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FINANCIAL REFORM: THE SHIFTING PENDULUM OF PREEMPTION

In a July 23, 2010, article appearing in the Los Angeles Daily Journal, Richard Kellner and Evan Zucker write about how the recently passed Dodd-Frank financial reform act will have a profound impact on the use of federal preemption as a defense against consumer litigation. The Act, in fact, would restrict banks from using this defense under Section 1044, unless state laws "would have a discriminatory effect on national banks."

Kellner and Zucker conclude that under Dodd-Frank, "Now, it is likely that consumers will become further empowered with additional tools that will enable them to combat inequities in the ever-increasing complexities of the credit, lending, borrowing and securities markets."