

The Burger Court Opinion Writing Database

*Citizens & Southern National Bank v.
Bougas*

434 U.S. 35 (1977)

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

November 3, 1977

RE: 76-398 - Citizens & Southern National Bank
v. Bougas

Dear Harry:

I join.

Regards,

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM.J. BRENNAN, JR.

October 28, 1977

RE: No. 76-398 Citizens and Southern National
Bank v. Nick Bougas

Dear Harry:

I agree.

Sincerely,

Bill

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

October 27, 1977

No. 76-398 - Citizens & Southern Nat. Bank
v. Bougas

Dear Harry,

I agree with the conclusion reached in your opinion and with its basic reasoning. I do, however, have a couple of problems.

First, I join John's suggestion that it would be a good idea to eliminate Part VI.

Second, while your opinion purports to disclaim any view on the correctness of the federal court decisions holding that a national bank, under §94, is "established" only in the federal district that encompasses the place specified in the bank's charter, I think in fact the opinion strongly implies approval of those decisions. This implication stems, I think, from the opinion's repeated emphasis on the difference in meaning between the word "established" and the word "located." It seems to me that the difference in the two words is in no way an essential part of the reasoning of the opinion.

If you are disposed to consider a review of the opinion with an eye to eliminating the implication to which I refer, I shall await a recirculation with interest. If, however, you think it wise not to modify the opinion along the lines I suggest, I shall simply concur in the judgment, with perhaps a few words of explanation.

Sincerely yours,

Mr. Justice Blackmun

Copies to the Conference

P. S. - For starters, I would eliminate the phrase "or to disrupt" and the word "consistent" in the twelfth line from the bottom of page 5, the paragraph beginning at the bottom of page 9 and running over onto page 10, and the last sentence of footnote 9 on page 10.

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

From: Mr. Justice Stewart
 Circulated: OCT 31 1977

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 76-398

Citizens and Southern National Bank, Petitioner, v. Nick Bougas. } On Writ of Certiorari to the Court of Appeals of Georgia.

[November —, 1977]

MR. JUSTICE STEWART, concurring.

The Court's opinion, despite its disclaimer, may be read by some to imply approval of the view that, for purposes of federal-court venue under 12 U. S. C. § 94, a national bank is "established" only in the district that includes its charter county. See *ante*, at —. I have serious doubt that the cases so holding were correctly decided,* and in any event this question remains an open one here.

Today we decide only that for purposes of state-court venue under § 94 a national bank is "located" in any county in which it has a branch bank. There is no need in this case to consider the meaning of the word "established" in § 94, nor to draw any contrast between the words "established" and "located." It is upon this understanding that I join the opinion of the Court.

*The first case to decide the question, *Leonardi v. Chase National Bank*, 81 F. 2d 21 (CA2), relied primarily on a First Circuit decision holding that a national bank chartered in New York was not "located" in Puerto Rico, where it operated a branch bank, for purposes of ~~state~~ taxation of the bank's shares, *National City Bank v. Domenech*, 71 F. 2d 13, and on the general provision for corporate venue which at that time limited venue to the district of incorporation. See 1 Moore's Federal Practice ¶ 0.141 [4], at 1352. Neither analogy compelled the Second Circuit's conclusion. Subsequent cases have not amplified *Leonardi*'s reasoning. See *United States National Bank v. Hill*, 434 F. 2d 1019 (CA9), and cases cited therein.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 28, 1977

Re: No. 76-398 - Citizens and Southern National
Bank v. Bougas

Dear Harry:

Please join me.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 1, 1977

Re: No. 76-398, Citizens and Southern National Bank v. Bougas

Dear Harry:

Please join me.

Sincerely,

T. M.
T. M.

Mr. Justice Blackmun

cc: The Conference

✓

HAB
Please give me

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 10/26/77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-398

Citizens and Southern Na-
 tional Bank, Petitioner, } On Writ of Certiorari to
 v. } the Court of Appeals of
 Nick Bougas. } Georgia.

[October —, 1977]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents an issue of state court venue of a transitory cause of action against a national bank. The controversy presumably concerns banking transactions at a duly authorized branch of the bank. The suit was filed in the state court of the county of the branch and not in the court of the different county specified in the bank's charter.

The governing statute is 12 U. S. C. § 94:

"Actions and proceedings against any association under this chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

The dispute obviously centers in the word "located" as it is employed in the statute.¹

¹ The word "located" appears in at least two other federal statutes concerning national banks:

28 U. S. C. § 1394 provides:

"Any civil action by a national banking association to enjoin the Comptroller of the Currency, under the provisions of any Act of Congress

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

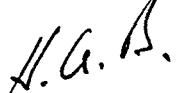
October 26, 1977

Re: No. 76-398 - Citizens and Southern National Bank
v. Bougas

Dear John:

This is in response to your note of this afternoon. I would not only consider omitting Part VI, I would be glad to do so if a majority would go along. I included it only because of the usual hesitancy around here about deciding anything not precisely presented by the record. If a majority is willing to go this far, that is fine with me and I'll adjust the opinion accordingly. I take it, from an informal communication received from Bill Brennan, he goes along.

Sincerely,



Mr. Justice Stevens

cc: The Conference

October 27, 1977

Re: No. 76-398 - Citizens and Southern National Bank
v. Bougas

Dear Potter:

Obviously you are highly dissatisfied with the opinion I propose for this case.

As my note of yesterday to John stated, I am glad to eliminate Part VI if four others are so inclined. John, you, Bill Rehnquist and I, at least, are receptive to this. Undoubtedly, someone else will be.

I shall circulate a new draft with some modifications. These include some, but not all, of your suggestions.

Sincerely,

HAB

Mr. Justice Stewart

✓ —
 pp. 1, 5, 10, 11
 To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 10/27/77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-398

Citizens and Southern National Bank, Petitioner, } On Writ of Certiorari to
 v. the Court of Appeals of
 Nick Bougas. Georgia.

[October —, 1977]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents an issue of state court venue of a transitory cause of action against a national bank. The suit was filed in the state court of the county of the branch and not in the court of the different county specified in the bank's charter.

The governing statute is 12 U. S. C. § 94:

"Actions and proceedings against any association under this chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

The dispute obviously centers in the word "located" as it is employed in the statute.¹

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28 U. S. C. § 1394 provides:

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 28, 1977

76-398 Citizens and Southern National Bank v.
Nick Bougas

Dear Harry:

Please join me.

Sincerely,

Levin

Mr. Justice Backmun

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 26, 1977

Re: No. 76-398 - Citizens and Southern National Bank
v. Bougas

Dear Harry:

I am quite agreeable to the omission of Part VI of your proposed opinion in this case, and will be glad to join it if that omission is made.

Sincerely,

WW

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 28, 1977

Re: No. 76-398 - Citizens and Southern National
Bank v. Bougas

Dear Harry:

Please join me.

Sincerely,

W.H.R.

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 26, 1977

Re: 76-398 - Citizens & Southern National Bank
v. Bougas

Dear Harry:

Would you consider omitting Part VI from the opinion. I do not think the language of § 94 provides any basis for making venue depend on where the transitory action arose. I am afraid that if Part VI is included, we would simply invite further litigation which might be avoided if this Part were omitted. I am happy to join Parts I - V of the opinion.

Respectfully,



Mr. Justice Blackmun

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