



## **CHAIRMANSHIP ACCEPTANCE SPEECH**

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**CSBS Chairman, 2009-2010**  
**Commissioner of North Carolina Office of Commissioner of Banks**

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My friends and colleagues, it is always a pleasure to be with you; today, it is also an honor. I am deeply grateful for the opportunity to serve you as Chairman during the coming year and am mindful of the importance of the office and of this organization. Although my timing could be better, perhaps, from a financial point of view, it could not be better in terms of the path on which my predecessors as Chairman have guided us. Tim<sup>1</sup> and Jeff,<sup>2</sup> thank you very much. I am also very grateful for our excellent professional staff, which has accomplished miracles on a shoestring. Finally, and most importantly, I am beyond grateful for the continued love, guidance and support of Elizabeth Marion Smith, to whom I have had the privilege of being married for thirty years this month.

These are, as the Chinese say, “interesting times” and we are, individually and as an organization, engaged in an ongoing struggle to maintain the very important role of state financial services supervision in our government, economy and society. The details of this struggle promise—as always—to be complex, constantly changing, and maddening. Thank heavens we have Neil, John, Buz, Mike and their colleagues to guide us through the minefield. They can’t do it alone; we commissioners have to learn the details, develop a line of argument and work like crazy if we want to have a place at the table when the new financial services regulatory order is established.

As we go into battle, we should first reflect together on why the battle is important. What is it, at bottom, we stand for? In my view, we stand for the protection of the personal and local sovereignty that underlie our constitutional order and way of life. Like many words that are related to power, “sovereignty” has a positive meaning—supreme power over a body politic—and a negative one—freedom from external control: autonomy.

We cannot remind ourselves too often that what we do every day is an expression of sovereignty in both of these senses. Each of us represents a sovereign state, acting under a state constitution that expresses the consent of the ultimate sovereign: the people. The

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<sup>1</sup> Timothy J. Karsky is the Commissioner of the North Dakota Department of Financial Institutions and served as CSBS Chairman in 2008-2009.

<sup>2</sup> Jeffrey C. Vogel is the Commissioner of the Wyoming Division of Banking and served as CSBS Chairman in 2007-2008.

### **CONFERENCE OF STATE BANK SUPERVISORS**

offices we hold confer on each of us the obligation to promote the welfare of our citizens, and their exercise of personal sovereignty.

In the battle before us, we seek to achieve this goal by preserving and strengthening the dual banking system and by working with our federal colleagues to prevent a recurrence of the abuses that have brought our financial system to its knees.

Our exercise of state sovereignty is, of course, limited by the United States Constitution and laws enacted under it, including the National Bank Act. Adoption of the National Bank Act sought to do on a national level what states had done for years before: promote commerce and the public welfare. This was accomplished through the establishment of a new system of national banks and a national currency.

These developments were part of the forging of the United States as a nation state, whose legitimacy would be based on its ability to provide for the welfare of its citizens.<sup>3</sup> I think it is fair to say that the national banking system contributed to the success of the United States as a nation state through the end of the Cold War. What has happened since is a different matter.

Since the fall of the Berlin Wall, there has been a persistent and continual reduction of regulatory oversight at the federal level and a concomitant use of the powers conferred by the National Bank Act to frustrate or prevent regulatory and enforcement actions by the states.

The results of these trends are all too obvious: a pronounced increase in the concentration of the banking industry; expansion of consumer credit, both secured and unsecured, on terms that were fraudulent or predatory or both; a surrender of local sovereignty to the demands of the market; a substantial tilting of income and wealth to the new Masters of the Universe; and disaster. Powers intended to build and bind our nation have employed in a way that has reduced local and personal sovereignty and undermined public confidence in our financial and governmental institutions.

In addition to legal and constitutional arguments, deregulation and preemption were rationalized as necessary for the survival of American financial institutions in the face of globalization and technological advance.

The changing environment was said by some to be leading to the rise of the “market state.” Unlike the nation state, whose legitimacy rests on its ability to enhance the public welfare, the market state, according to one scholar, exists to “maximize the opportunities enjoyed by all members of society.”<sup>4</sup> This rationale will be familiar to those of us who have fought the preemption wars and sought to regulate the mortgage market. As you will recall, we

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<sup>3</sup> Philip Bobbitt, *The Shield of Achilles: War, Peace and the Course of History* (Anchor Books 2003).

<sup>4</sup> Bobbitt, *op cit*, p. 229.

were often characterized as well-meaning but misguided naifs who were denying hard-working Americans the opportunity to own a home.

I believe it is fair to say that state legislatures, attorneys general and regulators have been vindicated by events. As I have already said, the financial crisis has weakened our nation's economy and the perceived integrity of its financial and governmental institutions.

Given the damage that has been done to the financial well-being of a large number of our citizens by mortgage fraud, foreclosures, and credit card debt, it is perhaps still possible to argue that these benighted souls were the beneficiaries of "maximized opportunities," but that claim rings hollow. Many of our fellow citizens were given illusory "opportunities" that they neither understood nor could handle. Further, any attempt by state authorities to limit access to potentially toxic products or to condition access on counseling, were resisted by the industry and pre-empted by our federal counterparts.

The damage that has been done to our economy, our society and our institutions requires that there be a policy response, both legislative and regulatory. Given this circumstance, our tasks for the future are clear:

- Actively participating in the legislative debate over regulatory reform, using as our keystone the principles developed by the Regulatory Reform Working Group under the leadership of our colleague Sarah Bloom Raskin.<sup>5</sup>
- Working to ensure that further federal consumer legislation (i) includes state participation in the development of standards, (ii) preserves the ability of states to act to protect their citizens, and (iii) includes a state role in the enforcement of all consumer protection standards.
- Implementing Gavin Gee's<sup>6</sup> vision of a National Mortgage Licensing System, participated in by all the states, and including path-breaking cooperation with our federal counterparts.
- Developing further areas of cooperative federalism, such as multi-state mortgage examinations, enlivening of the interstate banking compact, and cooperative work on consumer complaints.
- Strengthening state supervisory and regulatory capacity by advocacy for appropriate and necessary funding and development of "best practices" in all our endeavors.

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<sup>5</sup> Sarah Bloom Raskin is the Commissioner of the Maryland Office of Financial Regulation and Chairman of the CSBS Legislative Committee.

<sup>6</sup> Gavin Gee is the Director of Finance for the Idaho Department of Finance and the Chairman of the State Regulatory Registry LLC, the limited-liability company that owns and operates the CSBS-AARMR Nationwide Mortgage Licensing System.

- Dealing aggressively and effectively with the impact on state banks of the economic downturn, particularly in the commercial real estate area.

This is a lengthy and ambitious list of goals that will require a substantial commitment of time and resources from all of us. It will also require a willingness to work cooperatively with each other and with our federal counterparts.

While this cooperation may be seen as a limitation on sovereignty, I would suggest it is better viewed as an augmentation and strengthening of it through alliance with others.

None of this is easy and all of it is essential. I look forward to working with you to protect and enhance personal and local sovereignty in the financial services marketplace.

It is an honor to be your colleague and your Chairman. Thank you for this opportunity and for your attention.