

The Burger Court Opinion Writing Database

United States v. Phillipsburg National Bank & Trust Co.

399 U.S. 350 (1970)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 4, 1970

Re: No. 1093 - U. S. v. Phillipsburg National
Bank & Trust Co.

Dear Bill:

I contemplate dissenting in the above and will write briefly. Justice Marshall and I voted to affirm and it may be that he will be content as I probably will be with a recital that he and I would affirm.



W.E.B.

Mr. Justice Brennan

cc: The Conference

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BR
TK

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 25, 1970

Re: No. 1093 - U. S. v. Phillipsburg National Bank & Trust Co.

Dear John:

I concur in your circulation of June 23.

Regards,
WV

Mr. Justice Harlan

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

June 3, 1970

Dear Bill,

Re: No. 1093 - United States v. Phillipsburg
National Bank & Trust Co., et al.

I am happy to join you.

Sincerely,


H. L. B.

Mr. Justice Brennan

cc: Members of the Conference

To: The Chief Justice
Mr. Justice Black
✓ Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

1

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

dated: 5-27-70

No. 1093.—OCTOBER TERM, 1969

Recirculated: _____

United States, Appellant, }
v. } On Appeal From the
Phillipsburg National Bank } United States District
and Trust Company et al. } Court for the District
of New Jersey.

[June —, 1970]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This direct appeal under the Expediting Act, 15 U. S. C. § 29, is taken by the United States from a judgment of the District Court of New Jersey dismissing, after full hearing, the Government's complaint seeking to enjoin as a violation of § 7 of the Clayton Act, 16 U. S. C. § 18,¹ the proposed merger of appellees, Phillipsburg National Bank and Trust Co. (PNB) and the Second National Bank of Phillipsburg (SNB), both located in Phillipsburg, New Jersey. The Comptroller of the Currency, also an appellee here, approved the merger in December 1967 and intervened in this action to defend it, as he was authorized to do by the Bank Merger Act of 1966, 12 U. S. C. § 1828 (c)(7)(D).² The Bank Merger Act

¹ Section 7, as amended by the 1950 Celler-Kefauver Antimerger Act, provides in pertinent part:

"No corporation engaged in commerce shall acquire . . . the whole or any part of the stock or other share capital . . . of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition . . ."

² The merger was automatically stayed by the filing of this action. 12 U. S. C. § 1828 (c)(7)(A). The District Court continued the statutory stay pending disposition of the appeal.

*Paper
will*

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
 Mr. Justice Black
 Mr. Justice Douglas
 Mr. Justice Brennan ✓
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

No. 1093.—OCTOBER TERM, 1969

Circulated: **JUN 23 1970**

United States, Appellant, } On Appeal From the
 v. } United States District
 Phillipsburg National Bank } Court for the District
 and Trust Company et al. } of New Jersey.

Recirculated: _____

[June —, 1970]

MR. JUSTICE HARLAN, concurring in part and dissenting in part.

My first reaction to this case was wonderment that the Department of Justice had bothered to sue. How could that agency of government, I asked myself, be efficiently allocating its own scarce resources if it chose to attack a merger between two banks as small as those involved in this case? When compared with any of the 10 prior cases in which a bank merger was contested, the total assets of the bank that would result from this merger are minuscule.¹ Moreover, measured by trust

¹The appendix contains the following table showing the total assets of the resulting banks in the contested bank merger cases initiated up to the time of suit in this case.

CONTESTED SECTION 7 BANK MERGER CASES:
 ASSETS AND MARKET SHARES OF
 RESULTING BANKS

Case	Assets (in millions)
1. Manufacturers Hanover.....	\$6,001.8
2. Continental Illinois.....	3,248.3
3. Crocker-Citizens	3,217.4
4. California Bank—First Western.....	2,421.2
5. Philadelphia National Bank.....	1,805.3
6. Provident—Central Penn.....	1,069.1
7. First City—Southern National (Houston).....	1,042.9
8. Mercantile Trust—Security Trust.....	1,040.4
9. Third National—Nashville Bank & Trust.....	428.2
10. First National—Cooke Trust Company.....	389.7
11. Phillipsburg National—Second National.....	41.1

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Pp. 1, 3-9

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES Harlan, J.

No. 1093.—OCTOBER TERM, 1969

Circulated _____

Recirculated: JUN 26 1970

United States, Appellant, } On Appeal From the
v. } United States District
Phillipsburg National Bank } Court for the District
and Trust Company et al. } of New Jersey.

[June —, 1970]

MR. JUSTICE HARLAN, with whom THE CHIEF JUSTICE joins, concurring in part and dissenting in part.

My first reaction to this case, from the vantage point of what is depicted in the record and briefs, was wonderment that the Department of Justice had bothered to sue. How could that agency of government, I asked myself, be efficiently allocating its own scarce resources if it chose to attack a merger between two banks as small as those involved in this case? When compared with any of the 10 prior cases in which a bank merger was contested, the total assets of the bank that would result from this merger are minuscule.¹ Moreover, measured by trust

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SUPREME COURT OF THE UNITED STATES

No. 1093.—OCTOBER TERM, 1969

United States, Appellant, <i>v.</i> Phillipsburg National Bank and Trust Company et al.	}	On Appeal From the United States District Court for the District of New Jersey.
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[June —, 1970]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This direct appeal under the Expediting Act, 15 U. S. C. § 29, is taken by the United States from a judgment of the District Court of New Jersey dismissing, after full hearing, the Government's complaint seeking to enjoin as a violation of § 7 of the Clayton Act, 16 U. S. C. § 18,¹ the proposed merger of appellees, Phillipsburg National Bank and Trust Co. (PNB) and the Second National Bank of Phillipsburg (SNB), both located in Phillipsburg, New Jersey. The Comptroller of the Currency, also an appellee here, approved the merger in December 1967 and intervened in this action to defend it, as he was authorized to do by the Bank Merger Act of 1966, 12 U. S. C. § 1828 (c)(7)(D).² The Bank Merger Act

¹ Section 7, as amended by the 1950 Celler-Kefauver Antimerger Act, provides in pertinent part:

"No corporation engaged in commerce shall acquire . . . the whole or any part of the stock or other share capital . . . of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition . . ."

² The merger was automatically stayed by the filing of this action. 12 U. S. C. § 1828 (c)(7)(A). The District Court continued the statutory stay pending disposition of the appeal.

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SUPREME COURT OF THE UNITED STATES

No. 1093.—OCTOBER TERM, 1969

United States, Appellant, } On Appeal From the
v. } United States District
Phillipsburg National Bank } Court for the District
and Trust Company et al. } of New Jersey.

[June —, 1970]

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¹ Section 7, as amended by the 1950 Celler-Kefauver Antimerger Act, provides in pertinent part: "No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or tend to create a monopoly."

² The merger was automatically stayed by the filing of this action. 12 U. S. C. § 1828 (c)(7)(A). The District Court continued the statutory stay pending disposition of the appeal.

SUPREME COURT OF THE UNITED STATES

No. 1093.—OCTOBER TERM, 1969

United States, Appellant,	} On Appeal From the	
v.		United States District
Phillipsburg National Bank and Trust Company et al.		Court for the District of New Jersey.

[June —, 1970]

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²The merger was automatically stayed by the filing of this action. 12 U. S. C. § 1828 (c)(7)(A). The District Court continued the statutory stay pending disposition of the appeal.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 28, 1970

No. 1093 - U.S. v. Phillipsburg National Bank

Dear Bill,

I should appreciate your indicating at the foot of your opinion that I did not participate in the decision of this case.

Sincerely yours,

P.S.

Mr. Justice Brennan

~~Copies to the Conference~~

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 1, 1970

RE: No. 1093 - U.S. v. Phillipsburg
National Bank & Trust Co.

Dear Bill:

Please join me.

Sincerely,


B.R.W.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 26, 1970

Re: No. 1093 - U. S. v. Phillipsburg Bank

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference