No. 04-1186

In the Supreme Court of the United States

WACHOVIA BANK, NATIONAL ASSOCIATION,

Petitioner,

v.

DANIEL G. SCHMIDT III, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

28 U.S.C. § 1348 provides that, with limited exceptions that are inapplicable here, "[a]ll national banking associations shall * * * be deemed citizens of the States in which they are respectively located."

The question presented is whether, for purposes of federal diversity jurisdiction, a national banking association is "located" in, and thus deemed to be a citizen of, every state in which it maintains a branch.

RULE 29.6 STATEMENT AND PARTIES TO THE PROCEEDING

Pursuant to this Court's Rule 29.6, petitioner states that its parent company is Wachovia of Alabama, Inc. The parent company of Wachovia of Alabama, Inc. is Wachovia Corporation, a publicly held corporation. Wachovia Corporation indirectly holds 100% of petitioner's equity.

The parties to the proceeding in the court of appeals were Wachovia Bank, National Association; Daniel G. Schmidt, III; Priag LLC; and DGS Investments, Inc.

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-46a) is reported at 388 F.3d 414. The order of the court of appeals denying rehearing and rehearing en banc, and the accompanying dissent (Pet. App. 57a-62a), are unreported. The opinion of the district court (Pet. App. 47a-56a) is unreported.

JURISDICTION

The court of appeals' judgment was entered on November 1, 2004. A timely petition for rehearing was denied on January 28, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 1332(a) of the Judicial Code (28 U.S.C. § 1332(a) (1993 & Supp. 2004)) provides, in pertinent part:

> The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—
>
> (1) citizens of different States * * * .

Section 1348 of the Judicial Code (28 U.S.C. § 1348 (1993 & Supp. 2004)) provides, in pertinent part:

> The district courts shall have original jurisdiction of any civil action commenced by the United States * * * against any national banking association, any civil action to wind up the affairs of any such association, and any action by a banking association established in the district for which the court is held, under chapter 2 of Title 12, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by such chapter.

> All national banking associations shall, for the purpose of all other actions by or against them, be deemed citizens of the States in which they are respectively located.

STATEMENT

This case concerns the meaning of 28 U.S.C. § 1348, which provides that, for purposes of diversity jurisdiction, national banks are treated as citizens "of the states in which they are respectively located." At the time that Section 1348 and its predecessor statutes were enacted, all corporations, including state-chartered banks, were regarded as citizens of only a *single* state for diversity purposes. Here, however, the Fourth Circuit held that Section 1348 treats national banks as "located" in, and therefore as citizens of, *all* states in which they operate branches. Under its analysis, national banks may be citizens of multiple states across the country, and therefore have an access to the diversity jurisdiction of the federal courts that is uniquely *limited* as compared to their state-chartered competitors and other corporations. This holding is not dictated by the statutory language, was not intended by Congress, and is wholly illogical. It should be set aside.

1. Petitioner Wachovia Bank, National Association ("Wachovia") is a national banking association chartered by the Comptroller of the Currency under Title 12 of the United States Code, with its main office and principal place of business in Charlotte, North Carolina. Pet. App. 2a.[1] Wachovia maintains interstate branch locations in 15 States (including

[1] Although the term "main office" is used in several banking statutes (*e.g.*, 12 U.S.C. § 30(b)), it has no statutory definition. The Comptroller understands the term to refer to "the 'place where [the bank's] operations of discount and deposit are to be carried on'" and treats that place as "the location of the bank for corporate status purposes." OCC Inter. Ltr. 952 (Oct. 23, 2002), 2003 WL 23221430, at *1-2.

South Carolina) and the District of Columbia. See FDIC Institution Directory, http://www2.fdic.gov/idasp/main.asp (last visited Aug. 15, 2005).[2]

Wachovia commenced this action in the United States District Court for the District of South Carolina, seeking to compel the arbitration of claims that had been asserted against it by respondents, who are citizens of South Carolina. Pet. App. 2a. Wachovia invoked the district court's diversity jurisdiction pursuant to 28 U.S.C. § 1332. The court assumed jurisdiction over the action but dismissed Wachovia's petition on the merits, ruling that respondents were under no obligation to arbitrate their claims. Pet. App. 47a-56a. Wachovia timely appealed that ruling to the United States Court of Appeals for the Fourth Circuit.

Just before oral argument, respondents for the first time raised the contention that the action should be dismissed for lack of diversity jurisdiction. Respondents pointed to Section 1348, which provides that, for purposes of all actions other than certain specified ones not involved here, "national banking associations shall * * * be deemed citizens of the States in which they are respectively located." Under Section 1348, respondents argued, Wachovia is "located" in *every* state in which it maintains a branch, including South Carolina. Therefore, respondents asserted, the district court lacked diversity jurisdiction over Wachovia's petition to compel arbitration. After oral argument, the Fourth Circuit directed the parties to file supplemental briefs of not more than five pages on the jurisdictional issue.

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[2] A bank branch is defined as a place "at which deposits are received, or checks paid, or money lent." 12 U.S.C. § 36(j). Bank offices that do not perform any of these functions are not "branches" within the meaning of federal law. See *Clarke* v. *Sec. Indus. Ass'n*, 479 U.S. 388, 404-409 (1987).

2. A divided panel of the Fourth Circuit agreed with respondents, holding that Wachovia should be considered a citizen of every state in which it maintains a branch and that Wachovia's suit accordingly should be dismissed for want of jurisdiction. Pet. App. 1a-46a. The majority began by stating that "the ordinary meaning of 'located' suggests that a national bank is 'located' wherever it has a physical presence." *Id*. at 4a. The court sought to bolster this conclusion by noting that "Section 1348 uses two distinct terms to refer to the presence of a banking association: 'established' and 'located.'" *Id*. at 8a. These terms could be given "distinct meanings," the court believed, by reading "'established' to refer to a bank's charter location" and "'located' to refer to the place or places where it has a physical presence." *Ibid*. The majority relied heavily on *Citizens & Southern National Bank* v. *Bougas*, 434 U.S. 35 (1977), which held that the word "located," in a prior version of a national bank venue statute, "referred to branch locations." Pet. App. 13a.

The Fourth Circuit majority acknowledged that its holding conflicted with decisions of the Fifth, Seventh, and Ninth Circuits. It nevertheless dismissed these contrary rulings: "That our sister circuits may disagree with us in any given case is significant only insofar as their reasoning is persuasive. Here, that reasoning is simply unconvincing." Pet. App. 30a-31a. Pointing to what it described as "the evident weakness and transparent flaws in the Fifth and Seventh Circuit opinions" – respectively written for those courts by Judges Higginbotham and Flaum – the Fourth Circuit faulted their holdings as "amount[ing] to little more than judicial assertion of a policy preference in favor of federal forums for national banking associations." *Id*. at 32a.

Judge King dissented. Pet. App. 33a-46a. He first opined that the word "located" is ambiguous as a matter of ordinary usage. *Id*. at 35a. Turning to the statutory purpose, he concluded that "[t]he relevant history of our national banks reveals that Congress intended for such banks to enjoy

the same access to federal courts as that accorded other banks and corporations" (*id*. at 36a) – which, at the time of enactment of Section 1348, were deemed to be citizens of only a single state. Unlike the majority, Judge King believed that *Bougas* sheds little light on the question here because the venue provision there at issue differed in its purpose and origins from Section 1348. *Id*. at 41a-44a. He also ascribed little significance to the statute's use of the terms "established" and "located"; at the time of enactment of Section 1348, he explained, those terms "would have been functionally equivalent for jurisdictional purposes because a national bank was both 'established' and 'located' in the place specified in its certificate of organization." *Id*. at 45a (citation and internal quotation marks omitted).

Six judges voted to grant Wachovia's subsequent petition for rehearing en banc and only three voted to deny it. Four judges recused themselves, however, so the petition failed to garner the votes of a majority of the Fourth Circuit's 13 active judges and accordingly was denied. Pet. App. 57a-58a. Dissenting from the denial of rehearing, Judge King again emphasized that Congress has "consistently intended to provide national banks with the same access to the federal courts as that accorded corporations and state banks," adding that "the Supreme Court has recognized and enforced congressional intent on this point." *Id*. at 60a-61a.

INTRODUCTION AND SUMMARY OF ARGUMENT

At the time that Section 1348 and its predecessors were enacted, corporations (including state-chartered banks) were treated as citizens of only a *single* state for diversity purposes; even today, a corporation is deemed to be a citizen of no more than two states, the one in which it is incorporated and (if different) the one in which it maintains its principal place of business. As a consequence, the Fourth Circuit's holding that national banks are citizens of *all* states in which they operate branches imposes unique and extraordinary re-

strictions on the access of those entities to the diversity jurisdiction of the federal courts.

This is an outcome that no Congress that legislated on the subject could have or affirmatively did intend. To the contrary, from the creation of the national bank system in 1863, federal policy has dictated that national banks not be disadvantaged vis-à-vis their state-chartered counterparts. Against this background, the Fourth Circuit's counter-intuitive reading of Section 1348, which posits that Congress subjected national banks to different and less favorable rules than those that govern state-chartered banks and all other corporations, should be upheld only if it is compelled by unambiguous statutory language or the clearest expression of congressional intent – neither of which is present here.

A. The Fourth Circuit relied in substantial part on its belief that the word "located" as used in Section 1348 refers unambiguously to *all* places in which national banks maintain a physical presence. But that simply is not so. This Court has itself observed that "[t]here is no enduring rigidity about the word 'located'" as used in banking statutes. *Bougas*, 434 U.S. at 44. Common usage of the word confirms that it has no fixed meaning (*e.g.*, it is not at all obvious where Ford Motor Company is "located"); so does Congress's use of the word in some banking statutes to refer unequivocally to the single place where a national bank has its principal office, and in others to any place where the bank maintains a branch. And Section 1348's use of the word hardly can unambiguously mean what the Fourth Circuit said it does, when the two-judge majority's understanding of "located" has been rejected by the third member of the panel, three other courts of appeals, almost a dozen district courts, and the Comptroller of the Currency.

B. Because the language of the statute is ambiguous, the Court must turn to other interpretive guides to determine the meaning of "located." When that is done, the ambiguity is

dispelled: the statutory evolution and history make clear that Congress intended to establish jurisdictional *parity* between national and state banks. The original predecessor to Section 1348, enacted in 1882, set out that parity rule expressly, providing that federal jurisdiction over national banks "shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States." Act of July 12, 1882, 22 Stat. 162, 163. This Court consistently has held that each subsequent iteration of the statute – including the 1887 Act that first used the "located" language and the 1911 codification that put the law in essentially its current form – was not intended to effect any substantive change. And under the parity rule, the Fourth Circuit's holding is insupportable because, at the time of the enactment of Section 1348 and each of its predecessors, state banks and other corporations were understood to be citizens of only a *single* state.

This conclusion is confirmed by repeated congressional re-enactment of the "located" language *after* it had been interpreted by the courts to mandate equivalent treatment for national and state banks. This Court several times read that language to express the parity principle first enunciated in the 1882 Act; after each decision, Congress responded by using identical language in subsequent versions of the statute. Similarly, in 1943 a federal court of appeals read Section 1348's immediate predecessor to provide that national banks are not located wherever they operate branches; Congress re-enacted Section 1348 five years later without change.

The Fourth Circuit's contrary conclusion was predicated on its belief that Congress had modified the law prior to 1948 to permit interstate branching by national banks. Starting with that premise, the court reasoned that re-enactment of the term "located" in 1948 must have contemplated interstate branch locations. But here, the court of appeals simply committed an historical error. Although Congress acted in 1927 and 1933 to permit limited *intra*state branching by national

banks, the general prohibition on *inter*state branching by such banks remained in force until 1994. Intrastate banking, of course, has no implications for diversity jurisdiction. The Fourth Circuit thus labored under a crucial misimpression; because there had been no relevant change in the law governing interstate branching prior to 1948, Congress's re-enactment of the "located" language in that year *confirms*, rather than departs from, the previous view that national banks are located in only a single state for diversity purposes.

Other considerations point in the same direction. The Comptroller, whose views on the meaning of Section 1348's ambiguous language are entitled to deference, has concluded that national banks are not "located" wherever they operate branches. And the Fourth Circuit's holding departs from the settled congressional policy – dating to enactment of the first national banking statute in 1863 – of not disfavoring national banks vis-à-vis their state counterparts.

C. The Fourth Circuit also erred in reasoning that the words "established" and "located" as used in Section 1348 must be given different meanings. The history of interstate branch banking belies this analysis. Because national banks as a general rule could maintain banking offices in only a single state at the time of the enactment of Section 1348 and its predecessors, the words were functionally identical for jurisdictional purposes when they were placed in the statute. Moreover, the words were not chosen at the same time by the same Congress. Instead, the "located" clause of Section 1348 was drafted in 1887, while the "established" clause originated in a different statute in 1875. The two clauses were combined with the codification of Section 1348's predecessor in 1911. Because Section 1348 thus was formed from pre-existing bits, there is every reason to believe that Congress did not give any thought to, or see any significance in, the use of different words in the provision's two sentences (especially because, at the time, no consequences could have followed from use of different words).

D. The majority below also erred in relying on this Court's decision in *Bougas* construing the word "located" in a former national bank venue statute. *Bougas* expressly eschewed reliance on the "plain meaning" of "located." Instead, the Court focused on the policies of the venue statute, which are concerned with the convenience of the parties, concluding that national banks would not be unduly burdened by litigating where they maintain branches. Section 1348, in contrast, is a diversity statute that is aimed at the possibility of local prejudice against an out-of-state entity – a concern that applies to national banks every bit as much as it does to other corporations conducting a national business.

E. Concluding that national banks are not "located" everywhere they operate branches leaves open one question: what *is* a national bank's location for purposes of Section 1348? Decision of that question is not necessary for the resolution of this case because Wachovia cannot be deemed a citizen of South Carolina under any plausible test. But having said that, it is Wachovia's position that Congress intended national banks to be citizens of only a single state for diversity purposes. That state is the one identified in the bank's organization certificate, as modified by any designation submitted to the Comptroller that moves the institution's main office to a new state. This reading of the statute, which comports with Congress's stated goal of jurisdictional parity and rests on a close analogy to the citizenship rules applicable to other corporate entities at the time of Section 1348's enactment, focuses on the state where Congress would have regarded a national bank as being "located."

ARGUMENT

The Fourth Circuit held that Congress intended to depart from the ordinary rules defining the place of corporate citizenship – and to substantially diminish the availability of diversity jurisdiction for national banks – when it provided in Section 1348 that a national bank should be deemed a citizen

of the state where it is "located." Surely, a court should not reach such a counter-intuitive result unless compelled to do so by clear statutory language or manifest congressional intent. But here, the controlling statutory language is ambiguous, while the legislative history shows that Congress intended to establish jurisdictional *parity* between national and state-chartered banks. Thus, as this Court remarked in similar circumstances last Term, "[t]he text does not dictate th[e Fourth Circuit's] result; the statutory history suggests otherwise; and there is scant indication Congress meant to change the well-established meaning" (*Koons Buick Pontiac GMC, Inc.* v. *Nigh*, 125 S. Ct. 460, 468 (2004)) of a prior statutory provision that expressly required equivalent jurisdictional treatment for national and state banks. Consequently, the court of appeals' decision should be reversed.

A. The Term "Located" In Section 1348 Is Ambiguous

In holding national banks to be citizens of all states in which they operate branches, the Fourth Circuit first concluded that the word "located" is wholly unambiguous, a point to which it returned throughout its opinion. Pet. App. 4a-7a, 11a, 19a, 31a. Looking largely to dictionary definitions, the court reasoned that, "[i]n ordinary parlance, the word 'located' is a general term referring to physical presence in a place." *Id*. at 4a. From this starting point, the court determined that "the ordinary meaning of 'located' * * * naturally includes branch offices." *Id*. at 5a.

This Court, however, has understood matters differently, observing that "[t]here is no enduring rigidity about the word 'located'" and finding that recourse to the legislative purpose therefore is necessary to make sense of a statute using the term. *Bougas*, 434 U.S. at 44 (interpreting "located" in a national bank venue statute). And as other courts have pointed out in the specific context of Section 1348, the obvious problem with tying "located" to the concept of "physical presence

in a place" is that it begs the fundamental question that determines the outcome here: physical presence *of what*?[3] The point is made clear by looking to common usage of the word. Consider, for example, the following question: "where is the Ford Motor Company located?" We suspect that most people who are asked that question would either simply say "Michigan" or would, at a minimum, seek clarification: did the questioner want to know the location of Ford's headquarters, or did the query refer to all the places around the world where Ford has facilities?[4] But the word "located," viewed in isolation, does not make clear precisely what information is sought.

In fact, the ambiguity of "located" as used in this setting would seem beyond reasonable dispute. It is surprising that the Fourth Circuit ruled otherwise here, since the court itself acknowledged that the word is sufficiently adaptable that, in many provisions of the National Bank Act, Congress used "location" "in a specialized sense to refer only to charter location." Pet. App. 19a-20a. Thus, the word is used in some banking statutes to refer unequivocally to the place where a national banking association has its principal office. *E.g.*, 12

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[3] A number of dictionary definitions of "locate" are collected by the Fourth Circuit (see Pet. App. 4a) and by the Seventh Circuit in *Firstar Bank N.A.* v. *Faul*, 253 F.3d 982, 987 (7th Cir. 2001). But as the Seventh Circuit explained after reviewing these entries, "[u]nfortunately, such definitions do not provide much aid in our inquiry – what we are trying to determine is the number or scope of places where a national bank is fixed or established." *Ibid*.

[4] As Judge Flaum wrote for the Seventh Circuit in *Firstar*, "if in the course of discussing jurisdictional motions a federal judge asks a lawyer representing a corporation 'where is your client located?,' the judge likely expects to hear the lawyer respond by naming the state containing the corporation's principal place of business and probably the state of incorporation as well. The judge does not expect for the lawyer to rattle off every state where the corporation has facilities or a presence." 253 F.3d at 987.

U.S.C. § 32 (liabilities of association "under its old name or at its old location" not affected), § 52 (stock certificates must bear "the name and location of the association"), § 75 (shareholders' meetings shall be postponed until the first banking day following "a legal holiday in the State in which the bank is located"). In other national bank statutes, by contrast, the word refers to any place where a national bank maintains a branch office. *E.g.*, 12 U.S.C. § 92 (allowing a national bank "located and doing business in any place the population of which does not exceed five thousand inhabitants" to sell insurance). Because the word is capable of more than one plausible interpretation, then, it is ambiguous, and its meaning in Section 1348 cannot be divined by resort to a "plain meaning" analysis.

Other judicial interpretations of Section 1348 confirm the point. Three courts of appeals, the dissenting judge below, almost a dozen federal district courts,[5] and the Comptroller of the Currency (see OCC Inter. Ltr. 952 (Oct. 23, 2002), 2003 WL23221430) have all concluded that "located" as used in Section 1348 is ambiguous and does *not* refer to branches;

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[5] See *RDC Funding Corp.* v. *Wachovia Bank, N.A.*, 2004 WL 717111 (D. Conn. Mar. 31, 2004) (unpublished opinion); *Adams* v. *Bank of Am., N.A.*, 317 F. Supp. 2d 935, 941-942 (S.D. Iowa 2004); *MBIA Ins. Corp.* v. *Royal Indem. Co.*, 294 F. Supp. 2d 606 (D. Del. 2003); *Carl* v. *Republic Sec. Bank*, 282 F. Supp. 2d 1358, 1364 n.1 (S.D. Fla.), appeal dismissed, 2003 WL 22172202 (11th Cir. Aug. 5, 2003); *Evergreen Forest Prods. of Ga., LLC* v. *Bank of Am., N.A.*, 262 F. Supp. 2d 1297, 1307 (M.D. Ala. 2003); *Bank One, N.A.* v. *Shreeji A&M, Inc.*, 2003 U.S. Dist. LEXIS 10994 (N.D. Tex. June 27, 2003); *Pitts* v. *First Union Nat'l Bank*, 217 F. Supp. 2d 629, 630-631 (D. Md. 2002); *Bank One, N.A.* v. *Euro-Alamo Invs., Inc.*, 211 F. Supp. 2d 808, 810 (N.D. Tex. 2002); *Bank of Am., N.A.* v. *Johnson*, 186 F. Supp. 2d 1182, 1183 (W.D. Okla. 2001); *Fin. Software Sys.* v. *First Union Nat'l Bank*, 84 F. Supp. 2d 594, 601 (E.D. Pa. 1999).

the majority below concluded that it *does*.[6] In similar circumstances, and faced with a similar disagreement (although one involving a far *less* developed conflict in the lower courts), this Court observed that "it would be difficult indeed to contend that the word 'interest' in the National Bank Act is unambiguous with regard to the point at issue here." *Smiley* v. *Citibank (S.D.), N.A.*, 517 U.S. 735, 739 (1996). Precisely the same conclusion applies in this case. Analysis of Section 1348 must therefore "proceed on the premise that the text [of the statute] is not altogether clear." *Koons*, 125 S. Ct. at 470-471 (Kennedy, J., concurring).

B. The Background And Evolution Of Section 1348 Indicate That National Banks Are Not "Located" Wherever They Operate Branches

Because Section 1348 is ambiguous, the Court must turn to other interpretive aids to determine the meaning of "located." Simply as a logical matter, the absence of any evi-

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[6] Some district courts have held that national banks are "located" within the meaning of Section 1348 in states where they operate branches, but even these courts did not suggest that the word "located" as used in the statute is unambiguous. See *Frontier Ins. Co.* v. *MTN Owner Trust*, 111 F. Supp. 2d 376, 379-380 (S.D.N.Y. 2000); *Ferraiolo Constr., Inc.* v. *Keybank, N.A.*, 978 F. Supp. 23 (D. Me. 1997); *Norwest Bank Minn., N.A.* v. *Patton*, 924 F. Supp. 114, 115 (D. Colo. 1996); *Bank of New York* v. *Bank of Am.*, 861 F. Supp. 225, 231 (S.D.N.Y. 1994); *Connecticut Nat'l Bank* v. *Iacono*, 785 F. Supp. 30 (D.R.I. 1992). The Second Circuit considered the meaning of Section 1348 in two cases, but has not squarely decided the meaning of "located." See *United Republic Ins. Co.* v. *Chase Manhattan Bank*, 315 F.3d 168, 169 (2d Cir. 2003) (remanding case to district court to determine whether diversity jurisdiction existed under 28 U.S.C. § 1348); *World Trade Ctr. Props., L.L.C.* v. *Hartford Fire Ins. Co.*, 345 F.3d 154, 161 (2d Cir. 2003) (suggesting, in *dictum*, that a national bank is deemed by 28 U.S.C. § 1348 "to be a citizen of every state in which it has offices").

dent reason why Congress would have wanted national banks to be governed by different rules from those applicable to state banks suggests that the Fourth Circuit's reading of the statute is an improbable one. And common sense is confirmed by the statutory and jurisprudential history of Section 1348. In fact, Congress enacted and re-enacted the language at issue here to establish jurisdictional *parity* between national banks and their state-chartered counterparts, which were considered citizens of a *single* state at all times from 1882 (when Congress first established jurisdictional parity) to 1887 (when the language now codified in Section 1348 was first enacted) to 1948 (when Congress enacted Section 1348 and last turned its attention to the question of diversity jurisdiction for national banks).[7] The Fourth Circuit's holding cannot be reconciled with this congressional intent – or with the numerous prior decisions of this Court construing Section 1348's predecessors.

1. The Statutory History Of Section 1348 Shows That Congress Intended To Establish Jurisdictional Parity Between National Banks And State-Chartered Corporations

a. Section 59 of the National Currency Act of 1863 provided that any suit by or against a national bank could be brought in federal court. See 12 Stat. 665, 681 (1863). The following year, Congress provided that most such suits also could be filed in state court. See National Bank Act of 1864, § 57, 13 Stat. 116-117.

In 1882, however, Congress eliminated general federal question jurisdiction for suits involving national banks; at the same time, it preserved diversity jurisdiction in such suits, expressly requiring parity in the jurisdictional treatment of

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[7] Many of the relevant statutory provisions discussed below are reprinted as an appendix to the Court's opinion in *Mercantile National Bank at Dallas* v. *Langdeau*, 371 U.S. 555, 567-572 (1963).

national and state banks. A proviso to Section 4 of the 1882 Act stated:

> [T]he jurisdiction for suits hereafter brought by or against any association established under any law providing for national-banking associations * * * shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national-banking associations may be doing business when such suits may be begun[.]

Act of July 12, 1882 (the "1882 Act"), 22 Stat. 162, 163. The legislative history of the 1882 Act confirms Congress's intention. The sponsor of the amendment that became the proviso to Section 4 explained unequivocally that "'the jurisdictional limits for and as to a national bank shall be the same as they would be in regard to a State bank actually doing or which might be doing business by its side; that they shall be one and the same.'" *Mercantile Nat'l Bank at Dallas* v. *Langdeau*, 371 U.S. 555, 566 n.22 (1963) (quoting 13 Cong. Rec. 4049 (1882) (remarks of Rep. Hammond)).

Not long after passage of the 1882 Act, this Court interpreted it as "evidently intended to put national banks on the same footing as the banks of the state where they were located for all the purposes of the jurisdiction of the courts of the United States." *Leather Mfrs. Nat'l Bank* v. *Cooper*, 120 U.S. 778, 780 (1887). The Court added that, under the 1882 Act, a federal court would have jurisdiction in suits involving national banks when "a similar suit could be entertained by the same court by or against a state bank in like situation with the national bank." *Id*. at 781. As the Fourth Circuit itself acknowledged, the 1882 Act thus "was couched in terms of jurisdictional parity between national banks and state banks." Pet. App. 24a.

In 1887, Congress amended the then-existing judiciary statutes to include for the first time the "located" formulation

that appears today in 28 U.S.C. § 1348. The new language provided:

> That all national banking associations * * * shall, for purposes of all actions by or against them, * * * *be deemed citizens of the States in which they are respectively located*; and in such cases the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State.

Act of March 3, 1887 (the "1887 Act"), 24 Stat. 552, 554-555, § 4 (emphasis added); see also 25 Stat. 433 (1888) (correcting the text of the 1887 Act but not changing the relevant language).

In its first encounter with the 1887 Act, this Court concluded that Congress intended *no* substantive change from the 1882 Act and did *not* establish any special diversity rules for national banks. In fact, the Court suggested that Congress could have accomplished its purpose by doing no more than eliminating general federal question jurisdiction for suits involving national banks, but that, "[o]ut of abundant caution, [the 1887 Act] provided that national banks, for purposes of actions by or against them, should be deemed citizens of the states in which they were respectively located." *Petri* v. *Commercial Nat'l Bank of Chicago*, 142 U.S. 644, 650 (1892). Referring to the statutory clause specifying that federal courts "shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State," the Court also noted that "[n]o reason is perceived why it should be held that congress intended that national banks should not resort to federal tribunals as other corporations and individual citizens might." *Id.* at 650-651.[8] To the contrary, the Court found it "to be clear

[8] This clause – "the circuit and district courts shall not have jurisdiction other than such as they would have in cases *between* individual citizens of the *same* State" – was inartfully phrased. Read

that th[is] clause was intended to have, and must receive, *the same effect and operation* as that of the proviso" in the 1882 Act, which established jurisdictional parity between national and state banks. *Id*. at 651 (emphasis added). The Court added that, so far as diversity jurisdiction in suits involving national banks was concerned, "no limitation in that regard was intended." *Id*.[9]

In 1911, Congress amended the 1887 Act, incorporating it into the Judicial Code using wording substantially similar to the language of Section 1348. The 1911 amendment provided that district courts would have jurisdiction

> [o]f all cases commenced by the United States, or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any association

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literally, it would appear to *eliminate* diversity jurisdiction for national banks because diversity does not exist "between" citizens of the "same" state. As the Court explained shortly after enactment of the provision, however, Congress had no such intent. Although noting delicately that "[t]he use of the word 'between' is perhaps open to criticism," the Court found it "clear" that this clause was designed simply to indicate that national banks must rely on diversity rather than federal question jurisdiction when bringing cases involving state-law claims to federal court. *Petri*, 142 U.S. at 651. The Court thus understood Congress to have meant that a national bank should receive the same treatment for diversity purposes as applied in cases involving (rather than "between") an individual citizen of the state where the bank was based.

[9] In subsequent years, the Court reiterated its view that the 1887 Act was "similar in its terms" to the 1882 Act. See *Ex Parte Jones*, 164 U.S. 691, 693 (1897); *Federal Intermediate Credit Bank of Columbia, S.C.* v. *Mitchell*, 277 U.S. 213, 216 (1928) (national banks were by the acts of 1882 and 1887 "put on the same basis in respect of jurisdiction as if they had not been organized under an act of Congress"); see also *Herrmann* v. *Edwards*, 238 U.S. 107, 111-112 (1915).

> established in the district for which the court is held, under the provisions of title "National Banks," Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. *And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, * * * be deemed citizens of the States in which they are respectively located.*

Act of Mar. 3, 1911, Pub. L. 61-475, § 24, 36 Stat. 1087, 1092-1093, ch. 2 (1911) (the "1911 amendment") (emphasis added).

The 1911 amendment thus kept the "located" language of the 1887 Act intact, while eliminating the 1887 Act's confusing and inartfully drafted clause stating that "the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State." This Court concluded that the 1911 amendment was not intended to effect any substantive change in the law. As the Court explained, "while [the amendment] adopted a different form of expression, it was in substance a reenactment of the earlier provision [of the 1887 Act] in respect of such jurisdiction. The provisions of the [1911] Judicial Code are to be construed as continuations of existing statutes, and no change of intent is to be implied unless clearly made manifest." *Federal Intermediate Credit Bank at Columbia, S.C.* v. *Mitchell*, 277 U.S. 213, 216 (1928); see also *Herrmann* v. *Edwards*, 238 U.S. 107, 117-118 (1915) (explaining that the intent of the 1911 amendment was "obviously to make the purpose of the re-enacted statute clearer" and noting that change in the meaning of legislation "by the adoption of the [1911] Judicial Code" is "not to be indulged in without a clear manifestation of such purpose"); Act of Mar. 3, 1911, 36 Stat. 1087, 1167, ch. 13, § 294 ("The provisions of this Act, so far as they are substantially the same as existing statutes, shall be construed as continuations thereof,

and not as new enactments, and there shall be no implication of a change of intent by reason of a change of words in such statute, unless such change of intent shall be clearly manifest.").

Finally, in 1948, Congress recodified the language now appearing in Section 1348 without substantive change.[10] Congress has made no further amendments to the statutory text. In 1963, this Court restated *Petri's* longstanding interpretation of Section 1348's statutory predecessor, remarking

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[10] Curiously, it was not until 1948 that Congress expressly repealed that portion of the 1882 Act that specified jurisdictional parity between state and national banks, even though that proviso had long been rendered duplicative by succeeding legislation. *See Langdeau,* 371 U.S. at 570-571 & App. n.1 (setting forth in detail the statutory history of the relevant enactments). The codifiers of the 1911 Judicial Code expressly repealed the 1887 and 1888 Acts (see 1911 Amendment, 36 Stat. 1087, 1168, ch. 231, § 297), which had amended the 1875 Judiciary Act and were, accordingly, placed in the section of the Revised Statues that described the jurisdiction of the federal courts. The codifiers apparently overlooked the 1882 jurisdictional provision, however, which had amended the National Bank Act and been placed in a different section of the Revised Statutes dealing with national banks. The language from the 1882 Act did not appear in the 1925 version of the United States Code, which was an "official restatement * * * of all United States statutes presumptively in effect, evidently because the Committee on Revision cited the entire 1882 Act as repealed." *Langdeau,* 371 U.S. at 570 n.1. No significance should be attributed to Congress' housekeeping repeal of the 1882 provision as part of the 1948 codification of Section 1348; that codification, in the absence of a clear expression by Congress in the Reviser's Notes, did not effect any substantive change to the pre-existing statutes. See *Goldstein* v. *Cox,* 396 U.S. 471, 477-78 (1970); *Aberdeen & Rockfish RR. Co.* v. *Students Challenging Regulatory Agency Procedures,* 422 U.S. 289, 309 n.12 (1975). No such intent is expressed in the Reviser's Notes to Section 1348.

that "Section 4 [of the 1882 Act] apparently sought to limit, with exceptions, the access of national banks to, and their suability in, the federal courts to the same extent to which non-national banks are so limited." *Langdeau*, 371 U.S. at 565-566.

b. As this history of Section 1348 confirms, nothing in the language or evolution of the statute suggests that Congress ever intended national banks to be governed by uniquely unfavorable diversity rules. The Fourth Circuit itself recognized that the 1882 Act expressly created jurisdictional parity between national banks and their state-chartered counterparts. Pet. App. 24a. And this Court has consistently held that the subsequent re-enactments and modifications of that Act made *no* substantive change in the law. Thus, in *Petri*, the Court concluded that the 1887 Act "was intended to have, and must receive, the same effect and operation as that of the proviso" in the 1882 Act. 142 U.S. at 651. Likewise, in *Mitchell* and *Herrmann*, the Court confirmed that the 1911 codification of the 1887 Act "was in substance a reenactment of the earlier provision [of the 1887 Act] in respect of [diversity] jurisdiction." *Mitchell*, 277 U.S. at 216. Neither did the 1948 codification effect any substantive change. The lesson to be drawn from this history is clear: Congress has remained faithful – from 1882 to the present – to its intention to provide national banks the same access to the diversity jurisdiction of the federal courts as is enjoyed by state banks and other corporations.

This principle of jurisdictional parity compels the conclusion that national banks must be treated as citizens of only a single state. Both at the time the "located" language was first enacted in Section 1348's predecessor in 1887 and when the statute was placed in its current form in 1948, it was the settled rule that corporations were treated for purposes of diversity as citizens *only* of their state of incorporation. This Court announced the governing rule as early as 1844. See *Louisville C. & C.R. Co.* v. *Letson*, 43 U.S. (2 How.) 497

(1844). The theoretical underpinnings of this doctrine changed over the years, but the fundamental rule itself was squarely reaffirmed in 1854 (see *Marshall* v. *Balt. & Ohio R.R. Co.*, 57 U.S. (16 How.) 314, 329 (1854)) and was not challenged for the next hundred years. See generally *Carden* v. *Arkoma Assocs.*, 494 U.S. 185, 188 (1990); 15 J. Moore, *et al*., MOORE'S FEDERAL PRACTICE § 102 App.05 (3d ed. 1995).[11] When referring to the state where a national bank is "located," Congress accordingly must have had in mind the single state that was most equivalent to a state-chartered corporation's state of incorporation.

The Comptroller of the Currency surely had it right, then, when arguing, in support of Wachovia's petition for rehearing before the Fourth Circuit, that the holding below "departs from over 100 years of congressional action regarding federal court jurisdiction for national banks and consistent Supreme Court interpretations." No. 03-2061 (4th Cir.), *Wachovia Bank, N.A.* v. *Schmidt*, Br. for the Office of the Comptroller of the Currency, at 5. See also OCC Inter. Ltr. 952 (Oct. 23, 2002), 2003 WL 23221430, at *4-5. This conclusion by the Comptroller, about the meaning of a statutory provision that effectuates national banking policy, is due deference by the Court.

c. The Fourth Circuit disregarded this Court's longstanding interpretation of Section 1348 and its predecessors because it misapprehended the statute's history.

First, while acknowledging that the 1882 Act provided for parity between national and state banks, the court of ap-

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[11] Congress modified this rule in 1958, providing in 28 U.S.C. § 1332(c) that a corporation should be deemed a citizen not only of its state of incorporation but also "of the State where it has its principal place of business." See *Carden*, 494 U.S. at 196. It remains the rule that corporations are *not* treated as citizens of all states in which they maintain facilities or do business.

peals pointed to changes in the statutory text in 1887 and 1911 as "progressively *eliminating* parity language." Pet. App. 25a (emphasis in original). This characterization, however, wholly ignores this Court's conclusion in *Petri* that the "parity" provisions in the 1882 and 1887 Acts were "intended to have, and must receive, the same effect and operation." See *Petri*, 142 U.S. at 651. Exacerbating this error, the Fourth Circuit entirely failed to acknowledge this Court's conclusion in *Mitchell* and *Herrmann* that the 1911 amendment "was in substance a re-enactment of the earlier provision [of the 1887 Act]." *Mitchell*, 277 U.S. at 216. See *Herrmann*, 238 U.S. at 117-118. Indeed, the court of appeals' opinion does not cite *Herrmann* or *Mitchell* – oversights that go a long way toward explaining the court's misconstruction of the statute.

By the same token, the Fourth Circuit misapprehended the import of the elimination of the 1887 Act's final clause, on which the court placed primary reliance in its deconstruction of the statutory history. See Pet. App. 24a-25a (emphasizing repeal of a "clarifying clause about jurisdictional parity"). The language upon which the Fourth Circuit focused stated: "the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same state." This confusing clause was hardly a clear statement of the parity principle; as we have noted, it would have *eliminated* diversity jurisdiction for national banks if read literally, although Congress actually intended just the opposite. Moreover, by providing that federal courts would *not* have jurisdiction in cases involving national banks *except* when they would have jurisdiction in like cases over individual citizens, the clause was a *limitation* on the ability of national banks to invoke federal jurisdiction. Removal of this limitation in 1911 accordingly cannot have been intended to make it more *difficult* for national banks to bring their suits to federal court. Instead, as

this Court held in *Herrmann*, the purpose of the deletion was simply to make the statute clearer. 238 U.S. at 117-18.[12]

Second, the Fourth Circuit opined that recognition of the parity principle would establish only that Congress generally intended national and state banks to be subject to diversity rather than federal question jurisdiction, and not "to require that the same rules regarding the technical qualifications for state citizenship must apply both to national banks and to corporations." Pet. App. 26a-29a. Any reasonable application of the concept of parity, however, demands not only that national banks have *no more* access to federal court than state banks, but also that they have *no less* access. This interpretation was expressly stated in the proviso to Section 4 of the 1882 Act and in the comments of its congressional sponsor, who explained that the purpose of that provision was to make the "jurisdictional limits" of national and state banks "one and the same." 13 Cong. Rec. 4049 (1882). That purpose could have been effected only by subjecting national banks to the same jurisdictional rules regarding "technical qualifications for state citizenship" as state banks.

In fact, the Fourth Circuit's reasoning, which requires an affirmative showing that Congress intended the usual diversity rules to apply to national banks, has matters backwards. As we have noted, the Congresses that enacted Section 1348 and its predecessors legislated against the background of a settled rule that deemed corporations (including multistate businesses) to be citizens of only a single state. The Fourth Circuit found it significant that Congress did not *expressly* apply this rule to national banks and did not specify that the diversity rules governing national banks and other corporations would be identical in every jot and tittle. But as a mat-

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[12] Moreover, the Fourth Circuit confused the timing of the statutory modifications. The 1887 proviso was deleted from the national bank jurisdiction statute in 1911 and not, as the court of appeals believed, in 1948. See Pet. App. 24a-25a.

ter of common sense – a principle that the Court often invokes as an aid to statutory construction (see, *e.g.*, *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000); *Koons*, 125 S. Ct. at 470 (Stevens, J., concurring)) – it should not require any special evidence of intent to find that Congress expected the ordinary rules to govern when it provided, using general language, that national banks may rely on diversity to invoke the jurisdiction of the federal courts.

Third, the Fourth Circuit described as "perhaps [the] most telling[]" point regarding the legislative history of Section 1348 that "if Congress desired to 'maintain this parity' between national banks and state corporations * * * it is very surprising that Congress did not adopt similar language in Section 1348 to the language it adopted soon afterward in section 1332(c)(1), enacted in 1958," which "provides for dual citizenship of corporations, in the state of incorporation and at the principal place of business." Pet. App. 29a. The court reasoned that "[i]nterpreting the diversity jurisdiction statute governing national banks in light of the diversity jurisdiction statute governing corporations, as seems reasonable, we would conclude that Congress' use of *entirely different* language in the two reflects that it did *not* intend to adopt the same jurisdictional scheme for national banks as for corporations." *Id*. at 30a (emphasis in original).

If this is the "most telling" point in support of the Fourth Circuit's analysis, however, what it tellingly demonstrates is the weakness of its holding. Given this Court's skepticism of post-enactment legislative history (see, *e.g.*, *Central Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 187 (1994)), Congress's failure *in 1958* to amend Section 1348 casts no useful light on the legislative intent ten years earlier when Section 1348 was codified – let alone in 1911 and 1887, when the relevant language was written and put in its current form. Nor can Congress's failure in 1948 to incorporate language in Section 1348 that it did not apply to

other corporations *for another ten years* possibly be thought to signal an intent in 1948 to diminish the diversity jurisdiction then available to national banks.

2. Repeated Congressional Re-enactment Of The "Located" Language Must Be Understood To Endorse Judicial Rulings Interpreting That Language As Requiring Parity In The Treatment Of National Banks And Other Corporations

a. The conclusion that Congress intended Section 1348 to maintain jurisdictional parity finds additional support in the repeated congressional re-enactment of the "located" language *after* it had been interpreted by the courts to call for equivalent treatment for national and state banks. As we have explained, in 1892 this Court held that the 1887 Act's "located" clause was intended to restate the express parity principle of the 1882 Act, and that "[n]o reason is perceived why it should be held that congress intended that national banks should not resort to federal tribunals as other corporations and individual citizens might." *Petri*, 142 U.S. at 650-651. The same "located" provision was used in the 1911 amendment. Later, after the Court held in *Herrmann* and *Mitchell* that the 1911 amendment "was in substance a re-enactment of the earlier provision [of the 1887 Act]" (*Mitchell*, 277 U.S. at 216)), Congress re-enacted essentially identical language in 1948 as Section 1348. This history calls for application of the rule that, "[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well." *Bragdon* v. *Abbott*, 524 U.S. 624, 645 (1998); see also, *e.g.*, *Ankenbrandt* v. *Richards*, 504 U.S. 689, 700-701 (1992).

A lower court decision shortly before the 1948 codification buttresses this conclusion. In 1943, the Ninth Circuit considered the very question presented here: whether a national bank that operated a branch across state lines from its principal place of business should be treated as a citizen of the branch's state for diversity purposes. *Am. Surety Co.* v. *Bank of California*, 133 F.2d 160 (9th Cir. 1943).[13] Applying the statute that was the immediate predecessor of Section 1348, the court of appeals reasoned that "[t]here would appear to be a close analogy between [a national] bank and a corporation national in scope." *Id*. at 162. The court accordingly rejected the contention that a national bank is a citizen of the state in which its branch is located, explaining that such a rule "would be a noteworthy departure from the general rule, and more likely than not Congress would have plainly state[d] such intent." *Ibid*. Presumably aware of this decision (see *Lorillard* v. *Pons*, 434 U.S. 575, 580 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change")), Congress codified the same operative language without change just five years later in Section 1348.

In the face of this consistent understanding of the meaning of "located" prior to codification of the current Section 1348 in 1948, and in the absence of any contrary judicial au-

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[13] The bank's main office was in California; it operated a branch in Oregon. See 133 F.2d at 161. Although the court did not address the history of the institution, a predecessor state bank had opened the branch. See ANNUAL REPORT OF THE COMPTROLLER OF THE CURRENCY (Dec. 4, 1922), at 83 (noting that the Bank of California, formerly a state bank, continued to operate branches it had established before obtaining a federal charter). Federal law generally precluded interstate branching by national banks at the time, but state-chartered banks that converted to or combined with national banks were permitted to retain their branches. See note 14, *infra*.

thority at that time, the presumption that Congress intended to embrace the prevailing construction is insurmountable. As Judge Higginbotham put it in his opinion for the Fifth Circuit:

> It is * * * plain that Congress enacted section 1348 against a backdrop of equal access to the federal courts for national banks, state banks, and corporations. Because section 1348 does not have any language modifying or rejecting the interpretive understanding that came with its predecessors, this court should presume that Congress intended to retain and incorporate the existing interpretive backdrop.

Horton v. *Bank One, N.A.*, 387 F.3d 426, 431 (5th Cir. 2004); see also *Firstar*, 253 F.3d at 988; Pet. App. 40a (King., J., dissenting).

b. In reaching the contrary conclusion, the Fourth Circuit relied in large part on a mistaken belief that Congress had modified the law prior to 1948 to permit interstate branching by national banks, and that "Congress was aware of this change, having effected the change itself." Pet. App. 12a; see *id*. at 21a. On this basis, the court concluded that "Congress' re-adoption of the *general* term 'located' in 1948, after it became possible for national banks to locate to other states through branch offices, confirms that Congress did *not* intend to restrict the term to a bank's principal place of business." *Id*. at 12a (emphases in original). But here, the court of appeals was flatly mistaken; interstate branching by national banks was *not* permitted in 1948.

From 1863 until 1927, federal law did not permit *any* branching by a national bank, either within or outside the state where the bank did business. See G. Fischer, AMERICAN BANKING STRUCTURE 42-43 (1968); Wilmarth, *Too Big to Fail, Too Few to Serve? The Potential Risks of Nation-*

wide Banks, 77 IOWA L. REV. 957, 972 & n.51 (1992).[14] Remarking on this history, a congressional report observed in 1994 that the national bank system during this period "was comprised entirely of unit banks" (S. Rep. No. 103-240, 103rd Cong., 2d Sess. 5 (1994)) – *i.e.*, institutions with only a single banking office. See *Horton*, 387 F.3d at 432.

In 1927, Congress passed the McFadden Act, which responded to an explosion in *intra*state branching by state banks by allowing national banks to operate branches within the cities in which they maintained their principal offices, but only to the extent that state banks in the same municipalities were so authorized. See Pub. L. 69-639, 44 Stat. 1224, 1228-1229; *First Nat'l Bank of Logan* v. *Walker Bank & Trust Co.*, 385 U.S. 252, 257-58 (1966) (describing Congress's purpose in enacting McFadden Act). Six years later, Congress amended the McFadden Act to allow national banks to estab-

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[14] Congress permitted state-chartered banks to retain their branches if they converted to or merged with national banking associations. See Act of March 3, 1865, ch. 78, § 7, 13 Stat. 459; Revised Statutes of 1875, 18 Stat. 1, 996, & 1003, § 5155. But national bank branches of any kind during this period were so rare that they could not have figured in congressional consideration of the national bank diversity jurisdiction legislation in 1887 or 1911. "From the early 1860s to the 1890s there was almost no mention of branch banking in Congressional debates and very little discussion of the subject in general." G. Fischer, *supra*, at 25 (footnote omitted). Indeed, as of 1900 only five national banks – out of the more than 12,000 national and state-chartered commercial banks then operating nationwide – maintained any branches at all. See *id*. at 31, 35. And virtually all of these were *intrastate* branches; as of 1922, it appears that only a *single* national bank, the Bank of California, maintained interstate branches. See ANNUAL REPORT OF THE COMPTROLLER OF THE CURRENCY (Dec. 4, 1922), at 83-84. The Fourth Circuit properly did not suggest that the predecessors to Section 1348 were written with that anomalous institution in mind.

lish *intra*state branches outside their home municipalities, but again only to the extent that state-bank branches were afforded the same opportunity. See Pub. L. 73-55, 48 Stat. 162, 189-190; *Walker Bank*, 385 U.S. at 259-261 (describing legislative history of 1933 Act).

The McFadden Act (both as originally enacted in 1927 and as amended in 1933) did not allow national banks to have *inter*state branches. See generally *Northeast Bancorp, Inc.* v. *Board of Governors*, 472 U.S. 159, 169 (1985) (observing that "interstate branch banking was * * * prohibited by the McFadden Act"); Wilmarth, *supra*, 77 IOWA L. REV. at 973-74. When the states began greatly to relax the restrictions on interstate banking by state-chartered banks towards the end of the twentieth century, Congress kept national banks competitive by passing the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the "Riegle-Neal" Act), Pub. L. 103-328, § 102(b)(1). The Riegle-Neal Act, for the first time, permitted national banks to open new interstate branches – more than 60 years after enactment of the McFadden Act and almost 50 years after enactment of Section 1348.[15]

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[15] In 1959, eleven years after Section 1948 was enacted, an amendment to the National Bank Act indirectly allowed operation of a few interstate branches in limited circumstances. See Pub. L. 86-230, 73 Stat. 457 (1959). The 1959 amendment allowed a national bank to move its main office by no more than thirty miles, without addressing whether such a move could be accomplished across state lines. The OCC interpreted the amendment to allow an interstate relocation. See OCC Corporate Decision 95-05 (Feb. 16, 1995), 1995 WL 170344, at *12. Even after an interstate relocation of its main office, a national bank could retain its branches in the state in which its main office had been located, thus allowing for some level of interstate activity. See *id*. at *16-17. The 1959 amendment did not, however, permit a national bank to establish new branches in another state. *Id*. at *14.

The Fourth Circuit thus labored under a crucial misimpression. Because there had been no relevant change in the law governing interstate branching prior to 1948, Congress's re-enactment of the "located" language in that year must be understood to *confirm*, and not to depart from, the view that national banks are located for diversity purposes in only a single state.

3. The Fourth Circuit's Holding Frustrates The Broad Congressional Policy Against Placing National Banks At A Competitive Disadvantage With State-Chartered Banks

Finally, the Fourth Circuit's holding – which subjects national banks to uniquely unfavorable jurisdictional rules arising out of operation of their branches – cannot be reconciled with broader congressional banking policy. Even assuming federal law was not initially designed affirmatively to *favor* national over state-chartered banks (see generally *First Nat'l Bank of Fairbanks* v. *Camp*, 465 F.2d 586, 592 nn.7-8 (D.C. Cir. 1972), cert. denied, 409 U.S. 1124 (1973)), it surely was intended to foster a "policy of equalization" between the two types of institution. See, *e.g.*, *Lewis* v. *Fid. & Deposit Co. of Md.*, 292 U.S. 559, 564 (1934) (noting "policy of equalization" in National Bank Act of 1864 and subsequent amendments); *First Nat'l Bank in Plant City* v. *Dickinson*, 396 U.S. 122, 131 (1969) ("Congress has deliberately settled upon a policy intended to foster 'competitive equality.'"). The *Lewis* Court explained that this policy is repeatedly expressed throughout the national banking statutes – in provisions as diverse as those concerning taxation, the power to operate branches, the power to act as a fiduciary, the amount of interest on deposits, and capitalization. 292 U.S. at 564-65. Accord *Franklin Nat'l Bank of Franklin Square* v. *New York*, 347 U.S. 373, 375 (1954) (in order "[t]hat [national banks] may be at no disadvantage in competition with state-created institutions, the Federal Government has frequently expanded their functions and authority").

Congress has been especially concerned with assuring that national banks are not placed at a competitive disadvantage with respect to the operation of branches. As we have noted, Congress enacted the 1927 McFadden Act, which permitted the operation of intracity branches by national banks, in response to a significant increase in state bank branching during the first two decades of the twentieth century. See *Walker Bank,* 385 U.S. at 257-261; see generally J. Chapman & R. Westerfield, BRANCH BANKING 84-92 (1980 reprint), cited in *Clarke*, 479 U.S. at 411 (Stevens, J., concurring). Six years later, Congress "further strengthened the policy of competitive equality" by permitting national banks to establish intrastate branches wherever state-chartered banks in the jurisdiction had the same authority. *Dickinson*, 396 U.S. at 132. Together, these provisions were "intended to place national and state banks on a basis of 'competitive equality' insofar as branch banking was concerned," thus "continuing [Congress's] policy of equalization first adopted in the National Bank Act." *Walker Bank*, 385 U.S. at 261.

"The policy of competitive equality is therefore firmly embedded in the statutes governing the national banking system." *Dickinson*, 396 U.S. at 133. The McFadden Act, in particular, "reflects the congressional concern that neither [the state nor the national bank] system have advantages over the other in the use of branch banking." *Id*. at 131. But the Fourth Circuit's decision, which significantly disadvantages national banks in their ability to invoke federal jurisdiction, fails to heed this concern. Indeed, the Fourth Circuit's reading of Section 1348 marks an extraordinary departure from the deeply rooted federal policy that national banks not be disadvantaged vis-à-vis similarly situated state banks. This inconsistency with the overarching federal interest in (at the least) maintaining equality of treatment between national and state banks – a policy that came into force with enactment of the National Currency Act of 1863 and the National Bank

Act of 1864, and that remains in effect today – strongly suggests that the holding below is wrong.

C. Section 1348's Use Of The Term "Established" Does Not Justify An Expansive Interpretation Of "Located"

For the reasons set out above, the usual tools of statutory construction provide powerful support for the conclusion that Section 1348 does not make national banks citizens of all states in which they operate branches. In reaching the contrary conclusion, the court of appeals placed great weight on Section 1348's use of "two distinct terms to refer to the presence of a banking association." Pet. App. 8a. The first sentence of the statute gives district courts jurisdiction over "any action by a banking association *established* in the district for which the court is held" to enjoin the Comptroller or a receiver acting under his direction; the second sentence provides that, for purposes of other suits, national banks shall be "deemed citizens of the States in which they are respectively *located*." Pointing to the "principle of statutory interpretation that different words used in the same statute should be assigned different meanings whenever possible" (*id*. at 7a), the Fourth Circuit concluded that "established" should be understood "to refer to a bank's charter location," while "located" is taken "to refer to the place or places where [the bank] has a physical presence." *Id*. at 8a. In this way, the court was able to give the two words "independent meaning." *Ibid*.

While the canon of construction invoked by the court of appeals is doubtless a legitimate one, it must yield to more particularized evidence of what Congress actually had in mind. And here, there are compelling reasons to believe that Congress did not attribute any special significance to the use of differing terms in the two sentences of Section 1348.

1. To begin with, the history of interstate branching by national banks belies the Fourth Circuit's analysis. As we

have explained, at the time the terms were placed in Section 1348's predecessors (and at the time of the enactment of Section 1348 itself), national banks could do business in only *one* state. Thus, as the Fifth Circuit put it:

> [W]hen Congress enacted the predecessor of section 1348, "established" and "located" would have been functionally equivalent for jurisdictional purposes because national banks had no branches. * * * It is then difficult to conclude that Congress intended for the two words to have * * * different meanings.

Horton, 387 F.3d at 434.

For its part, the court of appeals did not suggest any practical effect that would have been accomplished by employing words with different meanings in the predecessors to Section 1348, or any purpose that Congress could have been seeking to serve in doing so. Although Wachovia made this point below, the court's only response was premised on its belief that Congress permitted interstate branching by national banks prior to 1948; that meant, in the Fourth Circuit's view, that Congress's re-adoption of the term "located" in 1948 "confirms that Congress did *not* intend to restrict the term to a bank's principal place of business." Pet. App. 12a (emphasis in original). For the reasons noted above, the court's understanding on this point plainly was mistaken.

b. The evolution of Section 1348 also demonstrates that Congress did not attribute special significance to use of the terms "located" and "established." The words, which derived from different predecessors to Section 1348, were not drafted at the same time by the same Congress (had they been, that might have supported the contention that the use of differing words was significant). Instead, Congress first used the word "located" in connection with federal jurisdiction over national banks in the 1887 Act; that statute did *not* use the term

"established" in a locational sense.[16] "Established," in contrast, was used to define jurisdiction in the Revised Statutes of 1875, 18 Stat. 1. Those statutes provided for *federal question* jurisdiction regarding all suits "by or against any banking association established in the district for which the court is held" (Section 629 (Tenth)), as well as over suits by or against "any banking association established in the district for which the court is held, * * * to enjoin the Comptroller of the Currency, or any receiver acting under his direction." Section 629 (Eleventh).

The words "located" and "established" were combined with the codification of the Judicial Code in 1911. At that time, Congress simply put together Section 629 (Eleventh) of the Revised Statutes of 1875 and the "located" clause of the 1887 Act, without making substantive changes to either provision. That combined provision, with immaterial changes, became Section 1348. See pages 17-18, *supra*. Because Section 1348 thus was formed from separate, pre-existing bits that did not at the time convey any different meaning, there is every reason to believe that Congress did not give any thought to, or see any significance in, the use of different words in the provision's two sentences. It may be added that there is nothing surprising or unusual in this imprecise use of language; as the Comptroller pointed out below, this Court itself "used the terms [located and established] interchangeably in 1947, observing that a national bank is a 'citizen' of the state in which it is 'established or located, and in that district alone can it be sued.'" CA4 Comptroller Br. at 8 n.4 (quoting *Cope* v. *Anderson*, 331 U.S. 461, 467 (1947)).

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[16] The word "established" did appear in that Act, but it served quite a different purpose: it referred to "national banking associations *established* under the laws of the United States," which were "deemed citizens of the States in which they are respectively located."

c. Other legislative background confirms that Congress could treat the words "established" and "located" as interchangeable. As just noted, the Revised Statutes of 1875 provided for federal jurisdiction over suits by or against "any banking association *established* in the district for which the court is held, * * * to enjoin the Comptroller of the Currency" (§ 629 (Eleventh)); it further provided for federal venue for such suits "where the association is *located*" (§ 763). Thus, under the Fourth Circuit's construction of the language, only one federal district court would have had jurisdiction to enjoin the Comptroller, but venue would have been proper in any district where the bank maintained a branch. That is an anomalous result Congress could not have intended.[17]

D. This Court's Decision In *Bougas* Does Not Support The Fourth Circuit's Interpretation Of "Located" In Section 1348

The final "traditional tool[] of statutory interpretation" upon which the Fourth Circuit relied – in addition to the "ordinary meaning of 'located' [and] its use in juxtaposition with the term 'established'" – was this Court's interpretation of "a parallel venue statute" in *Bougas.* See Pet. App. 9a, 13a-17a. That case involved the prior version of 12 U.S.C. § 94, which governs venue in suits against national banks.[18]

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[17] These terms still appear in the law. The word "established" moved from Section 629 of the Revised Statutes to current Section 1348; "located" moved from Section 763 to 28 U.S.C. § 1394. Thus, if the Fourth Circuit were correct, these statutes would still provide for federal venue despite the absence of federal jurisdiction.

[18] The national bank litigant in *Bougas* confined its banking operations to a single state (Georgia); the venue question arose because, although the bank's headquarters were in Savannah, it maintained branches in other Georgia counties. See 434 U.S. at 36-37. Interstate branching of national banks was still prohibited when the

For purposes of that statute, the Court held that a national bank was "located" in every place where it operated a branch. *Bougas*, 434 U.S. at 38.[19]

Perhaps the most striking feature of *Bougas* – as it relates to the issues here – is that this Court did *not* rely on the "plain" or "ordinary" meaning of "located" to reach its conclusion. To the contrary, as noted above, the Court observed that "[t]here is no enduring rigidity about the word 'located'" (434 U.S. at 44), and it "look[ed] to the legislative history to see what light it may afford." *Id*. at 41. Finding "no sure indicators" of congressional intent in that history (*id*. at 43), the Court ultimately based its holding on the policies served by the venue statute:

> What Congress was concerned with was the untoward interruption of a national bank's business that might result from compelled production of bank records for distant litigation. [Citation omitted.] That concern largely evaporates when the venue of a state-court suit coincides with the location of an authorized branch. It is also diminished by improvements in data processing and transportation.

Court decided *Bougas*, and the Court therefore did not address its implications under the venue statute.

[19] At the time *Bougas* was decided, the statute provided that suits against national banks could proceed in a federal court "within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases.'" *Bougas*, 434 U.S. at 35-36 (quoting Rev. Stat. § 5198). After *Bougas* was decided, Congress legislatively abrogated the result, amending the statute to provide for venue in suits against national banks that are in receivership with the FDIC only "within the district in which [the bank's] principal place of business is located." 12 U.S.C. § 94.

Id. at 44 (footnotes omitted).

This analysis – premised on an assessment of the purpose and function of the statute – favors the Fifth and Seventh Circuits' interpretation of Section 1348, not the ahistorical approach of the Fourth Circuit. By acknowledging that "located" has no plain meaning and by carefully examining the interests that 12 U.S.C. § 94 was intended to serve, the Court in *Bougas* was faithful to Congress's purpose in enacting the statute. The same approach is called for here.

There are several other reasons why *Bougas* does not support the Fourth Circuit's decision. *First*, this Court expressly limited the holding of *Bougas* to the question of state court venue, refusing to consider the effect of its decision on federal *venue,* much less federal *jurisdiction.* 434 U.S. at 44 n.9. The Fourth Circuit failed to respect this self-restraint when it applied *Bougas* here.

Second, that the Fourth Circuit should not have extended the holding of *Bougas* becomes all the more clear when one considers the respective origins of Section 1348 and 12 U.S.C. § 94. Those provisions originated (and ended up) in different statutes and titles of the United States Code: Section 1348 is a part of the Judicial Act and Judiciary Code, while the venue provision is part of the National Bank Act and is codified in Title 12. See *Horton*, 387 F.3d at 433; *Firstar*, 253 F.3d at 989-990. The principle that a given word may have different meanings in two sections of the *same* statute when the context so indicates (see, *e.g.*, *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 343 (1997)), applies with even greater force when the word in question appears in *different* statutes that were adopted at *different* times and for *different* purposes.

Third, venue and jurisdiction statutes serve fundamentally different goals. As this Court recognized, a venue provision like 12 U.S.C. § 94 is motivated primarily by considerations of convenience; the Congress that enacted

Section 94 was "concerned with * * * the untoward interruption of a national bank's business." *Bougas*, 434 U.S. at 44. A diversity jurisdiction statute like Section 1348, on the other hand, is aimed at the possibility of local prejudice against an out-of-state litigant. See 15 MOORE'S FEDERAL PRACTICE §102App.03[1], at 4-8 (citing cases and historical materials). And a national bank is just as susceptible to such bias – and is in need of just as much protection against it – as any other corporation conducting a national business. See *Firstar*, 253 F.3d at 989-990.[20]

Fourth, this divergence between the aims of Section 1348 and 12 U.S.C. § 94 precludes the application of the *in pari materia* doctrine – the interpretive aid upon which the Fourth Circuit chiefly relied to determine that *Bougas* controlled the reading of Section 1348. See Pet. App. 13a-16a. As Judge King observed below, the *in pari materia* "canon is only applicable * * * when the statutes address the same subject." Pet. App. 42a (citing 2B Norman J. Singer, SUTHERLAND ON STATUTORY CONSTRUCTION § 51.03, at 138 (6th ed. 2004)) (noting that "where the same subject is treated in several acts having different objects the statutes are not *in pari materia*"). Here, there are "basic" and "historic" differences between jurisdiction, which is concerned with a court's power to adjudicate, and venue, which is concerned with the convenience

[20] In response to this point, the court of appeals maintained that "there is not a shred of evidence that Congress, in enacting section 1348, was concerned with shielding national banks from potential bias in the courts of the states where they operate branch[es]." Pet. App. 17a. But there is no such evidence because the Congresses that enacted Section 1348 and its predecessors did not contemplate that national banks would operate interstate branches *at all*. The relevant point here is that Congress chose to make diversity jurisdiction available to national banks and that, in doing so, it surely was motivated by the same policies that underlie the decision to allow other corporations, including state banks, also to invoke diversity.

of litigants and witnesses. See *Neirbo Co.* v. *Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 168 (1939). It is these "basic" differences that make the *in pari materia* doctrine inapplicable here.

Fifth, the Fourth Circuit thought it appropriate to rely on *Bougas* because use of the terms "established" and "located" in the venue provision predated enactment of Section 1348's predecessors. The court reasoned that, in using those terms, Section 1348 "adopted precisely the same vocabulary to describe banks' presence as did the then-existing venue statute." Pet. App. 13a.

But it would be misleading to suggest that Congress, when it enacted the 1887 Act and 1911 amendment, had in mind the interpretation of the word "located" that ultimately was rendered in *Bougas*. The Court explained in *Bougas* "that Congress did not contemplate today's national banking system, replete with [intrastate] branches, when it formulated the 1864 Act" (which first made national banks subject to suit in state courts); it also noted that prior to enactment of the McFadden Act "Congress had no occasion whatsoever to be concerned with state-court venue other than at the place designated in the bank's charter." 434 U.S. at 43. Indeed, all of the judicial interpretations of the venue statute that had been rendered prior to the 1948 enactment of Section 1348 indicated that national banks were located *even for venue purposes* in only a single state.[21] As a consequence, even if it

[21] In a decision that predated inclusion of "located" in the 1887 Act, one federal court, addressing use of the word in the predecessor to 12 U.S.C. § 94, found it "quite apparent * * * that congress regards a national banking association as being 'located' at the place specified in the [bank's] organization certificate. If such a place is a place in a state, the association is located in the state." *Manufacturers' Nat'l Bank* v. *Baack*, 16 F. Cas. 671, 673 (S.D.N.Y. 1871). This analysis was repeated in subsequent years. See *Leonardi* v. *Chase Nat'l Bank*, 81 F.2d 19, 22 (2d Cir. 1936) (citing *Baack* for the proposition that "a national bank is 'located'

is assumed that Congress considered the venue statute's use of the words "located" and "established" when it enacted Section 1348's predecessors, there would be no basis for concluding that Congress actually had it in mind at that time that national banks are "located" for venue (let alone jurisdictional) purposes wherever their branches are found. *Bougas* accordingly sheds no useful light on the proper interpretation of Section 1348.

E. National Banks Have One Location Under Section 1348

The foregoing analysis demonstrates that a national bank should not be deemed to be a citizen of every state in which it maintains a branch. That analysis does not, however, determine *which* state is a national bank's location within the meaning of Section 1348. On that question, the Fifth Circuit, the Seventh Circuit, and the Comptroller have reached slightly different conclusions. The Seventh Circuit has held that a national bank is located both in the state specified in its "organization certificate" and in the state of its "principal place of business." *Firstar*, 253 F.3d at 994. The Fifth Circuit has endorsed that holding, but has ruled that a national bank also is located in the state specified in the bank's "articles of association." *Horton*, 387 F.3d at 431. The Comptroller has taken the position that a national bank should be deemed a citizen of "the state in which its principal place of business is located and of the state that was originally designated in its organization certificate and articles of association

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at the place specified in its organization certificate"); *Raiola* v. *Los Angeles First Nat'l Trust & Savings Bank*, 233 N.Y.S. 301, 302 (N.Y. City Ct. 1929) (same). Although the Fourth Circuit pointed to a disagreement in the lower courts about the meaning of the word "located" in the venue statute (Pet. App. 20a), all of the decisions holding that the venue statute reached the locations of branches *post-dated* the enactment of Section 1348. See *Bougas*, 434 U.S. at 39-41 (citing cases).

or, if applicable, the state to which that designation has been changed under other authority[.]" OCC Inter. Ltr. 952, 2003 WL 23221430, at *4. To resolve this case, the Court need not decide which approach is correct, because it is clear that Wachovia cannot be deemed a citizen of South Carolina under *any* plausible test. Cf. *Rotella* v. *Wood*, 528 U.S. 549, 554 & n.2 (2000). In the event the Court wishes to address the point, however, Wachovia sets out its views on the question below.

As we have argued above, Congress intended in Section 1348 that national banks be deemed citizens of only a single state for diversity purposes. And we submit that the state of citizenship is the one identified in the bank's organization certificate, as modified by any designation submitted to the Comptroller moving the institution's main office to a new state pursuant to 12 U.S.C. § 30. That approach focuses on the state where Congress would have regarded a national bank as being "located" at the time of enactment of Section 1348 and its predecessors, while also resting on a close analogy to the citizenship rules applicable to other corporations – rules that, for reasons we have noted, Congress had in mind when it enacted Section 1348.

1. The National Currency Act and National Bank Act require those forming a national banking association to submit to the Comptroller an "organization certificate, which shall specify [t]he place where [the bank's] operations of discount and deposit are to be carried on; designating the State, Territory, or district, and also the particular city, town or village." Rev. Stat. § 5134, 12 U.S.C. § 22.[22] This "place * * * [of] operations of discount and deposit" is the *only* physical location that a national bank must designate in its organization certificate; perhaps for that reason, this Court has referred to

[22] This provision appeared almost verbatim in the original National Currency Act of 1863. 12 Stat. 665, 666 (1863).

that location as a national bank's "charter address." *Marquette Nat'l Bank of Minneapolis* v. *First Omaha Serv. Corp.*, 439 U.S. 299, 301 (1978). That "charter address," therefore, must be the starting point for determining where a bank is "located" under Section 1348.

As the Comptroller has recognized, however, a complete definition of a national bank's "jurisdictional location" should account for any change in location of the office initially specified in the bank's organization certificate. See OCC Inter. Ltr. 952, 2003 WL 23221430, at *4. A definition that focuses on the organization certificate alone would be incomplete because that certificate is a static, historical document that cannot be amended to reflect a change in the location or activities of a national bank. See *id*. at *3 ("There is no statutory provision or regulatory procedure to change the organization certificate to reflect current conditions. It is a fixed historical document that was used in the organizing process but is not used subsequent to the issuance of the charter by the OCC[.]"); OCC Corporate Decision 95-05 (February 16, 1995) (noting that "the organization certificate itself is a historical document and, unlike the bank's articles of association, is not changed when subsequent changes occur at the bank."). Indeed, the organization certificate cannot be amended even if the bank abandons *all* operations in the state originally designated as the place of "operations of discount and deposit."

Congress made explicit provision for relocation of a national bank in a statute that now appears at 12 U.S.C. § 30(b) (entitled "[l]ocation change"). The precursor to this provision first allowed a change in the location of the banking office specified in a national bank's organization certificate (on an intrastate basis) in 1886, when Congress amended the National Bank Act to permit a national bank to change "the place where its operations of discount and deposit are to be carried on, to any other place within the same State, not more than thirty miles distant * * * ." 24 Stat. 18, 18 (1886). In

1959, Congress amended this provision again. Pub. L. 86-230, 73 Stat. 457 (1959). Among other things, the 1959 amendment changed the phrase "place where [the bank's] operations of discount and deposit are to be carried on" to "main office." Though neither the 1959 amendment nor any subsequent legislation has specifically defined "main office" as used in Section 30(b), the Comptroller has taken the sensible position that the terms "main office" and "place [of] * * * operations of discount and deposit" as used in Section 22 are synonymous. OCC Inter. Ltr. 952, 2003 WL 23221430, at *1-2. This position is entitled to substantial deference. *Smiley*, 517 U.S. at 739; *Nationsbank of North Carolina, N.A.* v. *Variable Annuity Life Insurance Co.*, 513 U.S. 251 (1995); *Clarke*, 479 U.S. at 403-404.

Under current law, a national bank may relocate its main office both on an intrastate basis and across state lines. 12 U.S.C. § 30. It is required to notify the Comptroller of such a relocation and, in certain cases, to secure the Comptroller's approval. *Ibid*.; 12 C.F.R. § 5.40. If (but only if) the relocation requires the approval of the Comptroller, the bank must also amend its articles of association to include the location of the new "main office." 12 C.F.R. § 5.40.[23] As the Comptroller has explained, "[a] national bank's change of its original designated state is akin to a state entity changing its state of organization by reincorporating in a new state." OCC Inter. Ltr. 952, 2003 WL 23221430, at *4.

2. In light of these authorities, Wachovia submits that a bank is "located" under Section 1348 in the state of its "charter address," as designated in the bank's organization certificate, *unless* the bank has designated a new "main office." If the bank has moved its main office pursuant to 12 U.S.C.

[23] Thus, a bank may in some instances redesignate its main office without amending its articles of association. For that reason, defining the place of citizenship by reference to the articles of association would be either redundant or misleading.

§ 30, the new main office should be the location of the bank under Section 1348. *Cf.* OCC Inter. Ltr. 952, 2003 WL 23221430, at *4 (concluding that a national bank's jurisdictional location should include the state to which the bank's designated office location in its organization certificate has been changed).

This test accords with congressional intent by focusing on the state identified in the bank's organic documents – the state that Congress presumably would have regarded as the jurisdictional location of a corporate entity at the time Section 1348 and its predecessors were enacted.[24] In addition, this test has the virtue of focusing on a bank's *current* main office, disregarding an office that a bank designates initially in its organization certificate but later abandons. And the location to which this test points is readily determined by reference to the public record (either the bank's organization certificate or the notice that a bank is required to file with the Comptroller when changing the location of its main office).

Under the proper test, the decision below must be set aside. It is undisputed that Wachovia's main office is in North Carolina.[25] It accordingly must be deemed a citizen of

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[24] In the Riegle-Neal Act, Congress provided that a national bank's "home state" – a term used in that Act to limit the scope of permissible branching – is "the State in which the main office of the bank is located." 12 U.S.C. § 1831u(g)(4)(A)(i). As the Comptroller has noted, "[t]his suggests Congress viewed the main office of a national bank as a way to designate a state that was comparable to the state of incorporation for a state bank." OCC Inter. Ltr. 952, 2003 WL 23221430, at *3.

[25] The organization certificate of the predecessor institution to Wachovia, First Fidelity Bank, identified Salem, New Jersey, as the location where it carried on its "operations of discount and deposit." A series of consolidations and main office relocations pursuant to 12 U.S.C. § 30 ultimately concluded in 2002, with the institution's main office now located in Charlotte, North Carolina.

that State for purposes of Section 1348. Because respondents all are citizens of South Carolina, diversity jurisdiction is present in this case. The Fourth Circuit's judgment that jurisdiction is lacking accordingly should be reversed and the case remanded for resolution of the merits of Wachovia's petition to compel arbitration.

CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals for the Fourth Circuit should be reversed.

Respectfully submitted.

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