

The Burger Court Opinion Writing Database

Marine Bank v. Weaver

455 U.S. 551 (1982)

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



To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: The Clerk of the Court

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[Handwritten scribbles and a large diagonal line]

FIRST DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1562

MARINE BANK, PETITIONER *v.*
SAMUEL WEAVER, ET UX.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

[February —, 1982]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to decide whether two instruments,
a conventional certificate of deposit and a business agreement
between two families, could be considered securities under
the antifraud provisions of the federal securities laws.

I

Respondents, Sam and Alice Weaver, purchased a \$50,000
certificate of deposit from petitioner, Marine Bank, on Feb-
ruary 28, 1978. The certificate of deposit has a six year ma-
turity and it is insured by the Federal Deposit Insurance
Corporation.¹ The Weavers subsequently pledged the cer-
tificate of deposit to Marine Bank on March 17, 1978, to guar-
antee a \$65,000 loan made by the Bank to Columbus Packing
Company. Columbus was a wholesale slaughterhouse and

¹The certificate of deposit pays 7½% interest and provides that, if the
Bank permits early withdrawal, the depositor will earn interest at the
Bank's current savings passbook rate on the amount withdrawn, except
that no interest will be paid for the three months prior to withdrawal.
When the Weavers purchased the certificate of deposit, it could only be in-
sured up to \$40,000 by the FDIC. The ceiling on insured deposits is now
\$100,000. Act of March 31, 1980, Pub. L. No. 96-221, 94 Stat. 147,
§ 308(b)(1).

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

RECEIVED
OFFICE OF THE
CLERK OF THE
SUPREME COURT

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 2, 1982

MAR 2 PM 2 25

Re: Marine Bank v. Weaver - No. 80-1562

Dear Chief:

Although I voted the other way in this case, I think I could join your opinion if you deleted the last two words of Part I of the opinion, on page 3, and substituted in their place, "now be considered." This change would make the last sentence of Part I consistent with the last sentence of the opinion.

Sincerely,

The Chief Justice

*Dear Bill
I have now
inserted "now be entertained."
Thank you
WJB*

Brennan J

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To: Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: The Chief Justice

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SECOND DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1562

MARINE BANK, PETITIONER *v.*
 SAMUEL WEAVER, ET UX.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
 APPEALS FOR THE THIRD CIRCUIT

[February —, 1982]

CHIEF JUSTICE BURGER delivered the opinion of the
 Court.

We granted certiorari to decide whether two instruments, a conventional certificate of deposit and a business agreement between two families, could be considered securities under the antifraud provisions of the federal securities laws.

I

Respondents, Sam and Alice Weaver, purchased a \$50,000 certificate of deposit from petitioner, Marine Bank, on February 28, 1978. The certificate of deposit has a six year maturity and it is insured by the Federal Deposit Insurance Corporation.¹ The Weavers subsequently pledged the certificate of deposit to Marine Bank on March 17, 1978, to guarantee a \$65,000 loan made by the Bank to Columbus Packing Company. Columbus was a wholesale slaughterhouse and

¹The certificate of deposit pays 7½% interest and provides that, if the Bank permits early withdrawal, the depositor will earn interest at the Bank's current savings passbook rate on the amount withdrawn, except that no interest will be paid for the three months prior to withdrawal. When the Weavers purchased the certificate of deposit, it could only be insured up to \$40,000 by the FDIC. The ceiling on insured deposits is now \$100,000. Act of March 31, 1980, Pub. L. No. 96-221, 94 Stat. 147, § 308(b)(1).

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

CHAMBERS OF
THE CHIEF JUSTICE

March 5, 1982

Re: 80-1562 - Marine Bank v. Weaver

Dear John:

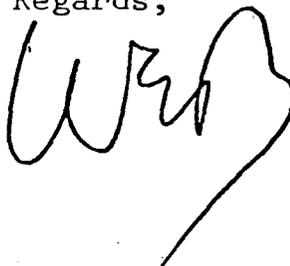
I think the point you make is really covered by my emphasis at the top of page 9 "that this (is a) unique agreement. . ." However, it will surely do no harm to underscore this uniqueness.

How about adding at the opening of Part V the following:

Whatever may be the consequences of these transactions, they did not occur in connection with the purchase or sale of 'securities.' 1/

1/ It does not follow that a certificate of deposit or business arrangement between contracting parties invariably falls outside the definition of a security as defined by statute. Each transaction must be analyzed and evaluated on the basis of the content of the instruments in question, the purposes intended to be served and the factual setting as a whole.

Regards,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

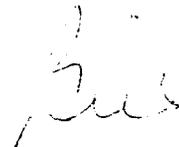
March 2, 1982

Re: Marine Bank v. Weaver - No. 80-1562

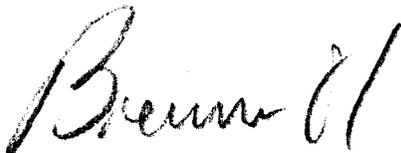
Dear Chief:

Although I voted the other way in this case, I think I could join your opinion if you deleted the last two words of Part I of the opinion, on page 3, and substituted in their place, "now be considered." This change would make the last sentence of Part I consistent with the last sentence of the opinion.

Sincerely,



The Chief Justice



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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

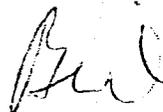
March 2, 1982

RE: No. 80-1562 Marine Bank v. Weaver

Dear Chief:

I join.

Sincerely,



The Chief Justice
cc: The Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 3, 1982

Re: 80-1562 - Marine Bank v. Weaver

Dear Chief,

Please join me.

Sincerely yours,



The Chief Justice

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cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 3, 1982

Re: No. 80-1562 - Marine Bank v. Weaver

Dear Chief:

Please join me.

Sincerely,


T.M.

The Chief Justice

cc: The Conference

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

March 3, 1982

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

Re: No. 80-1562 - Marine Bank v. Weaver

Dear Chief:

Please join me.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 2, 1982

80-1562 Marine Bank v. Weaver

Dear Chief:

Please join me.

Sincerely,

L. Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 2, 1982

Re: No. 80-1562 Marine Bank v. Weaver

Dear Chief:

Please join me in your opinion for the Court.

Sincerely,

WHR

The Chief Justice

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

march 4, 1982

Re: 80-1562 -- Marine Bank v. Weaver

Dear Chief:

Would you be willing to insert the substance of the following paragraph as a footnote at the end of the next to the last sentence of Part I on page 3 (or at some other suitable location)?

We do not hold that every conventional certificate of deposit or every business agreement between two families falls outside the definition of security. As the remainder of this opinion indicates, our analysis turns on the context in which the instruments were issued. It follows that the result of such an analysis in another case might be different if the context in which similar instruments were issued differed so greatly that application of the federal securities laws under those circumstances would be consistent with legislative intent.

I make this suggestion because I believe the consensus at conference was to accept the Solicitor General's recommendation that we carefully avoid holding that a certificate of deposit may never be a security under any circumstance. He suggested at pages 22-24 that it might be appropriate to regard the issuance of certificates of deposit by bank-type entities that are not regulated as securities, and also suggested that trading in such instruments might be regulated under the Investment Company Act's definition of a security even though the language in that definition is precisely the same as in the Securities Act. He also made reference to the possibility that trading in certificates of deposit in a secondary

-2-

market should be regarded as trading in securities. See footnote 40 on page 24. I do not believe anything in your opinion is intended to reject the Solicitor General's suggestion, but I am afraid it may be read somewhat more broadly than the Court intends unless you include some such caveat.

If this suggestion is acceptable to you, I will be happy to join your opinion.

Respectfully,

A handwritten signature, likely of the Chief Justice, consisting of a stylized 'C' followed by a vertical line and a horizontal stroke.

The Chief Justice

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 5, 1982

Re: 80-1562 - Marine Bank v. Weaver

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 1, 1982

No. 80-1562 Marine Bank v. Weaver

Dear Chief,

Please join me in your opinion in the
referenced case.

Sincerely,



The Chief Justice

Copies to the Conference