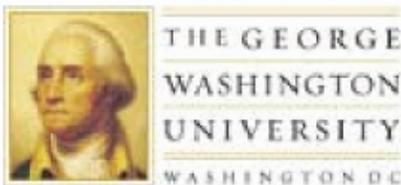


# The Burger Court Opinion Writing Database

## *First National Bank in Plant City v. Dickinson*

396 U.S. 122 (1969)

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

November 24, 1969

MEMORANDUM FOR THE CONFERENCE

Re: No. 19) First Natl. Bank, Plant City  
      ) v. Dickinson  
      No. 34) Camp v. Dickinson

Enclosed is a proposed opinion in the above case.

Absent objection, I will first circulate my opinions  
in this form.

The vote was unanimous to affirm in this case, and  
I believe the opinion is on a narrower basis than  
the Court of Appeals opinion.

WEB

WEB

November 21, 1969

No. 19 - First National Bank v. Dickinson  
No. 34 - Camp v. Dickinson

In this case we are called upon to construe Section 7 of the McFadden Act of 1927, 44 Stat. 1228-29, 12 U.S.C. § 36, as it relates to the definition of a branch bank for the purpose of determining the scope of branch banking available to a national bank in a state which prohibits branches for state banks.

12 U.S.C. § 36(f) provides in pertinent part:

(f) The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business . . . at which deposits are received, or checks paid, or money lent.

Florida prohibits all branch banking by state chartered banks; by statute a Florida bank may "have only one place of doing business," and all the business of the bank is to be carried on at that place "and not elsewhere." <sup>1/</sup> The issue must be resolved by what constitutes a "branch" or "additional office"; there is a threshold question of the extent to which this is governed by federal law.

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

CHAMBERS OF  
THE CHIEF JUSTICE

December 1, 1969

MEMORANDUM FOR THE CONFERENCE

Re: Nos. 19, 34 - First National Bank v. Dickinson

Revised draft of above enclosed with change in first line to conform to established format, and in the final sentence on page 15. Neither is a change of substance.

W. E. B.

W. E. B.

Through out

To: Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
~~Mr. Justice Fortas~~  
Mr. Justice Marshall

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

SUPREME COURT OF THE UNITED STATES

From: The Chief Justice

Nos. 19 AND 34.—OCTOBER TERM, 1969

Circulated: \_\_\_\_\_

Recirculated: DEC 1 1969

The First National Bank in  
Plant City, Florida,  
Petitioner,  
19 v.  
Fred O. Dickinson, Jr., et al.  
William B. Camp, Com-  
ptroller of the Currency,  
Petitioner,  
34 v.  
Fred O. Dickinson, Jr., et al.

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

[November —, 1969]

THE CHIEF JUSTICE delivered the opinion of the Court.

In this case we are called upon to construe § 7 of the McFadden Act of 1927, 44 Stat. 1228-1229, 12 U. S. C. § 36, as it relates to the definition of a branch bank for the purpose of determining the scope of branch banking available to a national bank in a State which prohibits branches for state banks.

12 U. S. C. § 36 (f) provides in pertinent part:

“(f) The term ‘branch’ as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business . . . at which deposits are received, or checks paid, or money lent.”

Florida prohibits all branch banking by state chartered banks; by statute a Florida bank may “have only one place of doing business,” and all the business of the bank is to be carried on at that place “and not else-

1 + 15

To: Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
~~Mr. Justice Fortas~~  
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

Nos. 19 AND 34.—OCTOBER TERM, 1969

Circulated: \_\_\_\_\_

Recirculated: **DEC 2 1969**

The First National Bank in  
Plant City, Florida,  
Petitioner,  
19 v.  
Fred O. Dickinson, Jr., et al.  
William B. Camp, Com-  
ptroller of the Currency,  
Petitioner,  
34 v.  
Fred O. Dickinson, Jr., et al.]

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

[November —, 1969]

MR. CHIEF JUSTICE BURGER delivered the opinion of  
the Court.

In this case we are called upon to construe § 7 of the  
McFadden Act of 1927, 44 Stat. 1228-1229, 12 U. S. C.  
§ 36, as it relates to the definition of a branch bank for  
the purpose of determining the scope of branch bank-  
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Florida prohibits all branch banking by state chartered  
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place of doing business,” and all the business of the  
bank is to be carried on at that place “and not else-

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

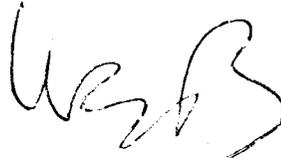
CHAMBERS OF  
THE CHIEF JUSTICE

December 4, 1969

Re: No. 19 - First National Bank v. Dickinson  
No. 34 - Camp v. Dickinson

MEMORANDUM FOR THE CONFERENCE

A few minor changes in the attached opinion  
are identified by a marginal mark. None are signifi-  
cant in my view.



W. E. B.

11 13, 14

To: Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
~~Mr. Justice Black~~  
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: The Chief Justice

Nos. 19 AND 34.—OCTOBER TERM, 1969

Circulated: \_\_\_\_\_

Recirculated: DEC 4 1969

The First National Bank in  
Plant City, Florida,  
Petitioner,

19 v.  
Fred O. Dickinson, Jr., et al.

William B. Camp, Com-  
ptroller of the Currency,  
Petitioner,

34 v.  
Fred O. Dickinson, Jr., et al.

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

[November —, 1969]

MR. CHIEF JUSTICE BURGER delivered the opinion of  
the Court.

In this case we are called upon to construe § 7 of the  
McFadden Act of 1927, 44 Stat. 1228-1229, 12 U. S. C.  
§ 36, as it relates to the definition of a branch bank for  
the purpose of determining the scope of branch bank-  
ing available to a national bank in a State which pro-  
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Florida prohibits all branch banking by state chartered  
banks; by statute a Florida bank may “have only one  
place of doing business,” and all the business of the  
bank is to be carried on at that place “and not else-

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November 25, 1969

**MEMORANDUM FOR THE CONFERENCE**

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I have agreed to the following opinions:

No. 19 - First Natl. Bank v. Dickinson  
No. 34 - ~~Camp~~ Dickinson (Chief Justice)

No. 17 - United States v. Knox  
(Justice Douglas, dissenting opinion)

No. 35 - Hugh Bryson v. United States  
(Justice Douglas, dissenting opinion)

No. 45 - Andersons-Black Rock, Inc. v.  
Pavement Salvage Co.  
(Justice Douglas, 11/24 circulation)

Respectfully,

Hugo L. Black

The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

1

SUPREME COURT OF THE UNITED STATES

Nos. 19 AND 34.—OCTOBER TERM, 1969

Circulated: 11/26/69

Recirculated: \_\_\_\_\_

The First National Bank in  
Plant City, Florida,  
Petitioner,

19 v.  
Fred O. Dickinson, Jr., et al.  
William B. Camp, Com-  
ptroller of the Currency,  
Petitioner,

34 v.  
Fred O. Dickinson, Jr., et al.

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

[November —, 1969]

MR. JUSTICE DOUGLAS, dissenting.

It will come as a shock, where common sense is the guide, to learn that an armored car picking up merchants' cash boxes and checks is a branch bank. Conceivably a bank could use an armored car as a place of business by stationing it at designated places during designated hours for opening accounts, receiving deposits, making loans, and the like. But no armored car was so used in these cases.

Federal law stated in 12 U. S. C. § 36 (f) defines "branch" as any facility "at which deposits are received, or checks paid, or money lent." And Congress provided that national banks may establish "branches" whenever, wherever, and however state banks may do so. *First National Bank v. Walker Bank & Trust Co.*, 385 U. S. 252, 261-262. That is the "competitive equality" as respects which Congress was legislating. *Id.*, at 261. There was no other or additional overriding principle of "competitive equality" that limits off-premises services of national banks to those that state banks can provide.

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

3

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES  
Fred O. Dickinson, Jr.

Nos. 19 AND 34.—OCTOBER TERM, 1969  
argued: 11/26/69

The First National Bank in  
Plant City, Florida,  
Petitioner,  
19 v.  
Fred O. Dickinson, Jr., et al.  
William B. Camp, Com-  
ptroller of the Currency,  
Petitioner,  
34 v.  
Fred O. Dickinson, Jr., et al.

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

[November —, 1969]

MR. JUSTICE DOUGLAS, dissenting.

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

3

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan ✓  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Nos. 19 AND 34.—OCTOBER TERM, 1969

Dated: 12/1/69

The First National Bank in  
Plant City, Florida,  
Petitioner,

19 v.  
Fred O. Dickinson, Jr., et al.

William B. Camp, Comp-  
troller of the Currency,  
Petitioner,

34 v.  
Fred O. Dickinson, Jr., et al.

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

[December —, 1969]

MR. JUSTICE DOUGLAS, dissenting.

It will come as a shock, where common sense is the guide, to learn that an armored car picking up merchants' cash boxes and checks is a branch bank. Conceivably a bank could use an armored car as a place of business by stationing it at designated places during designated hours for opening accounts, receiving deposits, making loans, and the like. But no armored car was so used in these cases.

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REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION LIBRARY OF CONGRESS

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

123

SUPREME COURT OF THE UNITED STATES

Nos. 19 AND 34.—OCTOBER TERM, 1969

From: Douglas, J.

Circulated:

12/3

The First National Bank in  
Plant City, Florida,  
Petitioner,

19 v.  
Fred O. Dickinson, Jr., et al.

William B. Camp, Comp-  
troller of the Currency,  
Petitioner,

34 v.  
Fred O. Dickinson, Jr., et al.

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

[December —, 1969]

MR. JUSTICE DOUGLAS, dissenting.

It will come as a shock, where common sense is the guide, to learn that an armored car picking up merchants' cash boxes and checks is a branch bank. Conceivably a bank could use an armored car as a place of business by stationing it at designated places during designated hours for opening accounts, receiving deposits, making loans, and the like. But no armored car was so used in these cases.

Federal law stated in the McFadden Act, 12 U. S. C. § 36 (f), defines "branch" as any facility "at which deposits are received, or checks paid, or money lent." And Congress provided that national banks may establish "branches" whenever, wherever, and however state banks may do so. *First National Bank v. Walker Bank & Trust Co.*, 385 U. S. 252, 261-262. The opinion of the Court leaves the impression that the McFadden Act created "competitive equality" between national and state banks across the boards. But as we stated in the *Walker Bank* case, that Act "intended to place national

November 21, 1969

Re: No. 19 - First National Bank v. Dickinson  
No. 34 - Camp v. Dickinson

---

Dear Chief:

You were kind enough to invite my views and suggestions as to your draft opinion in these cases. As I have already indicated to you, I think your opinion is a fine and solid one, but I venture the following relatively minor suggestions for such use as you may wish to make of them.

1. On page 1, the last sentence of the second paragraph might be modified slightly in order to leave open at that point the question, taken up on page 12, whether the definition of "branch" is a matter of state or federal law. Perhaps something along this line: "The issue must be resolved by what constitutes a 'branch' or 'additional office'; and there is a threshold question of the extent to which this is governed by federal law."

2. My only broad suggestion is that the question of the extent to which federal law governs the definition of "branch" be treated at slightly greater length. These recommendations are merely suggestive: (a) Delete the last paragraph on page 7 and the paragraph at the middle of page 8. This will allow the general discussion of the legislative history to precede specific discussion of the definition of "branch." (b) At the middle of page 12, where you reject the idea that state law governs the definition of "branch," perhaps some mention should be made of the argument by the amici National State Bank Supervisors that the state-law definitions

do control. That argument might be rejected simply with an observation that § 36(c) entrusted to the States the regulation of a specific subject matter, that is, branching as Congress then conceived it, and that to allow States to define the outer limits of that subject matter would permit them to determine the extent of the powers given to them. That this improbable result was not intended is indicated by the inclusion in § 36 of a general definition of "branch." (c) At this point the discussion of § 36(f) from pages 7-8 might be reinserted, to be followed by your explanation on pages 12-13 that the "competitive equality" policy dictates giving a broad reading to the definition. (d) Finally, I think the substance of footnote 9 might be inserted in text on page 13. The point is sufficiently important to the structure of the opinion that it should not be missed by readers who might not read all the footnotes.

3. Your demonstration that these activities amounted to the receipt of deposits is convincing. I suggest it might be supplemented by inserting, before the first full sentence on page 16, something to this effect: "Because the purpose of the statute is to ensure competitive equality, it is relevant in construing "branch" to consider not merely the contractual rights and liabilities created by the transaction, but all those aspects of the transaction that might give one bank the edge over another in their competition for customers. Unquestionably, a competitive advantage accrues to a bank that provides the service of receiving money for deposit at a place away from its main office; and the convenience to the customer is essentially the same whether the relationship of debtor and creditor is established at the moment of receipt or not until somewhat later." This might make more explicit the "purposes contemplated by Congress in Section 36(f)" to which you refer.

I also return herewith your draft of the opinion.

Sincerely,

JMH

The Chief Justice

November 26, 1960

Re: No. 19 - First Natl. Bank v. Dickinson  
No. 24 - Camp v. Dickinson

---

Dear Chief:

I am glad to join your very persuasive  
and excellent opinion in these cases.

Sincerely,



The Chief Justice

CC: The President

December 1, 1960

Re: Nos. 19 and 24 - National Bank Cases

Dear Chief:

I agree with your opinion as recirculated December 1, but I hope that you will change "The Chief Justice delivered the opinion of the Court" to "Mr. Chief Justice Warren delivered the opinion of the Court," the usual practice.

Sincerely,



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

November 25, 1969

MEMORANDUM TO THE CONFERENCE

RE: Nos. 19 & 34 - First National Bank, Plant City and  
Camp v. Dickinson

I have joined the Chief Justice's opinion in the  
above cases.

*Bill*  
W.J.B. Jr.

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Fortas  
Mr. Justice Marshall

1

SUPREME COURT OF THE UNITED STATES Stewart, J.

Nos. 19 AND 34, OCTOBER TERM, 1969

Circulated: DEC 1 1969

Recirculated: \_\_\_\_\_

The First National Bank in  
Plant City, Florida,  
Petitioner,

19 v.  
Fred O. Dickinson, Jr., et al.  
William B. Camp, Com-  
ptroller of the Currency,  
Petitioner,

34 v.  
Fred O. Dickinson, Jr., et al.

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

[November —, 1969]

MR. JUSTICE STEWART, dissenting.

I wholly agree with the Court that federal law is to be applied in determining whether the activities of a national bank constitute branch banking under the exclusive definition contained in the National Bank Act, 12 U. S. C. § 36 (f). Whether the activities here in question constitute branch banking under that standard seems to me an extremely close question. That being so, I would defer to the determination of the Comptroller of the Currency. He is the official charged with administering these provisions of the Act, and I cannot say his determination was not a reasonable one. See *Udall v. Tallman*, 380 U. S. 1, 16-18.

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

November 25, 1969

**MEMORANDUM FOR THE CONFERENCE**

I have today joined the Chief Justice's opinion in Nos. 19 - First National Bank, Plant City v. Dickinson, and 24 - Camp v. Dickinson.

A.S.M.

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

November 25, 1949

Re: No. 19) First Natl. Bank v. Dickinson  
No. 24) Case v. Dickinson

Dear Chief:

Please file us in your opinion.

Sincerely,