

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -X

WACHOVIA BANK, NATIONAL :
ASSOCIATION, :
Petitioner :

v. : No. 04-1186

DANIEL G. SCHMIDT, III, ET AL. :

- - - - -X

Washington, D.C.

Monday, November 28, 2005

The above-entitled matter came on for oral
argument before the Supreme Court of the United States
at 11:05 a.m.

APPEARANCES:

ANDREW L. FREY, ESQ., New York, New York; on behalf of
the Petitioner.

SRI SRINIVASAN, ESQ., Assistant to the Solicitor
General, Department of Justice, Washington, D.C.;
on behalf of the United States, as amicus curiae,
supporting the Petitioner.

JAMES R. GILREATH, ESQ., Greenville, South Carolina; on
behalf of the Respondents.

1 P R O C E E D I N G S

2 (11:05 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear argument
4 next in Wachovia Bank v. Schmidt.

5 Mr. Frey.

6 ORAL ARGUMENT OF ANDREW L. FREY

7 ON BEHALF OF THE PETITIONER

8 MR. FREY: Mr. Chief Justice, and may it
9 please the Court:

10 The question in this case is whether, for
11 purposes of Federal diversity jurisdiction, a national
12 bank is a citizen of every State where it has a branch,
13 or perhaps where it has any physical presence, or only
14 a citizen of the State where it was chartered or, if
15 different, where its main office is located.

16 The question turns on the meaning of the word
17 located in 28 U.S.C. 1348, which states that national
18 banking associations shall be deemed citizens of the
19 States in which they are respectively located.

20 Now, before turning to the --

21 JUSTICE O'CONNOR: Now, that was enacted, was
22 it not, in 1887?

23 MR. FREY: That's correct. The law --

24 JUSTICE O'CONNOR: And hasn't the -- the word
25 hasn't changed --

1 MR. FREY: It hasn't changed.

2 JUSTICE O'CONNOR: -- in all those years.

3 And there were no interstate branches in
4 1887, I assume.

5 MR. FREY: I'm -- I'm not aware of any.
6 There may have been a few State banks that had
7 interstate branches, although they would have been
8 citizens only of the State of their incorporation.

9 JUSTICE O'CONNOR: So it's a little hard to
10 look for congressional intent.

11 MR. FREY: Well, it -- it -- I don't believe
12 it is, Your Honor, because of the sequence of statutes.
13 You have to start with the 1882 statute and what the
14 Supreme Court has said.

15 But -- but I'd like to make a preliminary
16 comment before I turn to the substantive points here,
17 which is that nobody has ever suggested, not the Fourth
18 Circuit and not the respondent, any reason why Congress
19 would want the result reached by the Fourth Circuit, in
20 -- in 1887 or in 1948 or any other relevant time, to
21 uniquely restrict the access of national banks to
22 Federal diversity jurisdiction.

23 Indeed, the suggestion is incongruous that
24 Congress would want to do that. National banks are,
25 after all, federally created and federally regulated

1 instrumentalities.

2 JUSTICE SCALIA: Congress makes mistakes
3 sometimes.

4 MR. FREY: Yes, they -- they might have --
5 they might have done that.

6 And I -- I acknowledge that this
7 consideration is not controlling, standing by itself,
8 on the case. That is, if the statute plainly and
9 unambiguously called for such an implausible outcome,
10 then we might have a debate about whether an absurd
11 outcome that the plain language calls for is one that
12 should be enforced. But this is a background
13 consideration that I don't think the Court can put
14 aside or deem irrelevant to the outcome of this case.

15 So the key holding of the Fourth Circuit was
16 that the word located has an unambiguous meaning, and
17 it's -- that it's the one adopted by the Fourth Circuit
18 majority and not by the Fourth Circuit dissent, the
19 Fifth Circuit, the Seventh Circuit, the Comptroller of
20 the Currency, or anybody else.

21 The battle of the dictionary definition seems
22 to me plainly inconclusive. The biggest problem with the
23 definitions is that they are cast in terms of the
24 location of tangible physical things, a table, a lake,
25 a piece of land; whereas we're dealing here with an

1 incorporeal abstraction, a corporation, the location of
2 which is not necessarily tied to any particular
3 physical presence.

4 Both we and the Government have given Ford
5 Motor Company as an example in the brief. If you ask
6 somebody where is Ford Motor Company located, I venture
7 to say that most people would say Michigan. But when
8 you stop and think about it, it's possible that it
9 could be also located every place where it has
10 manufacturing facilities or sales outlets.

11 The only dictionary definition that I've seen
12 that is specific to the location of an incorporeal
13 entity, and specifically a bank, is the one that's
14 cited in the Chase -- JPMorgan Chase amicus brief,
15 which was taken from the 1951 edition of Black's Law
16 Dictionary, roughly contemporaneous with the enactment
17 of current section 1348, which states that a bank is,
18 quote, located, close quote, in the place specified in
19 its organization certificate.

20 The term also appears many places in the
21 National Bank Act, sometimes meaning a specific
22 headquarters location and sometimes meaning any place
23 where there are physical facilities.

24 And the Court -- this Court itself has given
25 located -- the word located various meanings. In the

1 Bougas case, which is much discussed in the briefs, the
2 Court said that the term has no enduring rigidity, and
3 the Court did not base its decision on the inherent or
4 natural or ordinary meaning of the word located.

5 In Federal Power Commission v. Texaco, which
6 is 377 U.S. 33, the Court interpreted the words in the
7 venue statute for appeals from Federal Power Commission
8 decisions which said the appeal could be taken to the
9 place where the company seeking review was located.
10 Texaco said, well, we have substantial facilities in
11 the Tenth Circuit. This matter that is the subject of
12 this arose in the Tenth Circuit. And the Court looked
13 at the statute and it said, no, located means where --
14 your place of incorporation.

15 Now --

16 CHIEF JUSTICE ROBERTS: Counsel, a -- a
17 national bank charter typically lists the national
18 bank's principal place of business. Correct?

19 MR. FREY: Well, it lists --

20 CHIEF JUSTICE ROBERTS: Its main office.

21 MR. FREY: -- it lists the -- the charter
22 location, where it's established. And until 1994, that
23 would have been synonymous with its principal place of
24 business.

25 CHIEF JUSTICE ROBERTS: But isn't that

1 amended if the principal place of business changes?

2 The charter is amended.

3 MR. FREY: You can -- just like a corporation
4 could reincorporate in another State, a bank could move
5 its main office, which I think is the term that's used
6 in 12 U.S.C., section 30.

7 CHIEF JUSTICE ROBERTS: So this would put
8 national banks in a favored position compared to
9 corporations --

10 MR. FREY: No.

11 CHIEF JUSTICE ROBERTS: -- which are citizens
12 of their State of incorporation and their -- their
13 principal place of business.

14 MR. FREY: Well, if there's -- I don't know
15 whether there's a divergence between principal place of
16 business and -- and main office, which is what the
17 Comptroller, I think, considers the equivalent of the
18 place of incorporation. It is possible.

19 But remember, at the time all of these
20 statutes were enacted, there would have been complete
21 parity because principal place of business was not --

22 CHIEF JUSTICE ROBERTS: My point is just --

23 MR. FREY: A corporation was not a citizen of
24 -- of its principal place of business, only of its
25 State of incorporation. So there would have been total

1 parity in 1882, 1887, 1911, 1948.

2 CHIEF JUSTICE ROBERTS: A good bit of your
3 argument is that your friend's interpretation on the
4 other side would put national banks in a disfavored
5 position.

6 MR. FREY: Yes.

7 CHIEF JUSTICE ROBERTS: Your argument would
8 put them in a favored position compared to a typical
9 corporation.

10 MR. FREY: Well, not necessarily. You could
11 interpret located to include principal place of
12 business. This issue doesn't arise in this case
13 because what -- what you have to decide is whether the
14 fact that the bank has a branch in South Carolina means
15 they're located in South Carolina. South Carolina is
16 not Wachovia's principal place of business or --

17 JUSTICE KENNEDY: Well, what would -- what
18 would be your view? I know the question is not before
19 us, but suppose we had a question like the principal
20 place of business.

21 MR. FREY: Our -- our view is that it's the
22 main office. I would defer somewhat to my colleague
23 from the Government who can speak for the Comptroller
24 on this question, but our view would be that it's the
25 main office.

1 And -- and I think it's important to
2 understand that when we're interpreting these statutes,
3 at every time when one of these -- when the statute was
4 reenacted, there would have been total parity between
5 our definition of located. There would have been one
6 place for a national bank. There would have been one
7 citizenship for a State bank.

8 JUSTICE GINSBURG: Mr. Frey, in practice, is
9 there, as there often is for a corporation, a
10 divergence between those two places? You have many
11 corporations incorporated in Delaware with their
12 principal place of business, say, in Michigan.

13 In the case of a national bank, is there that
14 similar difference that what you call its main office
15 or where it's chartered is different from where it has
16 its principal place of business?

17 MR. FREY: It's possible that there would be
18 for some banks, but the main office is the place that
19 -- that the Comptroller that -- that is in their
20 articles of association, which can be amended to change
21 the main office, and it's approved by the Comptroller
22 of the Currency. And -- and they can move their main
23 office.

24 Whether it -- all -- I know that in the case
25 of Wachovia, there is no divergence. North Carolina is

1 its main office and is its principal place of business.

2 But I can't speak for everything.

3 JUSTICE SCALIA: You -- you would say that
4 the main office is the place where they're established.

5 Is that what you think the word established refers to?

6 MR. FREY: No. I'm not sure what the word
7 established means. That would be different. As the
8 Court said in *Bougas*, it wasn't going there, and I
9 don't know that we need to go there today. Established
10 --

11 JUSTICE SCALIA: Well, I -- I think we need
12 to go there, at least -- it seems strange to me that
13 you have two different words and if, indeed,
14 established means the same thing that you're telling us
15 located means, I'm not going to agree with you. I
16 mean, they're -- they're two different words --

17 MR. FREY: Well, established could, I
18 suppose, mean the place of the original charter
19 location, and located could mean the place where --
20 where the main office is today. They could mean
21 different things.

22 Remember that at every -- at every enactment
23 of this statute, there was no difference between
24 established and located. The terms had no different
25 application because a national bank had only one

1 location, which was the place where it was established.

2 So as a practical matter, there was total parity with
3 State banks because up until 1958 a corporation was a
4 citizen only of the -- its place of incorporation, and
5 there was total parity with national banks because they
6 were -- they were confined to their original State.

7 They could not branch outside their State until 1994.

8 So we are interpreting statutes that were passed for the
9 purpose of achieving parity and at a time when they
10 succeeded in achieving parity.

11 And -- and the Chief Justice's question and
12 -- and your question suggest that today, with the
13 changes in the map of interstate banking, you might
14 have some small lack of total overlap between State
15 banks or other corporations, on the one hand, and
16 national banks. But that is not a reason to say that
17 national banks are citizens of every place where they
18 have any physical presence.

19 And one of the problems with the Fourth
20 Circuit's reading is that it injects substantial
21 ambiguity into the question of where a bank is located.

22 It's -- the Fourth Circuit said branches, but what
23 about where it has an office that's not a branch? What
24 about where it stores -- where it has warehouses that
25 store its records? What about where it has employees?

1 JUSTICE O'CONNOR: Or an ATM.

2 MR. FREY: What about where it has an ATM.

3 JUSTICE SCALIA: Well, there I think the
4 Fourth Circuit said we -- we had a case that resolved
5 that.

6 MR. FREY: Excuse me?

7 JUSTICE SCALIA: I think the Fourth Circuit
8 said that we had a case that -- that answered that
9 question, not a case involving this particular
10 provision --

11 MR. FREY: I don't -- I don't recall.

12 JUSTICE SCALIA: -- but a case involving
13 another provision of -- of the banking laws.

14 MR. FREY: I don't recall that. I don't
15 recall that, but I think the -- I think the question is
16 not at all clear where -- where a bank would be located
17 if it's in a State where it has facilities, property,
18 or employees but not a branch. And as you said in your
19 concurring opinion in Sisson against Ruby, it's not a
20 good idea to have a jurisdictional statute -- reading
21 of a jurisdictional statute that creates ambiguities.

22 JUSTICE GINSBURG: Mr. Frey, remind me of the
23 State bank. A State bank is, for Federal diversity
24 purposes, a citizen of two -- two places or only one?

25 MR. FREY: It depends on how it does

1 business. A State bank is a corporation and it is --

2 JUSTICE GINSBURG: So it would be the --

3 MR. FREY: -- the same as any corporation.

4 JUSTICE GINSBURG: -- its place of

5 incorporation and --

6 MR. FREY: Same as any corporation.

7 JUSTICE GINSBURG: -- principal place of

8 business if it's different.

9 MR. FREY: So in 1958, under -- if -- if you
10 follow the Chief Justice's question, in 1958 when it
11 became possible for corporations to be citizens of more
12 than one State, maybe the meaning of this statute that
13 was passed in 1948 changed. I -- I don't think that
14 makes sense. We're -- we're trying to interpret a
15 statute that Congress passed in 1948. At that time,
16 there was complete parity. The fact that in 1958
17 Congress perceived a problem which is not a problem
18 with national banks, where there was a divergence, a
19 serious divergence, between the place of incorporation
20 and the principal place of business that Congress said
21 we've got to deal with this problem. And so they
22 amended section 1332 in 1958 to deal with that
23 particular problem. That is not a problem that affects
24 national banks. So there's been no occasion. When
25 they enacted Riegle-Neal, there was no -- no need for

1 them to change --

2 CHIEF JUSTICE ROBERTS: Well, but you're --
3 you're asking us to interpret a statute that they
4 passed in light of events subsequent to the passage of
5 the statute.

6 MR. FREY: No.

7 CHIEF JUSTICE ROBERTS: You're saying that
8 when they passed it, national banks were only in one
9 place. Well, they were only located in one place --

10 MR. FREY: That's true.

11 CHIEF JUSTICE ROBERTS: -- even if you adopt
12 the reading of the Fourth Circuit.

13 MR. FREY: Well, let me -- let's -- let's go
14 back and -- because Justice O'Connor started me off,
15 and I -- I don't want to fail to get to her question.

16 The first statute was the 1882 statute. The
17 1882 statute unambiguously stated that the jurisdiction
18 shall be the same as and not other than the
19 jurisdiction for suits by or against banks not
20 organized under any law of the United States. So the
21 -- the purpose of Congress was to -- to give national
22 banks access to diversity jurisdiction on the same
23 basis as State banks. And that -- in the Leather
24 Manufacturers Bank case, that was recognized by the
25 Court.

1 Then in 1887, Congress went to a different
2 wording totally. It injected the word location. And I
3 -- I should point out that the 1882 statute was in the
4 Bank Act and the 1887 statute was in the Judiciary Act.

5 So it was -- it's not clear what they thought they
6 were doing with the 1882 statute when they adopted the
7 1887 statute.

8 But it is clear what this Court said they
9 were doing in the Petri case. This Court said no
10 reason is perceived why it should be held that Congress
11 intended that national banks should not resort to
12 Federal tribunals as other corporations and individual
13 citizens might. It then said further on, on page 651
14 of 142 U.S., the clause was intended to have and must
15 receive the same effect and operation as that of the
16 proviso to the fourth section of the act of July 12,
17 1882. And finally, they close by saying, no
18 limitation in the regard of access to Federal
19 diversity jurisdiction was intended.

20 Then we have the 1911 codification, and in --
21 and after 1911, we have several Supreme Court cases,
22 including the Mitchell case, which again says that the
23 codification worked no change. It says, the Court held
24 that as to suits with -- within the specified
25 exceptions, national banks were, by the acts of 1882

1 and 1887, put on the same basis in respect of
2 jurisdiction as if they had not been organized under an
3 act of Congress.

4 And then in 1948, you have the reenactment or
5 the codification of the current judicial code, not
6 intended to work any change in the meaning of the
7 statute.

8 JUSTICE SCALIA: And you think a lawyer has
9 to go back, in order to advise a client, and -- and
10 when he has a word -- two words in -- in a provision --
11 one, established; the other, located -- he has to go
12 back and figure out every one of these reenactments and
13 inquire into, you know, what Congress meant at the
14 time?

15 MR. FREY: Well, I don't think it's so
16 difficult to --

17 JUSTICE SCALIA: He -- he has -- he has a
18 statute that says established in one part, located in
19 another, and he has a Supreme Court case, which I
20 mentioned, but you apparently disregard, which is
21 Bougas, which --

22 MR. FREY: I don't disregard it.

23 JUSTICE SCALIA: Well, which -- when I asked
24 about it, you -- you drew a blank. I mean, that's the
25 case I was referring to. And in -- which had a similar

1 provision using the word established and located and
2 said that established meant one thing and said what in
3 this case it meant.

4 Now, it was for a different purpose, to be
5 sure, but if I were a lawyer looking up -- and it --
6 you know, it dealt with banks. And if -- if I were a
7 -- a lawyer, I would have -- I would have said, gee,
8 there it is. The Supreme Court --

9 MR. FREY: Well --

10 JUSTICE SCALIA: -- says where you have
11 established and located in -- in the same provision,
12 located means where they have a branch.

13 MR. FREY: Well, it didn't say that
14 established meant something different. It said it
15 would not consider what established meant. And in
16 deciding what located meant, it didn't say located had
17 some obvious meaning. It said it was going to look at
18 the purpose, and the purpose was the convenience of the
19 bank.

20 And what -- what the Court did in Bougas was
21 to place national banks in a position of parity with
22 State banks with regard to venue. State banks could be
23 sued anyplace they had a branch, and under Bougas,
24 national banks could be sued.

25 JUSTICE SCALIA: That may well be.

1 MR. FREY: What the Fourth Circuit has done
2 is destroy --

3 JUSTICE SCALIA: And -- and whatever --
4 whatever the outcome, whether it was equality or non-
5 equality, and whatever the rationale, whether it was
6 the purpose to be served or something else, the Court
7 held that the word located in a banking statute which
8 had both the words established and located in it --

9 MR. FREY: But --

10 JUSTICE SCALIA: -- meant where they have a
11 branch. And -- and that seems to me a very persuasive
12 indication for a lawyer --

13 MR. FREY: I think --

14 JUSTICE SCALIA: -- who's trying to figure
15 out how to advise his client.

16 JUSTICE GINSBURG: In a venue statute, as
17 opposed to a subject matter jurisdiction statute, the
18 venue means where, where -- what particular court.
19 Subject matter jurisdiction is which court system.
20 They're entirely geared to entirely different things.

21 MR. FREY: Entirely different things and
22 entirely different concerns. And I don't think --
23 well, I'd like to think that most lawyers would go
24 beyond the logic that Your Honor has suggested, would
25 look at what the Supreme Court had said in its cases

1 interpreting section 1348 and its predecessors, and
2 would look at the mode of analysis that the Supreme
3 Court used in *Bougas*, and applying that mode of
4 analysis, the Fourth Circuit result is wrong.

5 I'd like to reserve the balance of my time.

6 CHIEF JUSTICE ROBERTS: Thank you, counsel.

7 Mr. Srinivasan, we'll hear now from you.

8 ORAL ARGUMENT OF SRI SRINIVASAN

9 ON BEHALF OF THE UNITED STATES,

10 AS AMICUS CURIAE, SUPPORTING THE PETITIONER

11 MR. SRINIVASAN: Thank you, Mr. Chief

12 Justice, and may it please the Court:

13 For purposes of determining its State
14 citizenship under 28 U.S.C. 1348, a national banking
15 association is located in the State in which its main
16 office is found, not every State in which it may
17 maintain a branch office or other form of physical
18 presence.

19 JUSTICE GINSBURG: What about its principal
20 place of business if it's different from its main
21 office?

22 MR. SRINIVASAN: The --

23 JUSTICE GINSBURG: Principal place of
24 business.

25 MR. SRINIVASAN: We -- we don't think that a

1 national banking association is a citizen of a State in
2 which its principal place of business is found, insofar
3 as that might be different from the State in which its
4 main office is located.

5 JUSTICE GINSBURG: So the main office is it,
6 like 1332 before the '58 amendment.

7 MR. SRINIVASAN: That's right, Justice
8 Ginsburg, and in part, that's because of the historical
9 chronology. The word located was first used in 1887
10 and the current version of section 1348 was enacted in
11 1948, which was 10 years before the concept of
12 principal place of business had any jurisdictional
13 salience. That was the first time that Congress --
14 this was in 1958 -- that Congress enacted a specific
15 provision dealing with corporate citizenship, and
16 that's the first time that we see the concept of
17 principal place of business having relevance in the
18 jurisdictional context.

19 JUSTICE SCALIA: What did the Government
20 argue in Bougas? I -- I didn't look up the briefs in
21 the case. Did the Government appear in -- in that
22 case?

23 MR. SRINIVASAN: No.

24 But -- but Bougas I think is -- shouldn't
25 govern the resolution of this case for several reasons,

1 and one that I think is salient with respect to the
2 points that you were raising earlier, Justice Scalia,
3 is that it really is a happenstance of codification
4 that the terms, established and located, appear
5 together in section 1348. The paragraph that contained
6 established and the paragraph that contained located
7 were enacted in separate years. They concerned
8 separate subjects, and they were always treated as
9 separate provisions until the recodification of the
10 judicial code in 1911. And that recodification stated
11 in its explicit text that the provisions were -- were
12 to continue to carry the substantive meaning that they
13 had beforehand and that the arrangement of the
14 provisions were purely -- was purely for convenience.
15 And so I don't think it's fair to say that because
16 established and located happen to appear in the same
17 provision of section 1348 that they necessarily should
18 be given different meanings.

19 JUSTICE SOUTER: In Bougas, they were there
20 to -- they were put in originally in the original
21 drafting. They were paired, right?

22 MR. SRINIVASAN: Just about, Justice Souter.
23 I -- the -- the paragraph containing established was
24 in there in the 1863 National Banking Law, and -- and
25 the provision containing located was added to that

1 provision in 1864. So the first time that they both
2 appeared, they did appear together, which is another
3 distinction from the circumstance that the Court faces
4 with respect to 1348.

5 CHIEF JUSTICE ROBERTS: Could I -- could I
6 get your position again on exactly 1348? You say main
7 office is where the bank is located?

8 MR. SRINIVASAN: That's right.

9 CHIEF JUSTICE ROBERTS: What about if that's
10 different from the national bank charter?

11 MR. SRINIVASAN: It would still be the main
12 office. The -- the national bank charter -- I think
13 it's called the organization certificate under the
14 terms of the statute -- is a historic document that
15 documents where the national bank's initial main office
16 was located. But, of course, a national bank can
17 relocate its main office under 12 U.S.C. 30. And we
18 think that when a national bank relocates its main
19 office, it's the current main office that's
20 controlling.

21 CHIEF JUSTICE ROBERTS: Even if its charter
22 says something else.

23 MR. SRINIVASAN: Even if its charter says
24 something else.

25 CHIEF JUSTICE ROBERTS: Because I gather you

1 don't have to amend your charter.

2 MR. SRINIVASAN: You don't. In fact -- in
3 fact, there's no provision for amending the charter.
4 What you have to do is amend your articles of
5 association if you move the main office -- if you move
6 the main office outside the city or town in which the
7 main office previously was found.

8 CHIEF JUSTICE ROBERTS: How -- how do you
9 tell where a bank's main office is?

10 MR. SRINIVASAN: Well, as I was saying, you'd
11 have to amend the articles of association if you move
12 to a different city. So you could look at the articles
13 of association, and those are on file with the
14 Comptroller. So I think where a national bank's main
15 office is located is readily identifiable and it's
16 publicly available information.

17 CHIEF JUSTICE ROBERTS: So its main office
18 would be -- be where its articles of incorporation say,
19 even if it has 90 percent of its branches in another
20 State?

21 MR. SRINIVASAN: That's right. It's -- it's
22 -- the main office is -- is controlled by where the
23 national bank designates its main office to be.

24 Now, it's a little bit different than
25 corporations in the following sense, that with the main

1 office of a national bank, it at least has to be a
2 place where the bank is conducting the business of
3 banking. That's required by the statutes. Whereas
4 with a corporation, you could conceivably have a
5 situation where they were incorporated in one State --

6 CHIEF JUSTICE ROBERTS: So you can have these
7 banks -- I don't know -- presumably a State that they
8 bear little or no relation to could offer some
9 favorable treatment of them and they could suddenly
10 say, you know, Wachovia's main office is in Wyoming or
11 something, even though it doesn't -- it has one -- it
12 has one ATM or one branch there. And that would be all
13 right with you? That would be where -- where they were
14 located?

15 MR. SRINIVASAN: That's right, for --

16 CHIEF JUSTICE ROBERTS: That would be the
17 only place that they were located.

18 MR. SRINIVASAN: For purposes of this
19 provision. There -- there are other provisions where
20 the word located encompasses branch locations, but for
21 purposes of this provision, we think location is
22 synonymous with main office.

23 And I would say that the court of appeals
24 assumed in its opinion, by the way -- and this is at
25 pages 8a and 11a of the -- of the petition appendix --

1 that it's rarely going to be the case that a national
2 bank's main office will -- will deviate from the
3 national bank's principal place of business.

4 JUSTICE STEVENS: If a national bank changes
5 its main office, it must get the approval of the
6 Comptroller to do so?

7 MR. SRINIVASAN: It -- in -- in some
8 circumstances, yes. If it changes its main office --

9 JUSTICE STEVENS: What sort of circumstance?

10 MR. SRINIVASAN: -- the same city --

11 JUSTICE STEVENS: Does it say -- just to take
12 the Chief Justice's example, say they decided they want
13 to open a branch in -- just a -- just a one-window
14 branch in Wyoming and make that the main office. Would
15 there have been any reason why they couldn't do it?

16 MR. SRINIVASAN: No, because it's a -- it's
17 simply a product of where the --

18 JUSTICE STEVENS: So in other words, the --
19 the Comptroller would automatically approve such a
20 change.

21 MR. SRINIVASAN: I -- I think so. I don't --
22 I'm not aware of any criterion by which -- substantive
23 criterion by which the Comptroller limits where a
24 national banking association could designate its main
25 office to be.

1 JUSTICE STEVENS: Does the term, main office,
2 have any significance for -- for any purpose other than
3 this jurisdictional issue in this case?

4 MR. SRINIVASAN: Yes. It -- it has
5 significance in a number of provisions. For example,
6 it determines where the bank is located with respect to
7 what interest rates it might charge under 12 U.S.C. 85,
8 and that's an issue that this Court confronted a few
9 terms ago in the Smiley case and also in the Marquette
10 case.

11 But there are other provisions that refer to
12 the -- the location of a national banking association,
13 and in all of those we think, as a starting point, the
14 location would be the main office, and in some
15 situations, it would also encompass branch locations.

16 For purposes of this provision, we don't
17 think that the location would encompass branch
18 locations. And one reason, in particular, is because
19 the subject that section 1348 deals with is the State
20 citizenship of a national banking association. And the
21 concept of citizenship has always been thought to
22 require a distinctive association with a State and, in
23 particular, has been thought to require something more
24 than mere physical presence in a State. That's always
25 been the rule with respect to national persons, and of

1 particular significance, it's always been a rule with
2 respect -- it's always been the rule with respect to
3 corporations. And Congress defined national banking
4 associations as, quote, a body corporate, close quote,
5 in 12 U.S.C. 24.

6 JUSTICE STEVENS: May I ask you another
7 question that is really a follow-up on the Chief
8 Justice's earlier -- for a private corporation, it's
9 located both where it's incorporated and where it has
10 its principal place of business. Is it your view that
11 a national bank may have two parallel locations or just
12 one?

13 MR. SRINIVASAN: It -- it could have a main
14 office that's different from what one would construe to
15 be its principal place of business under the test that
16 applies to corporations under 1332(c), if -- if that's
17 what you're asking, so that factual circumstances --

18 JUSTICE STEVENS: It could -- it could have a
19 -- it could be a citizen of the State where its -- its
20 papers say its main office is and also the State where,
21 in fact, its main office is.

22 MR. SRINIVASAN: No. Well, I -- well, I
23 don't -- in fact, its main office is -- is a creature
24 of statutory designation, but I think what --

25 JUSTICE STEVENS: Well, I should use a

1 different word. Where its principal place of business
2 --

3 MR. SRINIVASAN: Principal place of business.

4 JUSTICE STEVENS: -- they have a big
5 operation in New York and a -- and a Delaware
6 headquarters in -- in Dover.

7 MR. SRINIVASAN: No. Our view is that it
8 wouldn't be a citizen of a State simply by virtue of
9 the fact that it has its principal place of business
10 there.

11 Now, I would say, though, that it's not an
12 open and shut case because the Court in a case that
13 specifically raised the issue, which of course this one
14 doesn't, it could construe 1332(c), which is the
15 provision that deals with corporations generally, as
16 also applying to national banking associations insofar
17 as national banking associations are, after all,
18 corporations.

19 But we think the better reading is that the
20 specific governs the general, and therefore, that
21 section 1348, which specifically deals with the
22 question of national bank citizenship, would govern
23 over the 1332(c) which more generally deals with the
24 question of corporate citizenship.

25 CHIEF JUSTICE ROBERTS: What --

1 JUSTICE SCALIA: And if we did -- if we did
2 interpret 1332(c) that way, there wouldn't be any
3 favoritism for national banks.

4 MR. SRINIVASAN: That's right. It would
5 entirely eliminate favoritism.

6 But I think it's important to note that the
7 type of favoritism that we're discussing is the
8 potential inequity as between one State and two States;
9 whereas under the court of appeals' interpretation of
10 section 1348, you could have an inequity that -- and
11 it's not farfetched to think -- that would encompass 50
12 States in the case of a national banking association
13 and one or two States in the case of a State
14 corporation. And so we're --

15 CHIEF JUSTICE ROBERTS: What -- what do you
16 mean that national banking associations are, after all,
17 corporations? I thought they were distinct entities
18 from corporations.

19 MR. SRINIVASAN: No. They're -- they're not
20 State chartered corporations. They're federally
21 chartered corporations, but they are corporate in the
22 -- as -- as distinguished from other sort of forms that
23 an entity, an incorporeal entity, may take. And
24 Congress specifically provided that in 12 U.S.C. 24 --

25 CHIEF JUSTICE ROBERTS: You mean --

1 MR. SRINIVASAN: -- when it defined them as,
2 quote, a body corporate, close quote. So I think it
3 makes sense to apply the normal rules that we apply to
4 corporate citizenship.

5 CHIEF JUSTICE ROBERTS: They're not
6 incorporated -- they're not incorporated under the laws
7 of any State, though.

8 MR. SRINIVASAN: They're not incorporated
9 under the laws of any State, but they're incorporated
10 under -- under the National Bank Act. They're
11 federally chartered corporations like other federally
12 chartered corporations. And so in that sense, we think
13 it makes sense to apply the normal rules that apply to
14 corporate citizenship to national banks.

15 CHIEF JUSTICE ROBERTS: But -- I'm sorry.
16 Maybe this is something everybody knows but me. But I
17 would have thought that a national association is
18 distinct from a corporation in a way, for example, that
19 a partnership is distinct from a corporation. And I
20 wouldn't have assumed that the laws with respect to
21 corporations automatically applied to national banking
22 associations. But you say they do?

23 MR. SRINIVASAN: If I could just -- just
24 briefly.

25 CHIEF JUSTICE ROBERTS: Yes.

1 MR. SRINIVASAN: I think what I'm trying to
2 say is that federally -- national banks are federally
3 chartered corporations and they share the salient
4 characteristics of a corporation, i.e., there's limited
5 liability for shareholders -- and that's at 12 U.S.C.
6 64(a) -- and they have a perpetual existence in the
7 same way that corporations do, and that's at 12 U.S.C.
8 24.

9 JUSTICE GINSBURG: But you did say 1332(c)
10 does not apply to the national bank. It's only one
11 location.

12 MR. SRINIVASAN: That -- that's our view, but
13 again, I'm -- I wouldn't characterize it an -- as an
14 open and shut case because 1332(c) refers generally to
15 corporations, and so one could reach the conclusion
16 that 1332's reference to principal place of business
17 should also apply to national banks.

18 CHIEF JUSTICE ROBERTS: Thank you, counsel.
19 Mr. Gilreath.

20 ORAL ARGUMENT OF JAMES R. GILREATH
21 ON BEHALF OF THE RESPONDENTS

22 MR. GILREATH: Mr. Chief Justice, and may it
23 please the Court:

24 Mr. Chief Justice, I want to follow up on a
25 point you -- you were on about this thing about an

1 association.

2 Before I do that, I want -- I want to say so
3 I'll be sure I don't forget it. Wachovia, according to
4 -- I think we've got it in our papers that we filed in
5 opposition to the petition -- has 179 branches in South
6 Carolina.

7 But it -- but it is important, as -- as you
8 pointed out, Mr. Chief Justice, that a national bank is
9 not a corporation, but it is a association formed under
10 Federal law. So there's no State to which this Court
11 can look or anybody can look to determine what their
12 citizenship is. In fact, in the Langdeau case, they
13 said it was a quasi-public institution, national in
14 character. So it's not a -- it's not a State
15 corporation. It's got no ties to a State corporation.

16 So if it's going to have citizenship for diversity
17 purposes, Congress has got to say how we going to
18 figure that out. And that's what they did in 1448.

19 This Court, in a series of cases back in the
20 mid-'80's, was faced with the -- with the issue of how
21 do you determine the citizenship of a corporation, and
22 it went back and forth but finally came down with a
23 doctrine that said a corporation will be deemed a
24 citizen of the State in which it is incorporated.

25 And then in 1958, Congress enacted 1332 and

1 added the additional clause of principal place of
2 business.

3 Now, given that it is a national association
4 and it's not a State corporation, it was necessary for
5 Congress to legislate and enact a statute so we could
6 determine how it would have diversity. And that's what
7 they did in 28-1448.

8 And going to the question Justice Scalia
9 asked, do we have to go back and look at all of this
10 statutory history -- and you can believe I've been
11 looking at it a lot more than I'd like to have lately.
12 It kind of ruined my holiday.

13 (Laughter.)

14 MR. GILREATH: But I think I understand it.
15 And my answer to your question is that you do not.
16 When Congress enacts a statute that says you are deemed
17 to be a citizen of a State -- let me be sure I read it
18 right here -- deemed to be a citizen of the State in
19 which you're respectively located, I don't know how
20 Congress can speak much clearer.

21 JUSTICE SOUTER: Let me -- let me raise the
22 reality check question. If -- if we assume that that
23 is not the only possible reading of that statute, why
24 in the world would Congress have wanted to impose the
25 -- the system that follows from -- from your result in

1 which the -- the national banks are -- are excluded
2 from diversity jurisdiction to a degree that the State
3 banks clearly are not?

4 MR. GILREATH: I don't think, when Congress
5 enacted section 1448, that they even knew about branch
6 banking. The -- the -- that -- that is something that
7 has evolved really since 1994 when the Neal-Riegle Act
8 was enacted.

9 So the statute says --

10 JUSTICE SOUTER: But the -- I guess the
11 problem is if -- if we start with the assumption that I
12 made a second ago that your reading is not a necessity
13 -- it's a possible reading. No question about it. But
14 if -- if we assume that it's not an absolute necessity,
15 we -- we try to avoid freakish results, and this seems
16 like a freakish result. And I take it your answer is
17 it may be a freakish result. We're not claiming that
18 Congress intended it. But that still leaves us, I
19 think, with the problem of a -- a reading which is not
20 absolutely necessary that does produce a freakish
21 result. And if that's the case, why shouldn't you
22 lose?

23 MR. GILREATH: Well, that assumes that you
24 want to give the -- the -- I'm not suggesting that you
25 -- you want to do this, but that -- that a court would

1 want to give the national banks what I say is a free
2 ticket to the Federal courts, to the --

3 JUSTICE GINSBURG: No. The question is why
4 would Congress -- let's assume we have a choice between
5 two readings. Why would Congress want to give the
6 State courts -- the State banks -- State banks --
7 greater access to Federal courts than it gives national
8 banks? What earthly reason would there be for Congress
9 wanting to do that?

10 MR. GILREATH: I can't -- I can't give you a
11 reason for that. I -- I would suggest that they --
12 they don't want to give greater access one way or the
13 other, but they've got to write a statute. And when
14 they wrote the statute, nobody had in mind what the
15 branch banking system was going to be today. And so
16 now what this Court is faced with is they are looking
17 at a statute that, when you read it literally, says
18 that they ought to be deemed to be a citizen of South
19 Carolina if they have a branch in South Carolina.

20 CHIEF JUSTICE ROBERTS: Well, it -- it says
21 located. I mean, do you -- what about an ATM? Does an
22 ATM make them -- that's all they've got in Wyoming.
23 Does that make them located in Wyoming?

24 MR. GILREATH: That's a good question. I --
25 I think you could argue either way. I -- I would say

1 they probably are located there because if --

2 JUSTICE BREYER: What -- what about if we go
3 back to 1880 or whatever and they had a messenger? You
4 know, they only had one office, but they had depositors
5 in different States, and this messenger went from State
6 to State handing out the cash and collecting a fee.
7 Would Congress at that time have considered that bank
8 to be located in all the States where the messenger
9 showed up?

10 MR. GILREATH: I'm -- I'm not sure that even
11 I could say that located goes quite that far. I'm not
12 even sure that back then the -- the statutes would have
13 allowed them to have had a messenger, but assuming it
14 --

15 JUSTICE BREYER: Couldn't have a messenger?
16 He just delivered some mail. The post office was slow.

17 MR. GILREATH: You make a good point.
18 I can't -- I can't argue too much --

19 JUSTICE BREYER: The Pony Express.

20 MR. GILREATH: -- with that point.

21 CHIEF JUSTICE ROBERTS: You can have private
22 delivery of mail. Can you?

23 Well, that's a -- but what -- what even more
24 -- what about a -- a warehouse? I mean, it's where
25 they keep the -- the money bags or whatever.

1 (Laughter.)

2 CHIEF JUSTICE ROBERTS: That's all that's --
3 that's all that's -- and that's all that's in the
4 State. Are they located in that State?

5 MR. GILREATH: They've got a presence there
6 and they're doing business there. I think they would
7 be deemed located there.

8 JUSTICE STEVENS: May I ask you -- call your
9 attention to another word in the statute that seems
10 persuasive to me? It's the word respectively. The
11 statute says all national banking associations shall
12 be, for the purposes of all other actions by or against
13 them, be deemed citizens of the State in which they are
14 respectively located, which I would read as saying in
15 which each of them is located. Isn't that --

16 MR. GILREATH: That -- that's the way I read
17 it, and we -- we discussed that in our brief, that --
18 that word. We -- we said more so that it doesn't take
19 away from the position that we've got, but I -- I agree
20 with what you're saying. It could be each State.

21 And -- and the statute also says States, in
22 the plural, in which they're located.

23 JUSTICE STEVENS: They're talking about a
24 plural banking associations, not just plural branches
25 of one association. And it's in which each -- in which

1 they are respectively located, which strikes me as
2 saying in -- in which each of those national banking
3 association is located, which seems to me to read as
4 though there's only one location for each bank.

5 JUSTICE SCALIA: Well, that -- that would be
6 true if it said the State in which they are -- in which
7 they are respectively located, but it does say of the
8 States.

9 JUSTICE STEVENS: That's what it does say:
10 the States in which they are respectively located.

11 JUSTICE SCALIA: Yes, so each one could be in
12 many States. No?

13 MR. GILREATH: I read it, because it says
14 States, that it's referring to more than one State in
15 which they could be located.

16 JUSTICE STEVENS: And of course, it refers to
17 more than one State because it referred to even more
18 than one national bank association. It's a plural
19 associations, and then it says, each of them shall be
20 deemed a citizen of the State in which -- it says in
21 the plural -- in which they are respectively located.

22 MR. GILREATH: I think what -- what we said
23 in our brief was that the word respectively is -- is in
24 there so that you are not talking about all the banks,
25 but talking about each bank.

1 JUSTICE STEVENS: Correct. That's exactly
2 right.

3 MR. GILREATH: If I could move on. There are
4 many different business entities that anybody can elect
5 to -- to do business under. As I think the Chief
6 Justice raised earlier, a limited partnership, for
7 instance, is deemed to have the citizenship of all of
8 its various partners.

9 JUSTICE GINSBURG: But not with every State
10 with which it has a close nexus.

11 MR. GILREATH: Right.

12 JUSTICE GINSBURG: So, in other words, the
13 partnership -- we have a corporation where it's
14 incorporated and Congress said a principal place of
15 business. We have a partnership where each partner is
16 located. I don't know of any instance where for
17 subject matter jurisdiction, that is, which court
18 system you go to, as distinguished from personal
19 jurisdiction or venue, you have a notion that someone
20 is a citizen of every place where it does the business.

21 Is there -- is there any other example? It's
22 certainly not true of a partnership. It isn't true of
23 -- of a corporation. Is there any other entity that
24 would, for subject matter jurisdiction purposes --

25 MR. GILREATH: I don't know of any. It's the

1 -- it's the same for a limited liability company as it
2 is for a partnership I believe, that you have to -- you
3 have to look through it.

4 JUSTICE GINSBURG: Its members.

5 MR. GILREATH: But the point -- the point I
6 was making is that it -- it doesn't necessarily have to
7 be the same rule that it is for a corporation, and --
8 and that -- that's what this Court decided in the
9 Carden case.

10 JUSTICE GINSBURG: Yes, but the question that
11 I asked you is, in the realm of subject matter
12 jurisdiction, that is, which court system, Federal or
13 State, as distinguished from where can I grab this
14 person for personal jurisdiction purposes, what are my
15 venue choices, is there any other example in all of
16 title 28 where, for subject matter jurisdiction
17 purposes, this -- every place where it's located
18 counts?

19 MR. GILREATH: Not -- not that I know of.

20 CHIEF JUSTICE ROBERTS: Do we owe any degree
21 of deference to the Comptroller's interpretation of the
22 provision?

23 MR. GILREATH: There -- there is some
24 authority that I think is cited in their brief or
25 somebody's brief that the Court should give deference

1 to -- to their interpretations. But this Court is not
2 bound by their interpretations. If -- if this Court
3 concludes that their interpretation is -- is clearly
4 incorrect, then it's not -- it's not bound by it.

5 JUSTICE SCALIA: This is not a matter of --
6 of -- over which the Comptroller has administrative
7 responsibility, is it? I mean, this is just a matter
8 for the courts as to what court these associations can
9 be -- can be sued in. And I don't see how the
10 Comptroller has any business in that area.

11 MR. GILREATH: Well --

12 JUSTICE SCALIA: I mean, I -- I guess he
13 deals with these associations all the time, so we
14 should -- we should listen to him, but -- but he -- he
15 is not authoritative as to -- as to who comes into
16 court, is he?

17 MR. GILREATH: No. I would agree. In fact,
18 Congress has the final say-so, and then this Court has
19 got to look at what Congress says to interpret it. And
20 Congress said, I say very simply, that they're deemed a
21 citizen of any State wherever they are located.

22 CHIEF JUSTICE ROBERTS: What do you do with
23 their -- their hypothetical in both your friend's brief
24 and the Government's brief about Ford Motor Company,
25 not in terms of 1332 but common parlance? If you ask

1 somebody where Ford Motor is located, they're likely to
2 respond by saying, well, what do you mean? Do you mean
3 their headquarters? Do you mean the -- the plant down
4 the street? Do you mean the dealership? It does
5 suggest that located doesn't have the clear meaning
6 that you rely on.

7 MR. GILREATH: You -- you can make that
8 argument, but it -- it depends on, like you say, what
9 -- what do you mean when you ask that question. If
10 you're going out to buy a Ford car, then you obviously
11 would want to know where it's located other than in
12 Michigan. You'd want to know where the nearest Ford
13 dealership is.

14 Located, obviously, can have several
15 meanings, but that's one of the points, I think, that
16 Judge Luttig made in his opinion, is you've got to look
17 at it in the context in which it is said in the
18 statute. And looking at the statute, in the context in
19 which the word located is there, it says where -- in --
20 in the States where it's located.

21 Now, there are other places in the statute,
22 which I'm sure they will argue or have argued in their
23 brief, that -- that say, you know, it's located, when
24 they're talking about a bank -- a branch bank where you
25 can do insurance or whatever, that it can -- it can

1 sell insurance in any branch where -- where it's
2 located, and that means another meaning to locate. But
3 you've got to look at locate in the context in which
4 it's used, and --

5 JUSTICE SCALIA: But the -- the argument here
6 is -- is in the context of deciding which citizen an
7 entity is a citizen -- which State an entity is a
8 citizen of, we normally don't think that entities are
9 citizens of multiple States. Just as you wouldn't
10 think if -- if you're asking, you know, where does the
11 Ford Motor Company manage its -- its operations from,
12 you wouldn't think from multiple States.

13 So here when you're talking about
14 citizenship, why doesn't this argument of context cut
15 precisely against you? We're talking about
16 citizenship. People aren't citizens of -- of 50
17 States. I mean, that -- that's an extraordinary result
18 to reach.

19 MR. GILREATH: I -- I agree. A citizen is a
20 citizen.

21 JUSTICE SCALIA: So we should be looking for
22 one State or maybe two States at most.

23 MR. GILREATH: Well, we -- I -- I contend --
24 I can understand why you say that, but if you read the
25 -- the statute the way it's worded and you -- and you

1 look at what's going on out there, I don't see any
2 problem with this Court construing that they are a
3 citizen of a State like South Carolina where they've
4 got 179 branches. The -- according to the brief by, I
5 think, the ABA or one of the amicus, they've got
6 something like 3,600 branches.

7 Now, they come into South Carolina, they're
8 taking -- if I bank with them, they're taking my money
9 and the -- and the money of other millions of South
10 Carolinians and -- who -- who are entrusting their
11 money to them, as opposed to entrust it to a State
12 court, and if I'm banking with them, I've got to go sue
13 them in -- in Federal court. Whereas, if I'm banking
14 with a --

15 JUSTICE GINSBURG: In South Carolina. It's
16 not -- it's not as though you're being sent to some
17 other place. The only question is whether they would
18 have access to the Federal court. But as far as
19 personal jurisdiction is concerned, you have it in
20 South Carolina.

21 MR. GILREATH: No. I think if -- if we -- if
22 this Court adopts the position the petitioner wants,
23 they would be deemed a -- a citizen of North Carolina,
24 not South Carolina. And if I had -- if I got into a
25 controversy with them about something in my account, I

1 would have to go file court -- file suit in a Federal
2 court to bring them to South Carolina where I would be
3 drawing a jury from 8 or 10 counties as opposed if they
4 were a State bank or --

5 JUSTICE GINSBURG: But it would still be in
6 South Carolina.

7 MR. GILREATH: It would still be in South
8 Carolina.

9 CHIEF JUSTICE ROBERTS: And the same would be
10 true if you were dealing with a State bank incorporated
11 in North Carolina with its principal place of business
12 in Virginia that had 50 branches in South Carolina.
13 The same thing --

14 MR. GILREATH: That's -- that's true.

15 CHIEF JUSTICE ROBERTS: -- would still be
16 true.

17 MR. GILREATH: That's exactly true.

18 CHIEF JUSTICE ROBERTS: And that's the parity
19 that Congress has -- that has been the guiding
20 principle of Congress' enactments in this area since
21 1882.

22 MR. GILREATH: Well, I don't -- I don't know
23 whether I necessarily agree with that or with this
24 parity argument that they've got. I wanted -- I want
25 to address that just briefly, if I could, is the parity

1 argument -- and -- and all of this parity argument they
2 get they get from -- from these 1882, 1885, 1887
3 statutes. All of those statutes have been repealed.
4 The parity argument is gone. If -- if Congress had
5 wanted parity, then where is parity in section 1448?
6 It's not there. It was there in 1882, 1885 and '87,
7 but those statutes have been repealed. Parity is not
8 some doctrine or something in the Constitution. So I
9 think --

10 JUSTICE STEVENS: May I go -- may I go back
11 to the textual argument that Justice Scalia was
12 suggesting a little while ago? If we presume that
13 normally a citizen is a citizen of only one place --
14 there are multiple -- there are other situations where
15 you have a dual citizen -- and that you would normally
16 assume they're only a citizen in one place, then
17 Congress, in order to solve the problem of corporate
18 headquarters in the private commercial world, corporate
19 headquarters, a main piece of business, went out of its
20 way to say corporations shall be deemed to be a citizen
21 of two places -- they made a special statute when they
22 could be a citizen of two places, which overcomes the
23 presumption that it's a citizen of only one place. But
24 there's nothing to overcome the presumption that in
25 1348 they're assuming each citizen has only one place

1 of citizenship because that statute just used the word
2 respectively. It talks about many banks but in --
3 respectively citizens of -- of different States. But I
4 think that's fully consistent with the notion, sort of
5 the basic background notion, that one person has one --
6 one citizenship; one corporation has only one place of
7 citizenship.

8 MR. GILREATH: I can't -- I can't argue with
9 the logic that you've got. But I -- I still come back
10 to the language of the statute.

11 JUSTICE STEVENS: Well, this -- I'm -- I'm
12 relying strictly on the statutory language in making
13 this argument.

14 MR. GILREATH: Are you talking about 1448?

15 JUSTICE STEVENS: Yes, because it doesn't say
16 anything about anybody being a -- capable of being a
17 citizen of two different places, whereas 1332 does,
18 which is the unusual situation.

19 MR. GILREATH: I agree, but it says they
20 shall be deemed citizens of the States in which they
21 are respectively located.

22 JUSTICE STEVENS: Respectively.

23 MR. GILREATH: The statute says State -- says
24 citizens, which to me says the statute is allowing you
25 to find that they can be a citizen of more than one

1 State.

2 JUSTICE STEVENS: See, but it's clearly
3 unusual to say you can be a citizen of two places. And
4 to do that, you had a special statute in 1332. To say
5 you can be a citizen of 40 or 50 States simultaneously,
6 there really is no precedent for that.

7 MR. GILREATH: I -- I can't argue with you,
8 but I -- I still come back, you know, to the statute.
9 I -- I think -- I think the real problem here is that
10 you've got a statute that was enacted in 1948 that
11 really, if you go back and look, it goes back to 1911.

12 And obviously, in 1911, nobody knew the proliferation
13 of branch banking that was going to take place. Nobody
14 knew the proliferation of branch banking that was going
15 to take place in -- in 1948 when it was enacted.

16 And I think the real decision that this Court
17 has got to make is whether you -- you read the statute
18 and apply it or either whether you're going to leave it
19 to Congress to -- to make that change.

20 I'm not -- and -- and you may -- you may
21 apply it the way I'm arguing, and I hope you do. And
22 it may be -- and -- and if you do, then the national
23 banking associations, with all the clout they've got,
24 can go over here across the street to Congress and they
25 can get it changed. And you can bet they probably will

1 be trying.

2 But I think the real question is -- is are
3 you going to read the statute for what it says or are
4 you going to, you know, give it the reading they want
5 by going back in all this history and twisting and
6 turning to get to the point they want to get to.

7 They even -- I think this is one point I want
8 to make is if you look at their brief, right at the
9 last page of their brief -- and I think this highlights
10 the -- the problem that you've got is they say you
11 don't need to go so far as to determine two places.
12 They just want you to determine one place. And I think
13 that highlights the fact of how far they're trying to
14 stretch the rubber band on this word to -- to get the
15 -- get the meaning that they want. They -- they say
16 that ought to be left for another day.

17 And so I come back that the -- the ordinary
18 meaning of the word located should -- should put it in
19 each State. The -- I -- I think this -- I come back
20 and I think the statute is unambiguous.

21 And that leads me to the -- the Bougas case,
22 which was talked about a little bit. It's not very
23 often that you have a statute where this Court has
24 already ruled, as it did in Bougas some 28 years ago, a
25 -- a virtually identical statute dealing with the

1 banking laws. They -- they try to say, well, the in
2 pari materia doctrine ought not to apply, but I mean,
3 you've got a statute there that's a -- a banking
4 statute, admittedly dealing with venue, where this
5 Court found the same meaning that we would like for it
6 to find here. The courts -- and -- and their argument
7 about established and located completely goes away
8 because the Court said whatever the reason behind the
9 distinction in those two words, it does exist and we
10 recognize it.

11 And -- and even if you say, well, in pari
12 materia doesn't apply -- and that's what they argue.
13 Judge Luttig said, well, it -- it's -- still there's
14 some authority that similar statutes should apply.

15 And here, we have a decision that's
16 construing an almost identical statute. It reaches the
17 conclusion that -- that we would like.

18 In summary, kind of the way I look at it it's
19 kind of like in 1948 the Congress tailored a
20 citizenship suit of clothes for national banks, and --
21 and that suit of clothes, a pattern of which was laid
22 out even back into the -- the 19th century, still fits
23 the bill today. It's old. It's a 57-year-old suit of
24 clothes, and -- but it still -- it can still work. It
25 may not work the way the banks want it to work, but it

1 will work. And if the banks want to get a new suit of
2 clothes for jurisdiction, then they need to go over
3 across the street here to Congress and let it make that
4 enactment.

5 If you have no further questions, that
6 concludes my argument.

7 CHIEF JUSTICE ROBERTS: Thank you, counsel.

8 Mr. Frey, you have 2 minutes remaining.

9 REBUTTAL ARGUMENT OF ANDREW L. FREY

10 ON BEHALF OF THE PETITIONER

11 MR. FREY: Thank you, I'll try to speak
12 quickly. I just have a couple of points.

13 One is with regard to the spread of national
14 banks. There is a comparable spread of State banks.
15 For instance, Sun Trust is a bank that's comparable in
16 scope to Wachovia. It has operations in many States.
17 It has many branches, I assume, in South Carolina. And
18 yet, it is a citizen only of its home State, its State
19 of incorporation, or principal place of business.

20 If there were a problem of abuse of
21 relocation, which I think the Court was a little bit
22 worried about, Congress would deal with it the way they
23 dealt with the abuses of corporate -- stated place of
24 incorporation by passing 1332(c).

25 So let me --

1 CHIEF JUSTICE ROBERTS: No, but if there were
2 the problems that you hypothesize here, Congress could
3 have dealt with them by enacting something that dealt
4 with the proliferation of branch banks rather than
5 interpreting the 1948 statute in light of 1980's --

6 MR. FREY: It could have, but it saw no need.
7 There was a statute that had been consistently on the
8 books for a century that meant the same thing, which is
9 surely what Congress wanted. Why would Congress bother
10 when it enacted Riegle-Neal and allowed interstate
11 branching, to say, by the way, just like State
12 corporations which conduct business in many States, you
13 know, the rule that we -- we've adopted that banks are
14 located in their main office or their charter location,
15 still applies? That would --

16 CHIEF JUSTICE ROBERTS: Well, but that's not
17 a rule that they've adopted. All they say is that
18 they're citizens of wherever they're located.

19 MR. FREY: But it's been interpreted by the
20 Court. It's -- it's been -- you have a series of
21 statutes, and each time the Court says it doesn't
22 change from the original 1882 meaning. You have the
23 1882 statute then you have 1887, and the Court says this
24 means the same thing as 1882. Then you have 1911. The
25 Court says this means the same thing as 1911. Then

1 1948. I think Langdeau says it means the same thing
2 there.

3 Let me just, in the brief time I have left,
4 on in pari materia, which is at the heart of Justice
5 Scalia's question about the Bougas case. Let me just
6 cite two cases to the Court that I think are
7 instructive on this, United States against Granderson,
8 511 U.S. 39, and Fort Stewart Schools, 495 U.S. 641,
9 both refusing to apply the in pari materia doctrine
10 where you had quite comparable statutes.

11 Thank you.

12 CHIEF JUSTICE ROBERTS: Thank you, counsel.

13 The case is submitted.

14 (Whereupon, at 12:01 p.m., the case in the
15 above-entitled matter was submitted.)

16

17

18

19

20

21

22

23

24

25