

The Burger Court Opinion Writing Database

Marquette National Bank of Minneapolis v First of Omaha Service Corp.

439 U.S. 299 (1978)

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

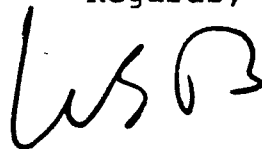
December 14, 1978

RE: (77-1265 - Marquette National Bank of
(Minneapolis v. First of Omaha
(Service Corporation
(
(77-1258 - State of Minnesota v. First
(of Omaha Service Corporation

Dear Bill:

I join.

Regards,



Mr. Justice Brennan

Copies to the Conference

P.S. If any other cases "emerge," I suggest that we schedule
a sitting for Monday to get them down. More later.

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

From: Mr. Justice Brennan
Presented by: [illegible]

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 77-1258 AND 77-1265

State of Minnesota, Petitioner,
77-1258 v.
First of Omaha Service
Corporation et al.
Marquette National Bank of
Minneapolis, Petitioner,
77-1265 v.
First of Omaha Service
Corporation et al.

On Writs of Certiorari to
the Supreme Court of
Minnesota.

[January —, 1979]

MR. JUSTICE BRENNAN delivered the opinion of the Court.
The question for decision is whether the National Bank
Act, Rev. Stat. § 5197, as amended, 12 U. S. C. § 85,¹ author-
izes a national bank based in one State to charge its out-of-

¹ Section 85 states, in the pertinent part:
"Any association may take, receive, reserve, and charge on any loan or
discount made, or upon any notes, bills of exchange, or other evidences of
debt, interest at the rate allowed by the laws of the State, Territory, or
District where the bank is located, or at a rate of 1 per centum in excess
of the discount rate on ninety-day commercial paper in effect at the Fed-
eral reserve bank in the Federal reserve district where the bank is located,
or in the case of business or agricultural loans in the amount of \$25,000 or
more, at a rate of 5 per centum in excess of the discount rate on ninety-
day commercial paper in effect at the Federal Reserve Bank in the Federal
Reserve district where the bank is located, whichever may be the greater,
and no more, except that where by the laws of any State a different rate
is limited for banks organized under State laws, the rate so limited shall
be allowed for associations organized or existing in any such State under
this chapter."

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 13, 1978

RE: No. 77-1258 Minnesota v. First of Omaha
No. 77-1265 Marquette National Bank v.
First of Omaha

Dear Harry:

I fully agree that the bond in the Iowa case should remain at the figure you fixed.

I gather that there'll be no session next Monday to announce opinions but Marquette (which now has 8 with only the Chief Justice out) will in any event be down on January 8.

Sincerely,



Mr. Justice Blackmun

1, 2, 5-8, 10-11, 14, 16

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

From: Mr. Justice Brennan
Circulated: _____
Recirculated: 14 DEC 97

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 77-1265 AND 77-1258

Marquette National Bank of
Minneapolis, Petitioner,
77-1265 v.
First of Omaha Service
Corporation et al.
State of Minnesota, Petitioner,
77-1258 v.
First of Omaha Service
Corporation et al.

On Writs of Certiorari to
the Supreme Court of
Minnesota.

[January —, 1979]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question for decision is whether the National Bank Act, Rev. Stat. § 5197, as amended, 12 U. S. C. § 85,¹ authorizes a national bank based in one State to charge its out-of-

¹ Section 85 states, in the pertinent part:

"Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, or in the case of business or agricultural loans in the amount of \$25,000 or more, at a rate of 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district where the bank is located, whichever may be the greater, and no more, except that where by the laws of any State a different rate is limited for banks organized under State laws, the rate so limited shall be allowed for associations organized or existing in any such State under this chapter."

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 6, 1978

Re: Nos. 77-1258 and 77-1265, Minnesota
v. First of Omaha Service Corp.

Dear Bill,

I am glad to join your opinion for the
Court.

Sincerely yours,

P.S.
/

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 7, 1978

Re: Nos. 77-1258 & 77-1265 -

State of Minnesota v. First of Omaha
Service Corporation, et al;

Marquette National Bank of Minneapolis
v. First of Omaha Service Corpora-
tion, et al.

Dear Bill,

Please join me.

Sincerely yours,

Mr. Justice Brennan

Copies to the Conference.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 7, 1978

Re: Nos. 77-1258 and 77-1265, Minnesota
v. First of Omaha Service Corp., et al.

Dear Bill:

Please join me.

Sincerely,

JM.

T.M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 28, 1978

Re: No. 77-1258 - Minnesota v. First of Omaha
Service Corp.
No. 77-1265 - Marquette National Bank v.
First of Omaha Service Corp.

Dear Bill:

Herewith, for your information, is a copy of a stay order I asked the Clerk to prepare in No. A-500 (78-846), First of Omaha Service Corp. v. Iowa, et al. This is the Iowa case, corresponding to the Minnesota litigation, where the Iowa court reached exactly the opposite result. The Supreme Court of Iowa entered a "temporary" stay which expires by its terms on December 1. Thus, they kicked the ball to me. The amount of the supersedeas bond is suggested by counsel for First of Omaha. I have asked for a response by noon on December 5 and have added the last paragraph to the order in case the State suggests that \$1,500,000 is insufficient. I shall bring this up at conference so that the entire Court may be informed.

Sincerely,



Mr. Justice Brennan

December 7, 1978

Re: No. 77-1258 - Minnesota v. First of Omaha
No. 77-1265 - Marquette National Bank v.
First of Omaha

Dear Bill:

By a separate note I am joining your opinion, and am glad to do so.

The following are very minor matters for your consideration. I realize I am being presumptuous in even suggesting the second:

1. It is getting to be a long time since I left the Midwest, but I am not aware that the Minnesota Reports are in the second series, as is indicated on pages 2 and 7 of the opinion. Perhaps you are more up to date than I am on this.

2. I realize that normally the case with the lower docket number is used for the heading. When I thought it was indicated, I have been able to persuade Mr. Putzel to reverse the procedure. I think this would be indicated here. The original plaintiff was the Marquette National Bank, and the State came in only by way of intervention. The litigation is basically one between two banks, with the State brought in, or coming in, to emphasize the Minnesota statute. You, of course, are the author and should do as you prefer. My own preference would be to use No. 77-1265 as the lead case.

Sincerely,

HAB

Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 7, 1978

Re: No. 77-1258 - Minnesota v. First of Omaha
No. 77-1265 - Marquette National Bank v.
First of Omaha

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 13, 1978

Re: No. 77-1258 - Minnesota v. First of Omaha
No. 77-1265 - Marquette National Bank v.
First of Omaha

Dear Bill:

The response I requested to the stay in the Iowa case has now come in from the Iowa Attorney General. He suggests that the amount of the supersedeas bond be raised from \$1,500,000 to \$2,000,000. I have chosen to take no further action and, thus, to let the bond remain at the lower figure. I reach this conclusion because of the imminence of the decision in the Minnesota case and because I think the lower figure is sufficiently protective anyway. I hope you do not disagree with this action on my part.

Sincerely,



Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 7, 1978

No. 77-1258 Minnesota v. First of Omaha
No. 77-1265 Marquette v. First of Omaha

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Confernce

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 11, 1978

Re: Nos. 77-1258 and 77-1265 Minnesota v. First of,
Omaha Service Corp. et al.

Dear Bill:

I had the most doubts about this case at Conference, I think, but you have written a good opinion and I am glad to join it. My only question is whether you really want to set out, as you do in the text and footnotes on pages 15-16, the cities at which bank notes could be redeemed. As you will note, they include not only larger metropolitan areas of the time, but Albany and Leaverworth; the footnote indicates that later Charleston and Richmond were added. Yet not a single city in New Jersey is included! Incidentally, Milwaukie, as you have spelled it, is a suburb of Portland, Oregon; if the Statutes at Large do indeed spell the name that way, I suppose you have no choice, but I would guess that they intended my native city of Milwaukee, Wisconsin.

Sincerely,

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 7, 1978

Re: 77-1258 - Minnesota v. First of Omaha
Svs. Corp.
77-1265 - Marquette Nat'l Bank of
Minneapolis v. First of Omaha Svs.
Corp.

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference