

# The Burger Court Opinion Writing Database

## *United States v. Connecticut National Bank*

418 U.S. 656 (1974)

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

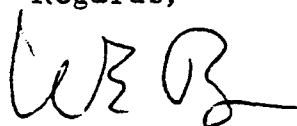
June 18, 1974

Re: 73-767 - U. S. v. Connecticut Natl. Bank

Dear Lewis:

Please join me.

Regards,

A handwritten signature in dark ink, appearing to be "WB", with a long, sweeping horizontal stroke extending to the right.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

June 20, 1974

Dear Byron:

Please join me in your dissent in the Connecticut Bank  
case dealing with the anti-trust issue, No. 73-767, United States  
v. Connecticut National Bank.

*William O. Douglas*  
William O. Douglas

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM J. BRENNAN, JR.

June 17, 1974

RE: No. 73-767 United States v. Connecticut  
National Bank

Dear Byron:

Please join me in your opinion in the  
above case.

Sincerely,

*BW*

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 12, 1974

Re: No. 73-767, United States v.  
The Connecticut National Bank

Dear Lewis,

I am glad to join your opinion for the Court  
in this case.

Sincerely yours,

*P.S.*  
*1.5*  
*/*

Mr. Justice Powell

Copies to the Conference

THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice  
Mr. Justice Douglas  
/Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: White, J.

Circulated: 6/17/74

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

No. 73-767 - United States v. Connecticut  
National Bank

Mr. Justice White, concurring in part and dissenting in part.

Although I agree with Part I of the majority opinion, as to the relevant line of commerce, I dissent from Part II, as to the determination of a relevant geographic market.

The Court holds that "in a potential competition case courts must define the relevant geographic market as the localized area in which the acquired bank is in significant, direct competition with other banks, albeit not the acquiring bank," relying on a statement to similar effect in Marine Bancorporation. Accordingly, the Court rejects the proposition, which the appellee banks accepted below,<sup>1/</sup> that the merger of FNH and CNB should be analyzed in terms of its effect on possible potential competition in areas not in or adjacent to the New Haven and Bridgeport markets, however those markets are to be defined.

There is certainly nothing in this Court's past cases on mergers under Clayton § 7 which requires this result. Even if Bridgeport and New Haven are relevant geographic markets, there can be more than one relevant geographic market in which to test the possible effects of a merger. Clayton § 7 speaks to lessening competition "in any section of the country" (emphasis added), and as the majority acknowledges in Marine Bancorporation, ante, p. n. 20, in United States v. Pabst Brewing Co., 384 U.S. 546 (1966),

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<sup>1/</sup> One of the principal witnesses presented by the appellee banks, Dr. Peck, analyzed the effect of this merger, and the removal of FNH as a potential competitor, along with CNB, on the various banking markets in the State.

To: The Chief Justice  
✓ Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

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

No. 73-767

Re-circulated: 6-20-74

United States, Appellant,  
v.  
The Connecticut National  
Bank et al. } On Appeal from the United  
States District Court for  
the District of Connecticut.

[June —, 1974]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, concurring in part and dissenting in part.

Mr. Justice Douglas

Although I agree with Part I of the majority opinion, as to the relevant line of commerce, I dissent from that part of the opinion dealing with the determination of a relevant geographic market.

The Court holds that "the relevant geographic market of the acquired bank is the localized area in which that bank is in significant, direct competition with other banks, albeit not the acquiring bank," relying on a statement to similar effect in *Marine Bancorporation*. Accordingly, the Court rejects the proposition, which the appellee banks accepted below,\* that the merger of FNH and CNB should be analyzed in terms of its effect on possible potential competition in areas not in or adjacent to the New Haven and Bridgeport markets, however those markets are to be defined.

There is certainly nothing in this Court's past cases on mergers under Clayton § 7 which requires this result. Even if Bridgeport and New Haven are relevant geo-

\*One of the principal witnesses presented by the appellee banks, Dr. Peck, analyzed the effect of this merger, and the removal of FNH as a potential competitor, along with CNB, on the various banking markets in the State.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 18, 1974

Re: 73-767 -- United States v. Connecticut National Bank

Dear Byron:

Please join me.

Sincerely,

*T.M.*  
T.M.

Mr. Justice White

cc: The Conference



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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 17, 1974

Re: No. 73-767 - U.S. v. Connecticut National Bank

Dear Lewis:

Please join me.

Sincerely,

*H.A.B.*

Mr. Justice Powell

cc: The Conference

93-767

June 4, 1974

Dear Byron:

I deliver herewith copies of a Chambers Draft of Marine Bancorporation. This draft is presently at the print shop for some editorial changes. The printer advises me that a circulation draft may not see the light of day until Friday in light of the backlog, including priority work for the Chief Justice and others.

As our time is running out, I thought it might be helpful to you to have these advance drafts in connection with your dissenting opinion. The editorial changes that I have made will not significantly affect the basic analysis.

Connecticut Bank is also at the printer. It is considerably shorter but will not be available earlier than the end of the week. If I can't give you something in print by Friday, I'll have a clean typed draft prepared.

Sincerely,

Mr. Justice White

lfp/ss

To: The Chief Justice  
Mr. Justice Douglass  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Rehnquist

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No 73-767

From: Powell, J.

Circulated: JUN 7 1974

United States, Appellant, }  
v. } On Appeal from the United  
The Connecticut National } States District Court for  
Bank et al. } the District of Connecticut.

[June —, 1974]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case concerns the legality of a proposed consolidation of two nationally chartered commercial banks operating in adjoining regions of Connecticut. The United States brought a civil antitrust action challenging the consolidation under § 7 of the Clayton Act, 15 U. S. C. § 18. Following a lengthy trial and on the basis of extensive findings and conclusions, the United States District Court for the District of Connecticut dismissed the Government's complaint. 362 F. Supp. 240 (1973). The Government brought a direct appeal pursuant to the Expediting Act, 15 U. S. C. § 29, and we noted probable jurisdiction. 414 U. S. — (1974).

The banks desiring to consolidate, Connecticut National Bank (CNB) and First New Haven National Bank (FNH), have offices in contiguous areas in the southwestern portion of Connecticut. CNB maintains its headquarters in the town of Bridgeport, which is situated on the Long Island Sound approximately 60 miles from New York City. CNB is the fourth largest commercial bank in the State. At year-end 1972, it held 6.2% of the deposits in commercial banks in Connecticut. CNB op-

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 18, 1974

No. 73-767 U.S. v. Connecticut National Bank

Dear Chief:

One of my clerks called my attention to the fact that when we noted this case on January 7, I "took no part in the consideration or decision". 414 U.S. 1227.

At that time, as I mentioned to the Conference, there was a question whether I should remain out of the case. Subsequently, after I had an opportunity to investigate, I concluded there was no reason for disqualification. I reported the basis for my conclusion to the Conference.

Although I continue to see no reason for recusing myself, I wanted to remind you and other members of the Court that I had remained out at the time we noted the case. I would appreciate being advised if you or any other Justice should have any question about this.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

*I see no reason whatever  
why you should stay out*

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

2nd DRAFT

From: Powell, J.

**SUPREME COURT OF THE UNITED STATES**

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

No. 73-767

Recirculated: 6/20/74

United States, Appellant,  
v.  
The Connecticut National  
Bank et al. } On Appeal from the United  
States District Court for  
the District of Connecticut.

[June —, 1974].

MR. JUSTICE POWELL delivered the opinion of the Court.

This case concerns the legality of a proposed consolidation of two nationally chartered commercial banks operating in adjoining regions of Connecticut. The United States brought a civil antitrust action challenging the consolidation under § 7 of the Clayton Act, 15 U. S. C. § 18. Following a lengthy trial and on the basis of extensive findings and conclusions, the United States District Court for the District of Connecticut dismissed the Government's complaint. 362 F. Supp. 240 (1973). The Government brought a direct appeal pursuant to the Expediting Act, 15 U. S. C. § 29, and the Court noted probable jurisdiction. 414 U. S. 1127 (1974).

The banks desiring to consolidate, Connecticut National Bank (CNB) and First New Haven National Bank (FNH), have offices in contiguous areas in the southwestern portion of Connecticut. CNB maintains its headquarters in the town of Bridgeport, which is situated on the Long Island Sound approximately 60 miles from New York City. CNB is the fourth largest commercial bank in the State. At year-end 1972, it held 6.2% of the deposits in commercial banks in Connecticut. CNB op-

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 10, 1974

Re: No. 73-767 - United States v. Connecticut National  
Bank

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference