No. 04-1186

In the Supreme Court of the United States

WACHOVIA BANK, NATIONAL ASSOCIATION,
PETITIONER

v.

DANIEL G. SCHMIDT, III, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Under 28 U.S.C. 1348, "national banking associations" are "deemed citizens of the States in which they are respectively located" for purposes of federal diversity jurisdiction. The question presented is whether a national banking association is "located" in, and hence a "citizen" of, every State in which it maintains a branch office or other form of physical presence.

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INTEREST OF THE UNITED STATES

This case presents the question whether, for purposes of federal diversity jurisdiction, a national banking association is "located" in, and therefore a "citizen" of, every State in which it maintains a branch of office or other form of physical presence. 28 U.S.C. 1348. The Office of the Comptroller of the Currency (OCC), a bureau within the Department of the Treasury, is responsible for administering the National Bank Act, 12 U.S.C. 1 *et seq.* As the agency charged with supervision of national banks and with protecting the safety and soundness of the national banking system, the OCC has an interest in the extent to which national banks have access to federal diversity jurisdiction. The OCC has issued an interpretive letter treating the location of the designated main office of a national banking association as generally determinative of citizenship. OCC Interp. Ltr. 952 (Oct. 23, 2002) (*available at* <http://www.occ.treas.gov/interp/feb03/int952.

pdf>). In addition, the OCC has filed a number of amicus briefs addressing the issue including one filed in support of the petition for en banc hearing below. See *Horton* v. *Bank One, N.A.*, 387 F.3d 426 (5th Cir. 2004), petition for cert. pending, No. 04-989 (filed Jan. 3, 2005); *Firstar Bank, N.A.* v. *Faul*, 253 F.3d 982 (7th Cir. 2001).

STATUTORY PROVISIONS INVOLVED

The provisions of 28 U.S.C. 1348 are set forth in an appendix to this brief. App., *infra*, 1a.

STATEMENT

1. a. National banking associations are federally chartered corporations authorized to "carry on the business of banking." 12 U.S.C. 24 (Seventh). Congress first provided for the formation of national banking associations in 1863. Act of Feb. 25, 1863, ch. 58, 12 Stat. 665 (1863 Act). Under the 1863 law, the persons forming a national banking association were required to "make a certificate" specifying, *inter alia*, "[t]he place where its operations of discount and deposit[] are to be carried on, designating the State, Territory, or district, and also the particular city, town, or village." 1863 Act § 6 (Second), 12 Stat. 666. The current provisions of the National Bank Act, 12 U.S.C. 1 *et seq.*, likewise prescribe that the persons forming a national banking association must "make an organization certificate" identifying, *inter alia*, "[t]he place where its operations of discount and deposit are to be carried on, designating the State, Territory, or District, and the particular county and city, town, or village." 12 U.S.C. 22 (Second). Upon filing its organization certificate and its articles of association, see 12 U.S.C. 21, 21a, a national banking association becomes "a body corporate," 12 U.S.C. 24.

Under the original national banking provisions enacted in 1863, a national bank was permitted to conduct its business only at the single place of business designated in its organization certificate, "and not elsewhere." 1863 Act § 11, 12

Stat. 668. Congress soon permitted a national bank to relocate its designated "place where its operations of discount and deposit are to be carried on," if the OCC approved the relocation and the new site remained in the same State and within 30 miles. Act of May 1, 1886, ch. 73, § 2, 24 Stat. 18. But while a bank therefore could relocate its designated place of business—*i.e.*, its designated "main office," 12 U.S.C. 30(b)—it generally was barred from opening any branch offices. See *First Nat'l Bank* v. *Missouri*, 263 U.S. 640, 656-658 (1924). In 1865, Congress enacted an exception permitting a state bank that converted into a national bank to retain its pre-existing branches. Act of Mar. 3, 1865, ch. 78, § 7, 13 Stat. 484. But branching by state banks remained limited, such that, "at the turn of the century, there were very few branch banks in the country." *First Nat'l Bank* v. *Walker Bank & Trust Co.*, 385 U.S. 252, 257 (1966).

b. In 1927, in response to increased branching by state banks, Congress first gave national banks general authority to establish branch offices. McFadden Act, ch. 191, § 7, 44 Stat. 1228; see *Walker Bank*, 385 U.S. at 257-258. Even then, a national bank was permitted to establish a branch only within the same municipality as its designated main office, and only to the extent that the State in which the bank was located would permit a state bank to operate a branch in like circumstances. § 7, 44 Stat. 1228. In 1933, Congress authorized a national bank to branch throughout its home State, but again, only to the extent that state banks possessed such authority under state law. Banking Act of 1933, ch. 89, § 23, 48 Stat. 189-190. Through those various measures, "Congress intended to place national and state banks on a basis of 'competitive equality' insofar as branch banking was concerned." *Walker Bank*, 385 U.S. at 261.

Although Congress in 1933 permitted national banks to establish branch offices within the same State, there remained no allowance for interstate branching. See S. Rep.

No. 240, 103d Cong., 2d Sess. 5 (1994). Over 60 years later, in 1994, Congress first gave national banks general authority to establish branch offices across state lines. See Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338. The authority to establish an out-of-state branch arises under specified conditions, such as if the branch results from an interstate merger transaction. 12 U.S.C. 36(d). The 1994 authorization of interstate branching applies not only to national banking associations, but also to state banks insured by the FDIC. See 12 U.S.C. 1831u(a)(1).

c. When a national banking association is initially formed, the "place where its operations of discount and deposit are * * * carried on," 12 U.S.C. 22 (Second), must be designated in both the organization certificate, see *ibid.*, and the articles of association, see 12 U.S.C. 21; OCC, *Instructions for Articles of Association* (*available at* <http://www.occ.treas.gov/corpbook/forms/InstructionsArticlesofAssoc.doc>). The certificate is essentially a fixed historic document used in the organizing process, whereas the articles reflect current conditions. Accordingly, the National Bank Act provides for amendment of the articles of association, 12 U.S.C. 21a, but not the organization certificate.

When a national bank wishes to change the "city, town, or village" of its designated "place where its operations of discount and deposit are to be carried on," 12 U.S.C. 22 (Second), it must amend its articles of association, 12 C.F.R. 5.40(d)(2)(ii). The new location becomes the bank's newly designated "main office" under 12 U.S.C. 30(b). When a bank relocates its designated main office under 12 U.S.C. 30(b), the original location designated in the organization certificate becomes obsolete. OCC therefore has determined in an interpretive letter that the location of the designated main office, rather than the location originally designated in the organization certificate, is generally controlling for pur-

poses of determining the bank's corporate status under the banking laws, see, *e.g.*, 12 U.S.C. 36(g)(3)(B) (defining bank's "home State" as State in which main office is found), and for determining the bank's citizenship. OCC Interp. Ltr. 952 (Oct. 23, 2002) (*available at* <http://www.occ.treas.gov/interp/feb03/int952.pdf>).[1]

2. Petitioner Wachovia Bank is a national banking association with its designated main office (and principal place of business) in Charlotte, North Carolina. Wachovia's organization certificate identified its original "place" for conducting "its operations of discount and deposit," 12 U.S.C. 22 (Second), as Salem, New Jersey. Wachovia operates branch offices in many States, including South Carolina. Pet. App. 2a.

a. On April 10, 2003, respondents, one of whom is a citizen of South Carolina, filed an action for fraud in South Carolina state court against Wachovia and other defendants. On June 18, 2003, Wachovia filed a petition in the United States District Court for the District of South Carolina, seeking an order compelling arbitration of respondents' state law claims. The sole basis invoked for federal jurisdiction was the diversity statute, 28 U.S.C. 1332. The district court, without addressing its subject matter jurisdiction, ruled against Wachovia on the merits of the petition to compel arbitration. Pet. App. 2a, 47a-56a.

b. A divided panel of the court of appeals vacated and remanded, holding that the district court was without diversity jurisdiction over the action. Pet. App. 1a-46a. The majority observed that Wachovia's citizenship for diversity

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[1] State chartered corporations are subject to parallel requirements concerning initial designation and subsequent modification of the site of the main office, except that the main office is generally referred to as the "principal office" (or "registered office"). See 18 C.J.S. *Corporations* §§ 107(b)-(c), 108 (1990); 14 C.J. *Corporations* §§ 417, 420 (1919); 1A William M. Fletcher, *Cyclopedia Corporations* § 140 (2002); 8 *Cyclopedia Corporations*, *supra*, § 4046 (2001); 9 *Cyclopedia Corporations*, *supra*, § 4373 (1999).

purposes is controlled by 28 U.S.C. 1348, which provides that "national banking associations" are "deemed citizens of the States in which they are respectively located." Pet. App. 3a (emphasis omitted). In the majority's view, Wachovia is "located" in, and therefore a "citizen" of, every State in which it maintains a branch office.

The majority reasoned that the "ordinary meaning of 'located' suggests that a national bank is 'located' wherever it has physical presence." Pet. App. 4a. The majority considered Section 1348 to be unambiguous on that score even though the three courts of appeals that previously addressed the issue had reached a contrary interpretation of the statute. *Id.* at 3a-7a; see *Horton* v. *Bank One, N.A.*, 387 F.3d 426 (5th Cir. 2004); *Firstar Bank, N.A.* v. *Faul*, 253 F.3d 982 (7th Cir. 2001); *American Sur. Co.* v. *Bank of Cal.*, 133 F.2d 160 (9th Cir. 1943). Because the majority's reading of Section 1348 rendered Wachovia a citizen of South Carolina based on the presence of Wachovia branches in that State, and because respondents also are citizens of South Carolina, the majority held that complete diversity was lacking. Pet. App. 32a.

Judge King dissented. Pet. App. 33a-46a. In his view, the term "located" in Section 1348 is ambiguous, and its meaning in context is informed by Congress's consistent intention in Section 1348's statutory precursors "to provide national banks with the same access to federal courts as that accorded other banks and corporations." *Id.* at 33a. Judge King concluded that a national banking association is a citizen of the State in which its principal office is located. *Id.* at 34a.

SUMMARY OF ARGUMENT

For purposes of Section 1348, a national banking association is not "located" in every State in which it maintains a branch office. It is undisputed that the term "located" has no fixed meaning throughout the National Bank Act. There is thus no basis for assuming that the term "located" in Section

1348 necessarily refers to *every* place that a national banking association may be physically found. Under some provisions of the banking laws, a national banking association is "located" only at the site of its designated main office rather than wherever it maintains a branch office. For instance, under a provision requiring rescheduling of the annual shareholders' meeting in the event that the original date conflicts with "a legal holiday in the State in which the bank is located," 12 U.S.C. 75, the bank is considered to be "located" only in the State in which its main office is found, and not in every State in which it maintains a branch.

The terms, context, and purpose of Section 1348 demonstrate that the term "located" in that provision similarly does not refer to every State in which the bank maintains a branch office or other form of physical presence. The explicit purpose of Section 1348 is to determine a national bank's *citizenship* for purposes of diversity jurisdiction. That purpose is incompatible with the court of appeals' interpretation of the provision.

An individual is a citizen of only one State for purposes of diversity jurisdiction, and does not become a citizen of other States by maintaining a residence or other form of physical presence there. The same rule holds with respect to corporations, including banking entities not specifically addressed by Section 1348. The longstanding rule under this Court's decisions is that a corporation is a citizen of the State of incorporation, and is not a citizen of every State in which it may conduct business or maintain a physical presence. That rule was firmly established when Congress introduced the word "located" in Section 1348's predecessor in 1887. Congress gave no indication that Section 1348 or its precursors were intended to break from the established principle that corporations are not citizens of every State in which they conduct business. To the contrary, when Congress added the word "located" in Section 1348's predecessor provision,

the banking laws already contained provisions in which the word "located" referred solely to the site of the main office.

Not only did Congress give no explicit indication of a desire to depart from the traditional rules for determining corporate citizenship, but Congress specifically intended to maintain jurisdictional parity between national banks and state banks (and other state corporations). The objective was to enable national and state banks to obtain access to federal jurisdiction on an equal basis. The court of appeals' interpretation, however, would establish an aberrant rule for national banking associations. While state banks under that approach could establish branches in additional States without jurisdictional consequence, any comparable expansion by a national bank would give rise to a contraction of diversity jurisdiction. There is no basis for concluding that Congress intended to establish any such disparity.

The court of appeals erred in relying on *Citizens & Southern National Bank* v. *Bougas*, 434 U.S. 35 (1977). *Bougas* construed a now-repealed statute governing venue in actions against national banks. While the Court concluded that the term "located" in that provision encompassed a bank's branch offices, the decision recognizes that the word "located" has no rigid meaning. The venue context at issue in *Bougas* differs markedly from Section 1348's concern with defining a national bank's citizenship for purposes of diversity jurisdiction. Moreover, the Court's reading of the venue provision had the effect of generally harmonizing the treatment of national banks for venue purposes with the treatment of state banks and corporations. The court of appeals' reading of Section 1348 has the opposite effect with respect to a national bank's citizenship.

Finally, the fact that the word "established" appears in a separate paragraph of Section 1348 does not compel reading the term "located" to have a meaning that differs from "established." The two words necessarily had the same mean-

ing when they were originally enacted in Section 1348's statutory predecessors because national banks at that time could not establish branch offices. The two words continue to have the same meaning today in those provisions in which the word "located" refers solely to a national bank's main office. There is thus no basis for concluding that the terms must be given different meanings. They originally appeared in separate provisions enacted in separate years, and they were placed in the same code provision as part of a consolidation of the Judicial Code that explicitly did not affect their meaning.

ARGUMENT

A NATIONAL BANKING ASSOCIATION IS NOT A CITIZEN OF EVERY STATE IN WHICH IT MAINTAINS A BRANCH OFFICE

The correct interpretation of the term "located" in 28 U.S.C. 1348 is dictated by the purpose and context of the provision. Section 1348 aims to identify the citizenship of a national banking association for purposes of diversity jurisdiction. In light of the longstanding rules for determining the citizenship of a corporation and the significant disparities that would attend the court of appeals' interpretation, Section 1348 cannot be read to render a national banking association a citizen of every State in which it operates a branch office or has a physical presence.

A. In Many Contexts, A National Banking Association Is Properly Considered To Be "Located" At The Site Of Its Main Office Rather Than Wherever It Maintains A Branch

Under 28 U.S.C. 1348, "national banking associations" are "deemed citizens of the States in which they are respectively located." The court of appeals, focusing exclusively on the word "located," determined that the word "is a general term referring to physical presence in a place." Pet. App. 4a.

Based on that understanding, the court concluded that for purposes of Section 1348, "a national bank is 'located' *wherever* it has physical presence," including "wherever it operates branch offices." *Id.* at 4a-5a (emphasis added). That approach is fundamentally flawed.

1. The word "located" first appeared in Section 1348's statutory predecessor in 1887. Act of Mar. 3, 1887, ch. 373, § 4, 24 Stat. 554. The term remained in the provision when it was re-enacted as part of the consolidation of the Judicial Code in 1911, Act of Mar. 3, 1911, ch. 231, § 24 (Sixteenth), 36 Stat. 1092, and when it was again re-enacted, in its current form, as part of the re-codification of the Judicial Code in 1948, Act of June 25, 1948, ch. 646, 62 Stat. 933 (28 U.S.C. 1348). At the time of each of those enactments (and at present), the word "located" signified the particular place at which something is established or found.[2] The court of appeals espoused essentially the same understanding, with the slight adaptation that it understood "located" to carry a "physical" connotation, so as to refer to the place at which the relevant entity or object is "physically" found. Pet. App. 4a.

The central flaw in the court of appeals' analysis is in its assumption that, insofar as the word "located" refers to the place at which something is (physically) established, the term "located" in Section 1348 necessarily refers to *every* place at which a national banking association has a physical presence. See Pet. App. 4a. There is no sound basis for that inference.

To begin with, because a "national banking association" under Section 1348 is a legal abstraction rather than a tangi-

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[2] See Noah Webster, *An American Dictionary of the English Language* (1828) (defining "locate" as "[t]o place; to set in a particular spot or position"); Henry C. Black, *A Dictionary of Law* 730 (1891) (defining "locate" as "[t]o ascertain and fix the position of something"); *Webster's New International Dictionary* 1266 (1917) (defining "locate" as "[t]o set or establish in a particular spot or position"); 6 *Oxford English Dictionary* 382 (1933) (defining "located" as "put in its place").

ble object, it is not self-evident that a reference to the location of the "association" concerns physical location at all. See *Trustees of Dartmouth Coll.* v. *Woodward*, 17 U.S. (4 Wheat.) 518, 636 (1819) ("A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law."); 1 William M. Fletcher, *Cyclopedia Corporations* § 7 (1999) ("The corporation has no physical existence, but exists only in contemplation of law."). Additionally, insofar as a reference to an association's "location" pertains to its physical manifestation, it is not clear which physical manifestation is relevant. Depending on context, the physical manifestation of an association could assume a number of forms, including the tangible assets that the association controls, the officers or employees that carry out its operations, the buildings in which those individuals generally perform their functions, or the products and services offered by the association. Identifying the "location" of an association thus requires consideration of the particular context in which the term is used.

More fundamentally, to the extent the context reveals that the word "located" refers to the site of a national banking association's bricks-and-mortar offices, there is no basis for presuming that the term refers to *every* office maintained by the association rather than to the designated main office alone. A "single word cannot be read in isolation" when construing a statute, *Smith* v. *United States*, 508 U.S. 223, 233 (1993), and as this Court has recognized, "[t]here is no enduring rigidity about the word 'located,'" *Citizens & Southern Nat'l Bank* v. *Bougas*, 434 U.S. 35, 44 (1977). Whether a national banking association is considered to be "located" at the site of its main office, or instead everywhere it maintains a physical presence, depends on the reason the question is asked. Particularly because an association exists "only in contemplation of law," *Dartmouth College*, 17 U.S. (4 Wheat.) at 636, it is readily conceivable that, for certain legal

purposes, the law would consider a national banking association to be "located" only at the site of its main headquarters.[3]

2. The provisions of the National Bank Act confirm the point. The Act frequently calls for identification of the place where a national banking association is "located," and there is no fixed meaning of the term that runs consistently through the Act.

For purposes of certain provisions, as the court of appeals conceded, Pet. App. 19a-20a, the term "located" refers solely to the association's designated main office. For example, 12 U.S.C. 75 provides for rescheduling of "the regular annual meeting of the shareholders" when the appointed day "falls on a legal holiday in the State in which the bank is located." It is undisputed that the "State in which the bank is located" under that provision is the State in which the bank's main office is found; legal holidays in States with branch locations do not affect the annual meeting. Similarly, 12 U.S.C. 52 requires that a bank's capital stock certificates set forth, *inter alia*, the "location of the association." That requirement pertains solely to the site of the main office and does not compel listing the location of every other office. Likewise, 12 U.S.C. 182, which requires the board of directors to publish a notice of dissolution "for a period of two months in the city or town in which the association is located," calls for such publication only in the municipality of the main office rather than in every "city or town" in which a branch may be found. See also 12 U.S.C. 32 (providing that change of location of main office under 12 U.S.C. 30(b) does not release liabilities that "national banking association" had assumed "at its old loca-

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[3] The reason that a legal entity such as a national banking association is required to designate a main office is generally to enable identifying the location of the entity for purposes of fixing jurisdiction, venue, tax situs, and place for service of process, and for allowing the public to inspect corporate records or contact management. See 18 C.J.S. *Corporations* § 108 (1990); 1A *Cyclopedia Corporations*, *supra*, § 140; 8 *Cyclopedia Corporations*, *supra*, § 4046.

tion"); 12 U.S.C. 55 (requiring notice of sale of capital stock "in a newspaper of the city or town in which the bank is located").

In other provisions, conversely, the term "located" encompasses or specifically refers to a bank's branch offices. See 12 U.S.C. 36(j) (defining "branch" to include "any branch place of business located in any State"); 12 U.S.C. 85 (limiting interest rate charged by national bank to "rate allowed by the laws of the State, Territory, or District where the bank is located") (construed in OCC Interp. Ltr. 822 (Feb. 17, 1998), *available at* <http://www.occ.treas.gov/interp/mar98/int822.pdf>); 12 U.S.C. 92 (permitting national banking association to act as insurance agent in certain circumstances when association is "located and doing business in any place the population of which does not exceed five thousand inhabitants") (construed in *Independent Ins. Agents* v. *Ludwig*, 997 F.2d 958 (D.C. Cir. 1993)). For instance, in *Bougas*, *supra*, which interpreted the term "located" in a now-repealed provision governing venue in state court actions against national banks, 12 U.S.C. 94 (1976), this Court concluded that, in the context of that particular statute, the term encompassed branch offices in a different county from the county in which the main office was located. 434 U.S. at 35-38; see pp. 26-28, *infra*.

It is thus apparent that, considered in isolation, the term "located" is ambiguous as applied to a national banking association. Whether a particular provision uses the term to refer to the site of the association as a legal abstraction, to an association's designated main office, or to all of the association's offices, depends on the context and purpose of the provision at issue.

B. Because Section 1348 Aims To Identify A National Banking Association's *Citizenship*, The Term "Located" Cannot Be Construed To Encompass Every State In Which The Association Maintains A Physical Presence

The proper understanding of the term "located" in Section 1348 is substantially informed by another word in the provision, *i.e.*, "citizen," and by the provision's broader aim of identifying a national bank's *citizenship* for purposes of diversity jurisdiction. When considered in light of that objective, the term "located" in Section 1348 cannot accommodate the expansive reading ascribed to it by the court of appeals.

1. The concept of citizenship inherently connotes a distinctive association with a place. Cf. 14 C.J.S. *Citizens* § 5 (1991) ("In view of the fact that the term 'citizenship' carries with it the idea of connection or identification with the state * * *, it implies much more than residence."). The rules for identifying a person's citizenship for diversity purposes are illustrative. An individual is deemed to be a citizen of the State of his or her domicile, *e.g.*, *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U.S. 826, 828 (1989), and it is "an historic rule of the common law" that "a person must have one domicile, and can have only one," *Texas* v. *Florida*, 306 U.S. 398, 429 (1939) (Frankfurter, J., concurring). It follows that a person can be considered a citizen of one, and only one, State. As the Court has explained, "[t]he very meaning of domicil is the technically pre-eminent headquarters [of] every person"; "[i]n its nature, *it is one*." *Williamson* v. *Osenton*, 232 U.S. 619, 625 (1914) (emphasis added); see *Sun Printing & Publ'g Ass'n* v. *Edwards*, 194 U.S. 377, 383 (1904).

An individual therefore is not a citizen of every State in which he may maintain a residence. "Citizenship and residence, as often declared by this court, are not synonymous terms," *Robertson* v. *Cease*, 97 U.S. 646, 648 (1878), and "[f]rom the earliest federal cases it has been held that mere

residence in a state does not make a person a citizen of that state," 13B Charles A. Wright et al., *Federal Practice and Procedure* § 3611, at 516 (1984); see *id.* § 3612, at 527-528 ("A person has only one domicile at a particular time, even though he may have several residences."). The traditional (and prevailing) understanding thus is that a natural person is a citizen of one State alone, not of every State in which he may maintain a residence or other form of physical presence.

2. The same principle has long obtained with respect to corporate entities such as banks. The Court initially ruled that a corporation was not itself a "citizen" of any State, and that the citizenship of the individual incorporators was thus determinative of diversity jurisdiction. *Bank of the United States* v. *Deveaux*, 9 U.S. (5 Cranch) 61 (1809). The Court later overruled that position, and held that a corporation is "capable of being treated as a citizen" for diversity jurisdiction purposes. *Louisville, Cincinnati & Charleston R.R.* v. *Letson*, 43 U.S. (2 How.) 497, 558 (1844). In particular, the Court established that a corporation is considered a citizen of the State in which it is incorporated. *Marshall* v. *Baltimore & Ohio R.R.*, 57 U.S. (16 How.) 314, 328-329 (1853). It thus became settled that, "for purposes of jurisdiction * * * a corporation [is] * * * deemed a citizen of the State creating it." *Great S. Fire Proof Hotel Co.* v. *Jones*, 177 U.S. 449, 456 (1900); see generally *Carden* v. *Arkoma Assocs.*, 494 U.S. 185, 187-189 (1990).

As with natural persons, the fact that a corporation of one State maintains a physical presence in another State does not render it a citizen of the latter State. See 13B *Federal Practice and Procedure*, *supra*, § 3623, at 597-599. Instead, by the time the word "located" first appeared in the predecessor to Section 1348 in 1887, it was established that a "corporation of one state, owning property and doing business in another state by permission of the latter, does not thereby become a citizen of this state also." *Pennsylvania R.R.* v. *St.*

Louis, Alton & Terre Haute R.R., 118 U.S. 290, 295 (1886); see *Railroad Co.* v. *Koontz*, 104 U.S. 5, 11-12 (1881) (Corporations "created by and organized under the laws of a particular State * * * [are] a citizen of that State," and "[b]y doing business away from their legal residence they do not change their citizenship, but simply extend the field of their operations."); *St. Louis & San Francisco Ry.* v. *James*, 161 U.S. 545, 562 (1896). The Court adhered to that rule even though it was already commonplace that corporations, while "[i]ncorporated under the laws of one state, * * * carry on the most extensive operations in other states." *St. Clair* v. *Cox*, 106 U.S. 350, 355 (1882). A contrary rule under which a corporation would be deemed a citizen of every State in which it transacts business would substantially curtail the availability of diversity jurisdiction (both to the corporation and to opposing parties). Cf. *Marshall*, 57 U.S. (16 How.) at 328-329 (explaining that looking through the corporate form to consider the citizenship of individual incorporators would unduly restrict the "privilege" of diversity jurisdiction).

The longstanding rule that a corporation is a citizen only of its State of incorporation governed until 1958, when Congress adjusted the rules of corporate citizenship. Under the new rule, codified at 28 U.S.C. 1332(c)(1), a corporation still is "deemed to be a citizen of any State by which it has been incorporated," but also is considered a citizen of "the State where it has its principal place of business," if different from the State of incorporation. While that provision adjusts the "long standing and thoroughly embedded" principle that a corporation "is deemed a citizen of the State in which it is incorporated," S. Rep. No. 1830, 85th Cong., 2d Sess. 4 (1958), it extends the traditional rule to encompass, at most, one additional State. It thus builds on, rather than abandons, the settled principle that a corporation is not considered a citizen of every State in which it maintains a physical presence.

3. Section 1348 must be interpreted against the background of the traditional and settled rules for determining corporate citizenship. See *North Star Steel Co.* v. *Thomas*, 515 U.S. 29, 34 (1995); *Midlantic Nat'l Bank* v. *New Jersey Dep't of Environmental Prot.*, 474 U.S. 494, 501 (1986) ("The normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific."); *Isbrandtsen Co.* v. *Johnson*, 343 U.S. 779, 783 (1952) (noting the "presumption favoring the retention of long-established and familiar principles"). See also *Green* v. *Bock Laundry Machine Co.*, 490 U.S. 504, 521 (1989) ("A party contending that legislative action changed settled law has the burden of showing that the legislature intended such a change.").

Nothing in the terms of Section 1348 demonstrates an intent to break with the settled rule that a corporation is not a citizen of every State in which it maintains a physical presence. The word "located" establishes no such intent because it readily accommodates an interpretation confined to the State in which a national banking association's main office is found. See pp. 12-13, *supra*. In fact, by 1887, when the word "located" first appeared in the predecessor to Section 1348, the National Bank Act contained several provisions in which the word "located" referred solely to an association's main office. See, *e.g.*, Act of June 3, 1864 (1864 Act), ch. 106, § 10, 13 Stat. 102 (providing that notice of a special election of directors must be published "in the city, town, or county in which the association is located").[4]

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[4] Accord 1864 Act § 15, 13 Stat. 103-104 (requiring publication in newspaper "where the association is located" of shareholder's failure to pay requisite installment of stock); § 18, 13 Stat. 105; § 42, 13 Stat. 112. Congress similarly used the term "location" to refer solely to an association's designated main office when it provided for an association to change the designated "place where its operations of discount and operations are to be carried on. §§ 2, 4, 24 Stat. 18-19 (1886). That law explicitly de-

Nor did Congress otherwise demonstrate an intention to disavow the traditional jurisdictional rules. To the contrary, Congress made clear that national banking associations are corporations, indicating that they should be subject to the established principles for determining corporate citizenship. See 1864 Act § 8, 13 Stat. 101 (national banking association is "a body corporate."); 12 U.S.C. 24 (same). Those principles reflect the traditional understanding that, while a corporation "may by its agents transact business anywhere," the abstract entity "cannot [thereby] change its * * * citizenship" because it "can have its legal home only at the place where it is *located* by or under the authority of its charter." *Ex parte Schollenberger*, 96 U.S. 369, 377 (1877) (emphasis added). That understanding governs the citizenship of an abstract "association" under the terms of Section 1348.

C. Congress Intended To Establish Jurisdictional Parity Between National Banks And State Banks

The absence of an explicit indication that Congress intended to depart from the traditional rules governing corporate citizenship alone suffices to demonstrate that the court of appeals erred in its interpretation of Section 1348. In addition, however, there is substantial evidence that Congress affirmatively intended to establish jurisdictional parity between national banks and state banks, such that national and state banks would have access to diversity jurisdiction on equal terms.

1. Under the original national banking statutes enacted in the 1860s, any action by or against a national banking association was considered to arise under federal law by virtue of the bank's federal charter. See *Leather Mfrs. Nat'l Bank* v. *Cooper*, 120 U.S. 778, 780-781 (1887). National banking associations (and opposing parties) therefore generally en-

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scribed such a change as a change of the "location" of the "association." *Ibid.*

joyed access to federal court as a matter of federal question jurisdiction. National banks, however, also retained the entitlement to bring an action on the basis of diversity of citizenship. See *Petri* v. *Commercial Nat'l Bank*, 142 U.S. 644, 649 (1892). Because federal question actions involving national banks were subject to restrictive venue provisions, see *St. Louis Nat'l Bank* v. *Allen*, 5 F. 551, 554-555 (C.C.D. Iowa 1881); *Manufacturers' Nat'l Bank* v. *Baack*, 16 F. Cas. 671, 671-672 (C.C.S.D.N.Y. 1871) (No. 9052), federal courts occasionally were called upon to determine a national banking association's citizenship for purposes of diversity jurisdiction.

The rule that emerged deemed a national bank to be a citizen of the State it identified in its organization certificate when designating the "place where its operation of discount and deposit are to be carried on." 12 U.S.C. 22 (Second). The basis for that rule was that a "national bank, being a corporation created by competent authority and located within a state * * * should be regarded, for all the purposes of the jurisdiction of the federal courts, as on an equal footing with" corporations of that State. *Allen*, 5 F. at 554; see *Baack*, 16 F. Cas. at 673-674. A national bank thus was a "citizen[] of the state as much as [the] state['s] corporations." *Allen*, 5 F. at 553; see *Baack*, 16 F. Cas. at 674.

2. In 1882, Congress revoked the provisions that gave national banks general entitlement to federal question jurisdiction. The result was to align national banks and state banks with respect to their access to federal jurisdiction:

> [T]he jurisdiction for suits hereafter brought by or against any [national banking] 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 * * * .

Act of July 12, 1882, ch. 290, § 4, 22 Stat. 163 (emphasis added). As this Court soon explained, the 1882 statute aimed "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." *Cooper*, 120 U.S. at 780. With respect to diversity jurisdiction in particular, the principle of jurisdictional parity codified in 1882 fortified the rule of citizenship that had emerged in the lower courts. A national bank was a citizen of the State in which it was located "on an equal footing with," *Allen*, 5 F. at 554—and subject to the same jurisdictional rules as—a corporation chartered by that State. Federal jurisdiction in actions involving national banks then would "be the same as, and not other than" jurisdiction in actions involving state banks. § 4, 22 Stat. 163.

Congress again amended the jurisdictional provisions in 1887 to read as follows:

> [A]ll national banking associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located.

Act of Mar. 3, 1887, ch. 373, § 4, 24 Stat. 554. Soon after the 1887 enactment, this Court explained that, with respect to diversity jurisdiction, "no limitation in that regard was intended." *Petri*, 142 U.S. at 651; see *Herrmann* v. *Edwards*, 238 U.S. 107, 111 (1915) (stating that 1887 provision was "identical" to 1882 provision). The Court saw "no reason" to conclude "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 citizenship clause was re-enacted as part of the 1911 codification of the Judicial Code. § 24 (Sixteenth), 36 Stat. 1092. The 1887 and 1911 laws therefore continued the rule that a national bank was a citizen of the State of its desig-

nated place of business and would have access to federal jurisdiction on the same basis as a bank or other corporation of that State.[5]

As part of the 1948 re-codification of the Judicial Code, the citizenship clause enacted in 1887 and 1911 was re-enacted without material change in its present form. App., *infra*, 1a. Five years before the 1948 enactment, the Ninth Circuit had interpreted the citizenship clause in the first appellate decision addressing the precise issue presented by this case, *i.e.*, whether a national banking association is a citizen of every State in which it maintains a branch. *American Sur. Co.* v. *Bank of Cal.*, 133 F.2d 160 (1943). The out-of-state branch in that case had been retained when the Bank of California converted from a state to a national bank. See *American Sur. Co.* v. *Bank of Cal.*, 44 F. Supp. 81, 83 (D. Or. 1941). The Ninth Circuit rejected the reading espoused by the court of appeals in this case, instead holding that a national bank is not "located" in, and thus a "citizen" of, every State in which it maintains a branch. The court explained:

> If the Congress had intended to provide that a national banking institution * * * should carry the duties of citizenship in various states upon the basis of branches being established therein, it would be a noteworthy departure from the general rule [for corporate citizen-

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[5] The 1887 provision, in addition to the citizenship language quoted in the text, went on to state that, "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 Mar. 3, 1887, ch. 373, § 4, 24 Stat. 555. This Court read that clause as limited to continuing the understanding that a national bank could obtain a federal forum only to the same extent as a state bank and had no preferred access by virtue of its federal charter alone. See *Petri*, 142 U.S. at 650-651. The Court explained that a contrary reading of the clause could have nullified the availability of diversity jurisdiction to national banks, which Congress could not have intended. *Id.* at 649-651. The clause was not carried forward in 1911.

> ship], and more likely than not Congress would have plainly state[d] such intent.

133 F.2d at 162.

It is instructive that Congress in 1948, in the wake of that pronouncement, re-enacted without material change the statutory language that had been construed in the court's 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's election not to change the language confirms that the current provision continues to embody the principle of jurisdictional parity long promoted by Congress, and according to which a national bank—just like its state counterpart—is not rendered a citizen of every State in which it may maintain a branch office or other form of physical presence.

3. The court of appeals determined that, insofar as Congress intended to establish jurisdictional parity between national and state banks, it did so only in the "limited sense" of making national and state banks alike dependent on diversity jurisdiction for access to federal court. Pet. App. 26a. In the court's view, Congress did not go so far as to prescribe that national banks and state banks be subject to parallel rules for determining their corporate citizenship. *Ibid.* That analysis misses the mark.

First, even if the court of appeals were correct in asserting that Congress sought only to require both national and state banks to rely on diversity of citizenship as the means of obtaining federal jurisdiction, that begs the question of which rules to apply in determining the citizenship of a national banking association for diversity purposes. And with respect to that issue, in view of the absence of indication by Congress of an intention to renounce the traditional and settled approach, the longstanding jurisdictional principles ap-

plicable to all other corporations should apply to national banking associations.

The contrary approach of the court of appeals would apply a novel citizenship rule for national banks, under which national banks with out-of-state branch offices would have a far more limited ability to obtain diversity jurisdiction than a state bank or any other corporation. It would be incongruous, in the context of Congress's longstanding efforts "to place national and state banks on a basis of 'competitive equality' insofar as branch banking [is] concerned," *First Nat'l Bank* v. *Walker Bank & Trust Co.*, 385 U.S. 252, 261 (1966), for branching to entail substantially disparate jurisdictional consequences as between national and state banks. The result would be especially anomalous in that a bank with a *federal* charter would have significantly lesser access to a *federal* forum than a bank (or other corporation) chartered by a State.

Bank of America, N.A., for instance, operates branch offices in some 30 States. See Pet. 10. Whereas a state bank with interstate branches would be deemed under the traditional rule a citizen of only one State (or deemed pursuant to the statute a citizen of perhaps two States, see 28 U.S.C. 1332(c)(1)), Bank of America, under the court of appeals' view, would be considered a citizen of all 30 States in which it presently maintains a branch. A state bank under that view could expand its interstate operations without jurisdictional consequence; but any expansion by a national bank into a new State would decrease its access to diversity jurisdiction. It would be odd for Congress to have granted national banks citizenship in a State so as to enable them to invoke diversity jurisdiction, see *Bankers Trust Co.* v. *Texas & Pacific Ry.*, 241 U.S. 295, 309-310 (1916) (federally chartered corporation generally not a citizen of any State for purposes of diversity jurisdiction unless Congress confers state citizenship), but then to impose a citizenship test under

which a national bank's expansion would constrict—and potentially even eliminate altogether—the availability of diversity jurisdiction.[6]

Moreover, there is nothing talismanic about a "branch office" from the perspective of the court of appeals' "physical presence" standard. Pet. App. 4a, 31a. Offices short of a "branch" might be viewed as establishing the requisite physical presence, see *Clarke* v. *Securities Indus. Ass'n*, 479 U.S. 388, 404-409 (1987); cf. *First Nat'l Bank* v. *Dickinson*, 396 U.S. 122 (1970) (bank's armored car messenger service and drop boxes constitute "branch" locations), as might other manifestations of a permanent physical presence. Bank of America, for instance, currently maintains proprietary ATMs in some 45 States. See Bank of America, *Investor Fact Book* 17 (2004) (*available at* <http://www.media.corporate-ir.net/media_files/nys/bac/4q04factbook_3.pdf>). Insofar as Bank of America could be considered thereby to maintain a physical presence in nearly every State, it already would have been rendered largely ineligible for diversity jurisdiction. Cf. *Independent Bankers Ass'n* v. *Smith*, 534 F.2d 921 (D.C.

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[6] The disparity in the jurisdictional consequences of branching under the court of appeals' approach is particularly stark given that, under the provisions of the 1994 law permitting interstate branching, state banks insured by the FDIC generally can engage in interstate branching to the same extent as national banks. See 12 U.S.C. 1831(u)(A)(1). Regions Bank, a state chartered bank, currently operates branch offices in 15 States, the same number of States in which petitioner Wachovia presently maintains branch locations (Wachovia also maintains branch offices in the District of Columbia). See *FDIC Institution Directory* (*available at* <http://www.2.fdic.gov/idasp/main.asp>). Especially in that light, there is no merit to the court of appeals' reliance on the historic purposes of diversity jurisdiction. See Pet. App. 17a-18a. Insofar as the court of appeals questioned the extent to which a national bank could reasonably fear a biased forum in a State in which it maintains branch offices, precisely the same sorts of questions could be raised with respect to any state bank (or other corporation) that conducts operations in the State but that nonetheless is not thereby rendered a citizen of that State for purposes of diversity jurisdiction.

Cir.) (determining that ATMs owned or rented by national bank constitute "branch" offices), cert. denied, 429 U.S. 862 (1976).[7]

Section 1348 should not be read to impose those sorts of substantially disparate and unfavorable jurisdictional consequences for national banks. Rather, as a leading treatise explains, the "term 'located' should be construed to maintain jurisdictional equality between national banks and state banks or other corporations. This approach appears to be well grounded in both policy and common sense." 15 James W. Moore, *Moore's Federal Practice* § 102.56[5] (3d ed. 2005) (footnote omitted).

4. The OCC has adopted that view in an interpretive letter. OCC Interp. Ltr. 952 (Oct. 23, 2002) (*available at* <http://www.occ.treas.gov/interp/feb03/int952.pdf>). The interpretive letter explains that national banks should be treated in a manner similar to state banks for purposes of diversity jurisdiction. *Id.* at 5-6. The letter thus rejects the conclusion that a national bank should be considered a citizen of every state in which it maintains a branch or other presence. The letter further explains that, for a national banking association, the analog of the State of incorporation is the State in which the national banking association's designated main office is located. *Id.* at 6.[8] The letter thus concludes

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[7] Although the statutory definition of a "branch" now provides that an ATM fails to qualify, see 12 U.S.C. 36(j), a proprietary ATM station still might be viewed as establishing whatever degree of "physical presence" is contemplated by the court of appeals' standard. Indeed, the ambiguity in the court of appeals' physical-presence standard itself counsels against adopting that approach. See *Sisson* v. *Ruby*, 497 U.S. 358, 378 (1990) (Scalia, J., concurring in judgment) (explaining that rules that produce "vague boundar[ies]" are "to be avoided in the area of subject-matter jurisdiction wherever possible").

[8] Compare 12 U.S.C. 1831u(g)(4)(A)(i) (defining "home State" of national bank as "the State in which the main office of the bank is located"), with 12 U.S.C. 1831u(g)(4)(A)(ii) (defining "home State" of state bank as "the State by which bank is chartered").

that, in the case of an association that has relocated its designated main office to a different State from the one initially identified in the association's organization certificate, the current location of the main office is controlling for purposes of determining the association's citizenship. *Ibid.*[9]

D. This Court's Decision In *Citizens & Southern National Bank* v. *Bougas* Does Not Control This Case

The court of appeals relied heavily on this Court's decision in *Citizens & Southern National Bank* v. *Bougas*, 434 U.S. 35 (1977). That reliance was misplaced. While this Court concluded in *Bougas* that the term "located" encompassed branch offices in the context of the particular statute at issue there, this case involves a different provision with a different purpose.

1. *Bougas* concerned a now-repealed provision governing venue in actions against national banking associations. The provision stated that such actions "may be had in any district or Territorial court of the United States held within the district in which such association may be established," or alternatively, "in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases." 434 U.S. at 35-36 (quoting 12

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[9] After explaining that a national banking association should be treated similarly to a state bank for citizenship purposes and that the relevant State is the one in which the association's main office is currently located, the interpretive letter states that a national bank should be considered a citizen of that State *and* the State in which the association's principal place of business is found, if different. OCC Interp. Ltr. 952, *supra*, at 6. In the case of a national banking association, the State of the main office usually does not differ from the State of the principal place of business. That is true in this case. See p. 5, *supra*. This case therefore does not raise the question whether a national bank should be considered a citizen only of the State of its main office, or instead should also be considered a citizen of, if different, the State of its principal place of business.

U.S.C. 94 (1976)).[10] The Court held that, for purposes of that provision, a national bank with its designated place of business in Savannah, Georgia, was also "located" for state-court venue purposes in DeKalb County, Georgia, where it maintained an intrastate branch.

That holding is not controlling here. Because the meaning of the term "located" in the national banking laws varies depending on the context of the particular provision at issue, the interpretation of the former venue provision in *Bougas* does not govern the interpretation of Section 1348. *Bougas* itself recognizes that the term "located" has no rigid meaning. 434 U.S. at 93. And the context at issue in that case differs materially from the context of Section 1348.

The question of venue "is primarily a matter of choosing a convenient forum." *Leroy* v. *Great W. United Corp*, 443 U.S. 173, 180 (1979). That consideration was dispositive in *Bougas*. As the Court explained, in enacting the venue provision, "Congress was concerned with * * * the untoward interruption of a national bank's business that might result from compelled production of bank records for distant litigation," a concern that "largely evaporates when the venue of a state-court suit coincides with the location of an authorized branch." 434 U.S. at 44; see *id.* at 44 n.10.

Such concerns are not controlling in the context of Section 1348. The question of citizenship for purposes of diversity jurisdiction does not turn on considerations of convenience among available forums. If it did, corporations routinely would be deemed citizens of any State in which they maintain a significant presence. The question of citizenship instead pertains to the power of a court to hear a case in the

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[10] The provision was repealed in 1982 and replaced by a provision limited to defining venue in actions against national banks for which the FDIC has been appointed receiver or against the FDIC as receiver of a national bank. See 12 U.S.C. 94. All other actions involving national banks are now governed by the general venue statute. See 28 U.S.C. 1291.

first place, and it is illuminated by longstanding and deeply rooted principles. "This basic difference between the court's power and the litigant's convenience is historic in the federal courts." *Neirbo Co.* v. *Bethlehem Shipbuilding Corp.*, 308 U.S. 165, 167-168 (1939). The distinction was all the more salient when the word "located" was introduced in Section 1348's precursors; at that time (before *Erie R.R.* v. *Tompkins*, 304 U.S. 64 (1938)) access to diversity jurisdiction determined the substantive law governing the action.

Significantly, the result in *Bougas* had the effect of generally aligning the treatment of national banks with the treatment of other corporations for purposes of venue. While venue typically is governed by statute and the particular provisions may vary among the States, a corporation ordinarily may be sued where it has a place of business. See 92A C.J.S. *Venue* § 86 (2000) ("In many jurisdictions there are statutes under which venue may be laid in the county where the defendant transacts business, or has a place of business * * * ."); 67 C.J. *Venue* § 159 (1934) (same). See also 28 U.S.C. 1391(c) (corporation may be sued "in any judicial district in which it is subject to personal jurisdiction"); 19 C.J.S. *Corporations* § 717(c) (1990) (noting that, "ordinarily," a corporation "is not privileged to be sued only" in "the county where it has its principal place of business"). *Bougas* was consistent with that approach in holding that venue lay against a national bank in any county that contains an intrastate branch. The court of appeals' interpretation of Section 1348 in this case has the opposite effect. That interpretation would establish an anomalous rule of citizenship for national banks at odds with the longstanding principle that a corporation is not a citizen of every State in which it conducts business or maintains a physical presence.

2. The court of appeals, again relying on *Bougas*, attached significant weight to the presence in Section 1348 of the word "established" in the paragraph that precedes the

one containing "located." See Pet. App. 7a-13a. The court believed that the two terms must be given different meanings. That view is incorrect.

When the national banking laws were originally enacted in the 1860s, the place where a bank was "located" was the same as where it was "established" because national banks were barred from establishing any branch locations. See 1864 Act § 8, 13 Stat. 101-102 (referring to "office or banking house *located* in the place specified in its organization certificate," *i.e.*, where it was established) (emphasis added). And because it remains the case that the word "located" refers in a number of provisions to a bank's designated main office, see pp. 12-13 *supra*, the word is generally synonymous in those provisions with the place where the bank is "established." See, *e.g.*, 12 U.S.C. 30(b) (treating designated "main office" as place where association "is located"). The court of appeals' approach thus rests on the assumption that, whereas "located" and "established" can have the same meaning when found in separate provisions, they must be given different meanings when found in the same provision. There is no warrant for adopting any such rigid interpretive rule.

That is particularly true in this case because it is a happenstance of codification that the paragraphs containing "located" and "established" appear together in Section 1348 rather than in separate provisions. The statutory predecessors of the two paragraphs were enacted in separate provisions in different years. See § 4, 24 Stat. 554 (1887) (original version of paragraph now containing "located"); Act of Dec. 1, 1873, ch. 7, § 629 (Tenth to Eleventh), 17 Stat. 111 (original version of paragraph now containing "established"). The provisions were first combined in one provision as part of the consolidation of the Judicial Code in 1911. § 24 (Sixteenth), 36 Stat. 1092. That statute stated explicitly that the "arrangement and classification of the several sections of this Act" were "made for the purpose of a more convenient and

orderly arrangement" rather than to effect any substantive change. § 295, 36 Stat. 1167; see § 294, 36 Stat. 1167. In that light, it is not surprising that this Court has used the terms "located" and "established" as alternatives when discussing the citizenship of a national banking association. See *Cope* v. *Anderson*, 331 U.S. 461, 467 (1947) ("For jurisdictional purposes, 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.") (citation omitted).

The presence of the word "established" in a separate paragraph of Section 1348 therefore does not dictate any particular reading of the word "located." Rather, the term "located" should be interpreted consistently with the long-standing rules for determining corporate citizenship, under which a corporation is not a citizen of every State in which it conducts business or maintains a physical presence.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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AUGUST 2005

APPENDIX

Section 1348 of Title 28, United States Code, provides:

The district courts shall have original jurisdiction of any civil action commenced by the United States, or by direction of any officer thereof, 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 purposes of all other actions by or against them, be deemed citizens of the States in which they are respectively located.