

By Pamela M. Prah

State regulators are locked out of a slice of the home mortgage-lending industry, thanks to a recent U.S. Supreme Court decision. But the turf war between states and the federal government over banking regulations isn't over.

A different case, launched by New York's then-Attorney General Eliot Spitzer, now governor, will test whether states can wedge a foot in the door at national banks doing business in a state. And in Congress, there are efforts to pass a national law against "predatory" lending practices that deceive or abuse borrowers but that could, if enacted, pre-empt 37 states already equipped with consumer protections.

The outcome of the complicated, long-running feud could have repercussions for consumers of home loans and perhaps many kinds of financial services from the 1,800 nationally chartered banks and an estimated 500 operating subsidiaries of national banks.

The fight is over whether state officials and/or the federal government should police financial services offered by national banks, with such recognizable names as Wachovia and Wells Fargo, and their operating subsidiaries.

In a major defeat for Michigan, which was joined in its appeal by the 49 other states, the Supreme Court ruled April 17 that states have no role in regulating the licensing, reporting, and examination of a national bank's mortgage business, even if the business is conducted by an operating subsidiary, not the bank itself. While the case centered on the mortgage business, the court's decision might be applied to other services, such as car loans and investment advice, offered by national banks' subsidiaries.

The 5-3 ruling in *Watters v. Wachovia* means that consumers of national banks and their subsidiaries must go to the federal government — not the state — if they feel they are being cheated or have other complaints.

"Certainly the decision was a defeat for state regulators," said Arthur E. Wilmarth, Jr., a George Washington University law professor who filed court papers on behalf of states and governors and had urged the court to side with the states.

Joseph Calluroi, an attorney with Traiger and Hinckley in

New York city who advises financial institutions, said "state regulators met their Waterloo" in the *Watters* case.

States and consumer groups fear the decision will pressure state-chartered banks to align themselves with national banks to avoid state regulations and also what they argue is more aggressive enforcement by state regulators than the federal government. "Imagine if petty thieves could pick their sheriff, they wouldn't pick the most vigilant," said Ellen Harnick, an attorney with the Center for Responsible Lending in North Carolina, although she added that she didn't equate banks with thieves.

Banks and the federal government, however, argue that the decision puts an end to the hodgepodge of duplicative and conflicting federal and state banking regulations. "Instead of being distracted by who is enforcing which law, now the industry can focus on the more important issue of compliance with the law itself," Edward L. Yingling, president of the American Bankers Association, said in a statement.

States' roles as consumer watchdogs also are stake in the banking case filed by Spitzer that is now pending in the U.S. Court of Appeals in New York.

"The Spitzer case is equally if not more important for states and consumers," said John Ryan, executive vice president of the Conference of State Bank Supervisors, which represents state banking departments. The issue, he said, is whether a state, through its attorney general, can enforce applicable state and federal consumer, anti-discrimination, and other laws at a national bank or its subsidiary.

Banks and the federal Office of the Comptroller of the Currency (OCC), the agency that charters and supervises national banks, won a court order preventing Spitzer from investigating possible anti-discrimination violations by four national banks. Thirty-two states and a coalition of advocacy groups filed briefs in support of Spitzer's actions.

One result of the Supreme Court's decision restricting state regulation could be to deliver "a kick in the pants for Congress and/or the OCC" to address consumer protections, said attorney Calluroi. He maintains a federal banking examiner would be no less likely to respond to a consumer problem than a state offi-

cial.

The high court's ruling comes as states and Congress are contemplating how to react to record numbers of home foreclosures, especially among "subprime" loans that offered less-favorable terms to consumers with credit issues.

Kirsten Keefe, executive director of Americans for Fairness in Lending, an advocacy group, said she hoped the ruling would prod lawmakers on Capitol Hill to enact a national anti-predatory lending law. "Ideally we would like a very strong consumer-protection law that does not pre-empt state laws," she said.

Many consumers probably don't know whether their mortgage comes from a "state-chartered bank," a "nationally chartered bank," "an operating subsidiary of a national bank," or from a bank at all. But the distinctions are important because they determine who in government is looking out for consumers and what kind of practices are forbidden.

The Office of the Comptroller of the Currency is responsible for overseeing about 1,800 federally chartered banks, while states charter and supervise an estimated 5,700 state banks. State banks still have a federal regulator, either the Federal Reserve System or the Federal Deposit Insurance Corporation, according to a 2006 report from the U.S. Government Accountability Office. Mortgage brokers and loan officers in non-bank companies are subject to state — not federal — regulation.

The Supreme Court case stemmed from a 2003 dispute between Wachovia Bank and Michigan's Office of Financial and Insurance Services. Wachovia maintained it no longer needed to register in Michigan because it had converted its mortgage company into an operating subsidiary of the national bank, headquartered in North Carolina. Michigan insisted Wachovia could no longer conduct mortgage business in the state if the banking subsidiary refused to register. Wachovia sued and won in federal district court and at the appellate level.

This report first appeared on Stateline.org

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Troop surge touted success, but casualty stats incomplete

By Eli Clifton

WASHINGTON (IPS) — The Bush administration and proponents of the U.S. troop surge in Iraq claim that the increased military presence in Baghdad and al-Anbar province has reduced sectarian violence between Sunni and Shiite Muslims and lowered civilian casualties. But not all of the numbers are being included.

It has emerged that the Bush administration does not count car bombing victims among Iraq's civilian casualties and the Iraqi government is withholding from the United Nations its statistics on Iraqi casualties.

On Feb. 14, U.S. troops increased their presence in and around Baghdad as part of a "troop surge" for which the United States has committed an extra 30,000 troops. Iraqi forces have detained more than 3,000 people since the Baghdad security plan came into effect, said a new human rights report by the United Nations.

General David Petraeus, commander of U.S. forces in Iraq, has stated that the troop surge cut the number of sectarian killings by

one-third since January and Pres. George W. Bush has gone so far as to call the surge a success if one doesn't count suicide or car bombings.

"If the standard of success is no car bombings or suicide bombings, we have just handed those who commit suicide bombings a huge victory," Bush told TV interviewer Charlie Rose on April 24.

The report by the UN mission in Iraq provides an analysis of human rights concerns from January through March. It concludes that the Iraqi government is up against "immense security challenges in the face of growing violence and armed opposition to its authority and the rapidly worsening humanitarian crisis."

Noticeably lacking from the report are the civilian casualty statistics that, according to the previous report from the UN, recorded 34,452 Iraqi civilian casualties in 2006.

The report said the Iraqi government had "decided against providing the data, although no substantive explanation or justification was provided."

U.S. State Department officials

have publicly questioned the factual accuracy of the UN report and defended the Iraqi government's decision not to release the figures.

The decision not to publicize the figures on civilian casualties — considered by many to be a gauge of the situation in Iraq, and in al-Anbar province in particular — is an important omission since the statistics would be a means of measuring the success of the troop surge.

Unofficially, the Iraqi government expressed concern that the numbers would be "used to portray the situation as very grim," said Ivana Vuco, a UN human rights officer in Iraq, quoted by Human Rights Watch. High casualty figures would "further undermine their efforts to establish some kind of security and stability in the country," she said at a news conference in Baghdad.

The U.S. government disregarding car and suicide bomb attacks and the Iraqi government withholding civilian casualty statistics make it difficult to determine the effectiveness of the surge or the situation on the ground in Iraq, agree most analysts.

"If the standard of success is no car bombings or suicide bombings, we have just handed those who commit suicide bombings a huge victory."

— Pres. George W. Bush

Bush administration officials have pointed to a 50-percent decline in the number of bodies found on Iraqi streets as evidence that the new security plan and troop surge is working, but the number of people killed in explosive attacks has risen from 323 in March to 365 through Apr. 24.

The UN human rights report, despite the lack of Iraqi government data on civilian deaths, describes a precarious security situation and attributes the high level of violence in Baghdad to "large scale indiscriminate killings and targeted assassinations perpetrated by insurgency groups, militias and other armed groups." The violence killed large numbers of civilians, including women and children, in Shia and Sunni neighborhoods alike, the report said.

Another area of UN concern is the large number of detainees and the limited rights afforded to them.

The UN found that by the end of March, 37,641 people were being held throughout Iraq, including 17,898 in U.S. custody.

The report cited concern with the U.S. military's "indefinite internment of detainees" and people "held for prolonged periods effectively without charge or trial."

"Security detainees are denied access to defense council during first 60 days of internment," and "continued failure of the Iraqi government as a whole to seriously address issues relating to detainee abuse and conditions of detention" are of concern, reads the report.

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UN panel to offer solutions for the willing

By Marwaan Macan-Markar

BANGKOK (IPS) — Solutions to stop global warming outlined in a new United Nations-backed report may ignite heated debates, if not actually compel governments to make choices that would impact their respective economies.

The report, "Mitigation of Climate Change," is the third in a series launched this year by the Inter-governmental Panel on Climate Change (IPCC). The first two — scientific bodies of work that presented a bleak forecast — were "Physical Science Basis," released in February, and "Impacts, Adaptation and Vulnerability," released in early April.

Some 2,000 top scientists, environmentalists, and government officials from more than 180 countries are expected to gather in Bangkok for a weeklong meeting to debate the new report before its release on Friday. The panel is seeking ways to limit or prevent greenhouse gas (GHG) emissions and enhance "activities that remove them from the atmosphere," states a background note released by the U.N. Environment Program.

But a Thai academic and member of his country's team reviewing the report says this third volume will generate a "hot, fiery debate," said Anond Snidvong, an environment expert at Bangkok's Chulalongkorn University, "because the solutions are directly related to present and future economic development of countries," they would matter more to governments.

The success of the report will be gauged by how willing governments are to embrace the new alternative energy technologies to "reduce GHGs in each economic sector of their respective countries," he added. "There is a need for immediate and quick action."

Environmental activists heading for the Bangkok meeting say that governments from across the economic spectrum cannot afford to stall further the introduction of new technologies to combat carbon emission from fossil fuels like oil, coal, and gas. "This report is very much about technology options that work to reduce carbon emissions based on evidence," said Catherine Pearce, climate campaigner for Friends of the Earth International, a global net-



work of grassroots environmental organizations. "It is the first step to give governments credible solutions."

The political commitment of countries will be tested in "how strongly governments will want to invest and where money will be directed to encourage these technologies," she said from her London office. "The governments have no reason for delay anymore."

In fact, the global environmental lobby Greenpeace is hoping that the report will challenge governments from the developed and developing world to "revolutionize the energy sector." For the developing world it would mean investing in alternative technologies that help economic development without reducing energy requirements.

Currently, renewable energy accounts for only 13 percent of the world's primary energy demands, of which biomass, used for heating, is the largest alternative energy source, states Greenpeace in a recent study. "About 80 percent of primary energy supply still comes from fossil fuels."

Oil provides 36 percent of the world's fuel needs, while coal supplies 25 percent of the world's energy, it adds. "The share of renewable energy in electricity generation is 18 percent."

"There is a need to phase in energy efficiency and a need for a massive uptake of renewable energy sources," said Shailendra Yashwant, climate and energy team manager for the Southeast Asia office of Greenpeace. "The change is necessary for the good of the developing world and the world's poorest people."

The dire scenario that the poorest will be the worst affected by

the drastic changes in the climate was captured in the 1,400-page second report, "Impacts, Adaptation and Vulnerability," released in Brussels early April. In sub-Saharan Africa, for instance, 250 million people could face water shortages by 2020, it warned.

The first report in February, "Physical Science Basis," had scientists raising the alarm about the planet being condemned to even hotter months, warmer winters, a rise in sea levels, storms and hurricanes, droughts, and thawing glaciers if the prevailing pace of carbon emissions continued.

These reports warned that the planet's temperature could increase up to six degrees Celsius by the end of the century. The impact of such an eventuality was conveyed by the IPCC panel in another assessment — up to a third of animal and plant species could be threatened with extinction if global temperatures rose by two degrees Celsius.

The expected blueprint for change in the energy sector targets countries in the developing and developed world. Both have major polluters, ranging from developed nations like the United States and Australia to developing countries such as China and India. The United States and China top the lists as the world's leading producers of GHGs due to high dependency on fossil fuels.

"Failure to change our energy sources will not only affect future generations, but the impact will be felt with present ones also," said Yashwant. "This is the hour of solutions."

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