

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,

WRB

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

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

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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.

Circulated: _____

Recirculated: 6-10-75-

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-

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SECTION OF ADVISORY

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

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1933

United States, Appellant,	} On Appeal from the United
v.	
Citizens and Southern Na-	
tional Bank et al.	States District Court for
	the Northern District of
	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,¹ use by the suburban banks of the C&S logogram 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

¹ 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."

PS
 Please find me
 [Signature]

[Handwritten signature]

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

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Wm Brown 00774

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

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

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U.S. SUPREME COURT

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

Dear Potter:

Please join me.

Sincerely,

T.M.
T.M.

Mr. Justice Stewart

cc: The Conference

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U.S. DEPARTMENT OF JUSTICE

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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

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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,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

✓

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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,



Mr. Justice Stewart

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