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Municipal Bond Issuers: Second Circuit Properly Applied 'Rigorous Analysis' Standard in Certifying VRDO Class

Certiorari should be denied because no circuit split exists, and Rule 23 does not require courts to resolve expert disputes at class certification.

Respondents City of Philadelphia and other municipal plaintiffs urged the Supreme Court to deny certiorari from a Second Circuit decision affirming class certification in an antitrust action alleging a conspiracy by major financial institutions to inflate variable-rate demand obligations (VRDO) interest rates. They argued in their Brief in Opposition that the lower courts correctly applied the well-settled Rule 23 "rigorous analysis" standard, evaluating competing expert evidence while properly declining to resolve merits disputes reserved for the jury. According to respondents, there was no circuit split, as all courts of appeals applied the same framework requiring scrutiny, but not resolution, of the ultimate persuasiveness of expert testimony at the certification stage. The petition, they contended, improperly sought a rule requiring courts to decide which experts are more persuasive, conflicted with Supreme Court precedent, and presented a poor vehicle for review given the fact-bound nature of the ruling, petitioners' failure to preserve key arguments below, and their failure to challenge the district court's predominance findings (*Banc Of America Securities LLC v. City Of Philadelphia, Pennsylvania*, No. 25-639 (U.S. Mar. 13, 2026)).

Background. The case arose from allegations that major financial institutions conspired from approximately 2008 to 2015 to fix and inflate interest rates on variable-rate demand obligations (VRDOs), a type of municipal bond whose rates are periodically reset by banks acting as remarketing agents (RMAs). According to respondents, instead of competing to set the lowest possible rates, as required, petitioners coordinated base rates. They shared pricing and inventory information, resulting in supra-competitive rates that increased costs for municipal issuers.

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