue was "a consumer protection measure, enacted to ensure that Texas employees, and in particular the working poor, received payment for the face value of their paychecks." Wells Fargo, at 490. It also noted that the par value statute was intended to protect the integrity of negotiable instruments. See id.

Wells Fargo was whether the par value statute prevented Wells Fargo from charging a fee. See Wyeth.

Although Wells Fargo did acknowledge that the bank was free to charge the fee to the account of the customer who wrote the check, and that section 7.4002(a) "**would seem not to conflict with Par Value**, as Par Value [only] prohibits a fee charged to the non-account holding payee," the court did not realize that this was *the* issue. Instead, the court focused on the irrelevant fact that the OCC had said that national banks were allowed to charge the fee to payees. As discussed above, just because a federal law allows a national bank to engage in an activity, does not mean that a State law may not prohibit national banks from engaging in that activity. As discussed above, the court must first ask what is the purpose or objective of the federal law. See Wyeth. Then, the court must ask whether the State law conflicts with that purpose. See id. If the State law conflicts with the purpose of the federal law, the State law is preempted. See id. However, if the State law does not conflict with the purpose of the federal law, the State law is not preempted. See id. Wells Fargo did not address this issue. Therefore, Wells Fargo should not be followed.

In Kronemeyer v. U.S. Bank, 857 N.E.2d 686 (Ill. App. Ct. 2006), State laws prohibited national banks from settling their own checks at less

than par. The bank argued that the State laws were preempted because federal law authorized it to charge fees. See id. The court said, "[t]he United States Supreme Court has held that where a state law **interferes** with a power which national banks are authorized to exercise, the state law irreconcilably conflicts with the federal law and is preempted by operation of the supremacy clause." Id., at 689. (emphasis supplied). It said that the regulation of federally chartered banks is one of those "fields of regulation that have been substantially occupied by federal authority." Id. at 690. This is a "field preemption" notion. It suggests that **any State interference** with national banks is preempted. In "conflict preemption" cases, a State law is only preempted if it conflicts with **the purpose** of the federal law at issue. The purpose of section 7.4002(a) is to enable national banks to charge fees. Thus, the preemption issue in Kronemeyer was whether the State laws prevented U.S. Bank from charging a fee. See Wyeth. Kronemeyer did not address this issue. Therefore, Kronemeyer should not be followed.

In Bank of America v. Lawson, WL 31965741 (M.D.Tenn. Oct. 15, 2002), a State law provided that "[a] bank shall pay all checks drawn on it at par and shall make no charge for the payment of such checks." Bank of America sued the State contending that the statute was preempted because federal law authorized it to charge fees. The State did not respond to the

complaint, and consented to a finding that the statue was preempted. See id. The court held that the statute was preempted. However, in "conflict preemption" cases, a State law is only preempted if it conflicts with **the purpose** of the federal law at issue. The purpose of section 7.4002(a) is to enable national banks to charge fees. Thus, the preemption issue in Lawson was whether the State law prevented Bank of America from charging a fee. See Wyeth. Lawson did not address this issue. Therefore, Lawson should not be followed.

In Bank of America v. Sorrell, 248 F. Supp.2d 1196 (N.D.Ga. 2002), Georgia Code, section 7-1-239.5 provided that "[n]o financial institution, savings bank, national bank, or state or federal credit union or savings and loan association may charge a fee of any kind to a person or corporation who does not have an account with that institution for cashing a check or other instrument which is payable to such person or corporation and is drawn on the account of another person or corporation with that institution." Georgia Code, section 7-1-372 provided that a "commercial bank shall pay all checks drawn on it at par and shall make no charge for the payment of such checks." Bank of America argued that these statutes were preempted because federal law authorized it to charge fees. The Sorrell court said, "federal banking law permits banks to charge fees to non-account holders for cashing checks

drawn on that bank. [citation omitted] As such, there exist no questions of fact that the Georgia statutes are in direct conflict with the National Bank Act, and therefore are preempted." Id., at 1199. (emphasis supplied). This is a "field preemption" notion. It suggests that if a federal banking law permits an activity, any State law that interferes with that activity is preempted. However, in "conflict preemption" cases, a State law is only preempted if it conflicts with **the purpose** of the federal law at issue. The purpose of section 7.4002(a) is to enable national banks to charge fees. Thus, the preemption issue in Sorrell was whether the State laws prevented Bank of America from charging a fee. See Wyeth. Sorrell did not address this issue. Therefore, Sorrell should not be followed.

In Gonzales v. Bank One Texas, 2004 WL 57052 (Tex. App. Ct. Jan. 14, 2004), a State law prohibited national banks from settling their own checks at less than par. The bank argued that the State law was preempted because federal law authorized it to charge fees. The court said "[b]ecause federal law authorizes Bank One to charge a check-cashing fee, any claim under a state statutory provision that would . . . invalidate **the procedure** by which such a fee is charged is preempted by operation of the *Supremacy Clause*." Id., at *5. (emphasis supplied) This is a "field preemption" notion. It suggests that, **any State interference**, even an interference with **the**

procedure by which a fee is charged, is preempted. However, in "conflict preemption" cases, a State law is only preempted if it conflicts with **the purpose** of the federal law at issue. The purpose of section 7.4002(a) is to enable national banks to charge fees. Thus, the preemption issue in Gonzales was whether the State law prevented Bank One Texas from charging a fee. See Wyeth. Gonzales did not address this issue. Therefore, Gonzales should not be followed.

CONCLUSION

Bank of America's argument is that section 655.85 conflicts with *Bank of America's objective*. Bank of America's objective is to charge a fee, *to the payee*, when cashing checks drawn on Bank of America accounts. However, preemption does not exist to protect Bank of America's objectives; only to protect *Congress's objectives*. *Congress's objective*, vis-à-vis section 7.4004(a), is to enable Bank of America to charge fees. Bank of America could have charged a fee for cashing Britt's check because Bank of America could have charged a fee to the account of the customer who wrote Britt's check. Section 655.85 only conflicts with *Bank of America's objective*, not with *Congress's objective*. Therefore, section 655.85 is not preempted. Accordingly, Britt requests that this matter be remanded to the lower court, with instructions that it be remanded to the trial court for further proceedings.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that, on the date indicated below, a true and correct copy of this document was furnished via the U.S. Postal Service to Virginia B. Townes, Esq., and Brandon W. Banks, Esq., Akerman Senterfitt, P.O. Box 231, Orlando, Florida 32802-0231.

CERTIFICATE OF COMPLIANCE

WE HEREBY CERTIFY that 14 point, Times New Roman font, is used in this brief.

Counsel for Appellant
CPLS, P.A.
Attorneys and Counselors at Law
201 East Pine St., Suite 445
Orlando, FL 32801
(T)407-647-7887/(F)407-647-5396
www.cplspa.com

Dated: February 8, 2011

/s/ Samuel A. Walker
Samuel A. Walker, Esq.
USVI Bar No. 633
swalker@cplspa.com

/s/ Alberto E. Lugo-Janer
Alberto E. Lugo-Janer, Esq.
Florida Bar No. 0972592
alugo-janer@cplspa.com
lugojaner@earthlink.net

/s/ Tee Persad
Tee Persad, Esq.
Florida Bar No. 0045594
attorneypersad@cplspa.com