

# The Burger Court Opinion Writing Database

*United States v. Citizens & Southern National Bank*

422 U.S. 86 (1975)

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



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

CHAMBERS OF  
THE CHIEF JUSTICE

June 5, 1975

Re: 73-1933 - U. S. v. Citizens & Southern National Bank

Dear Potter:

Please join me.

Regards,

WB

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

June 9, 1975

Re: No. 73-1933 - United States v. Citizens & Southern  
National Bank

Dear Bill:

Please join me in your dissent.

W.O.D.

Mr. Justice Brennan

cc: The Conference

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CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

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

May 2, 1975

RE: No. 73-1933 United States v. Citizens & Southern  
National Bank

Dear Potter:

In due course I shall circulate a dissent in the  
above.

Sincerely,

*Bill*

Mr. Justice Stewart

cc: The Conference

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

From: Brennan, J.

Circulated: 6/2/75

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 73-1933

United States, Appellant, } On Appeal from the United  
v. } States District Court for  
Citizens and Southern Na- } the Northern District of  
tional Bank et al. } Georgia.

[June —, 1975]

MR. JUSTICE BRENNAN, dissenting.

I agree that the District Court erred in holding that the correspondent associate programs are immune from Sherman Act scrutiny because they are subject to the "exclusive primary jurisdiction" of the Federal Reserve Board under the Bank Holding Company Act of 1956, as amended. The District Court also erred, however, in holding that the United States did not prove the violations of § 1 of the Sherman Act and § 7 of the Clayton Act alleged, and I therefore dissent from the affirmance of its judgment.

The issues under the Clayton and Sherman Acts, while logically independent, are related; both present the question whether a large commercial bank, already possessing a substantial share of the Atlanta market, may lawfully acquire other banks, rather than expand internally. Three banks now control more than 75% of the commercial banking business in Atlanta. Today's decision assures that their dominions will soon be extended as arrangements they have made with independent banks to operate as "*de facto* branches" are solidified through merger. I cannot agree with today's decision that the Government is powerless to prevent this result.

### I. The Sherman Act

The "five percent" banks in this litigation entered into a relationship with C&S far exceeding that of "cor-

— Stylistic changes throughout  
See Pages 6, 15, 19

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

From: BRENNAN, J.

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 73-1933

United States, Appellant, On Appeal from the United  
v. States District Court for  
Citizens and Southern Na- the Northern District of  
tional Bank et al. Georgia.

[June —, 1975]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE WHITE join, dissenting.

I agree that the District Court erred in holding that the correspondent associate programs are immune from Sherman Act scrutiny because they are subject to the "exclusive primary jurisdiction" of the Federal Reserve Board under the Bank Holding Company Act of 1956, as amended. The District Court also erred, however, in holding that the United States did not prove the violations of § 1 of the Sherman Act and § 7 of the Clayton Act alleged, and I therefore dissent from the affirmance of its judgment.

The issues under the Clayton and Sherman Acts, while logically independent, are related; both present the question whether a large commercial bank, already possessing a substantial share of the Atlanta market, may lawfully acquire other banks, rather than expand internally. Three banks now control more than 75% of the commercial banking business in Atlanta. Today's decision assures that their dominions will soon be extended as arrangements they have made with independent banks to operate as "*de facto* branches" are solidified through merger. I cannot agree with today's decision that the Government is powerless to prevent this result.

I *The Sherman Act*

The "five percent" banks in this litigation entered into a relationship with C&S far exceeding that of "cor-

*PS*  
*PP*  
*we*

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

From: Stewart, J.

Circulated: MAY 2 1975

2nd DRAFT

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## SUPREME COURT OF THE UNITED STATES

No. 73-1933

United States, Appellant, } On Appeal from the United  
v. } States District Court for  
Citizens and Southern Na- } the Northern District of  
tional Bank et al. } Georgia.

[May —, 1975]

MR. JUSTICE STEWART delivered the opinion of the Court.

For many years the State of Georgia restricted banks located in cities from opening branches in suburban areas. To circumvent these restrictions in the Atlanta area, the Citizens & Southern National Bank (C&S National) formed the Citizens & Southern Holding Company (C&S Holding), and the latter company embarked on a program of forming *de facto* branch banks in the suburbs of Atlanta. This program involved, among other features, ownership by C&S Holding of 5 percent of the stock of each of the suburban banks (the maximum allowed by state law), ownership of much of the remaining stock by parties friendly to C&S,<sup>1</sup> use by the suburban banks of the C&S logo and of all of C&S's banking services, and close C&S oversight of the operation and governance of the suburban banks. The expectation on all sides—by

<sup>1</sup> Unless otherwise indicated, the term "C&S" refers generically to the C&S system of banking entities, including C&S National and its majority owned affiliates and C&S Holding, but excluding the 5-percent banks. The defendants in this suit—appellees here—are C&S National, C&S Holding, six of the 5-percent banks, and two banks in the Atlanta area, C&S Emory and C&S East Point, which are subsidiaries of C&S Holding. Taken together, these will sometimes be called the "defendant banks."<sup>2</sup>

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 5, 1975

Re: Opinions to be announced next Monday

Dear Chief,

It is my understanding that No. 73-1933, United States v. Citizens & Southern National Bank, is not to be announced on Monday, because Bill Douglas has not yet had an opportunity to consider the Court's opinion or the dissenting opinion.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

Wm Brew 6/5/75

Supreme Court of the United States  
Washington, D. C. 20542

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 3, 1975

Re: No. 73-1933 - United States v. Citizens and  
Southern National Bank

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 2, 1975

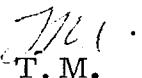
No. 73-1933 -- United States v. Citizens and Southern  
National Bank

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Dear Potter:

Please join me.

Sincerely,

  
T. M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 6, 1975

Re: No. 73-1933 - United States v. Citizens and  
Southern National Bank

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 6, 1975

No. 73-1933 United States v. Citizens  
and Southern National Bank

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 12, 1975

Re: No. 73-1933 - United States v. Citizens and Southern  
National Bank

Dear Potter:

Please join me.

Sincerely,

W

Mr. Justice Stewart

Copies to the Conference