

The Burger Court Opinion Writing Database

Northeast Bancorp, Inc. v. Board of Governors, FRS

472 U.S. 159 (1985)

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



N

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

CHAMBERS OF
THE CHIEF JUSTICE

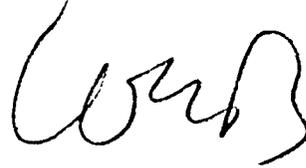
May 28, 1985

Re: No. 84-363 - Northeast Bancorp v. Board
of Governors

Dear Bill:

I join.

Regards,



Justice Rehnquist

Copies to the Conference

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CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

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

May 21, 1985

No. 84-363

Northeast Bancorp, Inc., et al.
v. Board of Governors of the
Federal Reserve System, et al.

Dear Bill,

I agree.

Sincerely,

Justice Rehnquist

Copies to the Conference

13
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 22, 1985

84-363 - Northeast Bancorp, Inc. v. Board of
Governors of the Federal Reserve System

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 28, 1985

Re: No. 84-363-Northeast Bancorp v. Bd of
Governors of the Fed. Reserve System

Dear Bill:

Please join me.

Sincerely,

J.M.

T.M.

Justice Rehnquist

cc: The Conference



CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

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

May 23, 1985

Re: No. 84-363, Northeast Bancorp., Inc.
v. Board of Governors of the Federal Reserve System

Dear Bill:

Please join me.

Sincerely,

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 10, 1985

84-363 Northeast Bancorp v. Board of Governors

Dear Al:

Please mark me "out" on the public record in this case.

It has just recently come to my attention (initially through an article in the Washington Post) that a former major client of mine has a substantial interest in the outcome of this case.

Sincerely,

Lewis

Mr. Alexander L. Stevas

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 17, 1985

84-363 Northeast Bancorp v. Board of Governors

Dear Bill:

Please add at the end of the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

L. F. P.

Justice Rehnquist

lfp/ss

cc: The Conference

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

From: **Justice Rehnquist**

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P 6, 7, 13

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-363

**NORTHEAST BANCORP, INC., ET AL., PETITIONERS
v. BOARD OF GOVERNORS OF THE FEDERAL
RESERVE SYSTEM ET AL.**

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

[May —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

Intervenor-respondents Bank of New England Corporation ("BNE"), Hartford National Corporation ("HNC"), and Bank of Boston Corporation ("BBC") are bank holding companies which applied to the Federal Reserve Board to obtain approval for the acquisition of banks or bank holding companies in New England states other than the ones in which they are principally located. Petitioners Northeast Bancorp, Inc., Union Trust Company and Citicorp opposed these proposed acquisitions in proceedings before the Board. The Board approved the acquisitions, and the Court of Appeals for the Second Circuit affirmed the orders of the Board. Petitioners sought certiorari, contending that the acquisitions were not authorized by the Bank Holding Company Act of 1956, 70 Stat. 133, as amended, 12 U. S. C. § 1841 *et seq.*, and that, if they were authorized by that Act, the state statutes which permitted the acquisitions in each case violated the Commerce Clause and the Compact Clause of the United States Constitution. We granted certiorari because of the importance of these issues, — U. S. —, and we now affirm.

The Bank Holding Company Act (BHCA), 12 U. S. C. § 1841 *et seq.*, regulates the acquisition of state and national banks by bank holding companies. The Act generally de-

Stylistic

pp 4, 5, 16, 17

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

From: Justice Rehnquist

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-363

**NORTHEAST BANCORP, INC., ET AL., PETITIONERS
v. BOARD OF GOVERNORS OF THE FEDERAL
RESERVE SYSTEM ET AL.**

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

[June —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

Intervenor-respondents Bank of New England Corporation ("BNE"), Hartford National Corporation (HNC), and Bank of Boston Corporation (BBC) are bank holding companies which applied to the Federal Reserve Board to obtain approval for the acquisition of banks or bank holding companies in New England States other than the ones in which they are principally located. Petitioners Northeast Bancorp, Inc., Union Trust Company and Citicorp opposed these proposed acquisitions in proceedings before the Board. The Board approved the acquisitions, and the Court of Appeals for the Second Circuit affirmed the orders of the Board. Petitioners sought certiorari, contending that the acquisitions were not authorized by the Bank Holding Company Act of 1956, 70 Stat. 133, as amended, 12 U. S. C. § 1841 *et seq.*, and that, if they were authorized by that Act, the state statutes which permitted the acquisitions in each case violated the Commerce Clause and the Compact Clause of the United States Constitution. We granted certiorari because of the importance of these issues, 469 U. S. —, and we now affirm.

The Bank Holding Company Act (BHCA), 12 U. S. C. § 1841 *et seq.*, regulates the acquisition of state and national banks by bank holding companies. The Act generally de-

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Stylized + pp. 2, 7 & 17

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

From: **Justice Rehnquist**

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Recirculated: MAY 31 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

 No. 84-363

NORTHEAST BANCORP, INC., ET AL., PETITIONERS
v. BOARD OF GOVERNORS OF THE FEDERAL
RESERVE SYSTEM ET AL.

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

[June —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

Intervenor-respondents Bank of New England Corporation ("BNE"), Hartford National Corporation (HNC), and Bank of Boston Corporation (BBC) are bank holding companies which applied to the Federal Reserve Board to obtain approval for the acquisition of banks or bank holding companies in New England States other than the ones in which they are principally located. Petitioners Northeast Bancorp, Inc., Union Trust Company and Citicorp opposed these proposed acquisitions in proceedings before the Board. The Board approved the acquisitions, and the Court of Appeals for the Second Circuit affirmed the orders of the Board. Petitioners sought certiorari, contending that the acquisitions were not authorized by the Bank Holding Company Act of 1956, 70 Stat. 133, as amended, 12 U. S. C. § 1841 *et seq.*, and that, if they were authorized by that Act, the state statutes which permitted the acquisitions in each case violated the Commerce Clause and the Compact Clause of the United States Constitution. We granted certiorari because of the importance of these issues, 469 U. S. —, and we now affirm.

The Bank Holding Company Act (BHCA), 12 U. S. C. § 1841 *et seq.*, regulates the acquisition of state and national banks by bank holding companies. The Act generally de-

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 17, 1985

MEMORANDUM TO THE CONFERENCE

RE: No. 84-754, Citicorp v. Board of Governors of the Federal Reserve System

This case was held for No. 84-363, Northeast Bancorp v. Board of Governors of the Federal Reserve System. It involves the proposed acquisition of RIHT Financial Corporation, a Rhode Island bank holding company, by Bank of Boston Corporation, and the proposed acquisition of Fleet National Bank of Boston and Fleet National Bank of Connecticut by Fleet Financial Group, a Rhode Island bank holding company. The same Massachusetts and Connecticut statutes that were involved in the Bancorp case are involved here, along with the substantially similar Rhode Island statute, which was described in Bancorp.

By stipulation of the parties, the CA2 entered orders affirming the rulings of the Board approving these proposed acquisitions. The orders relied on the CA2's opinion in Bancorp. The petition for certiorari presents the same issues that were presented in the Bancorp petition. Because we affirmed the CA2 in Bancorp, I will vote to deny.

Sincerely,



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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 17, 1985

Re: 84-363 - Northeast Bancorp v. Board of
Governors, Federal Reserve System

Dear Bill:

Please join me.

Respectfully,

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

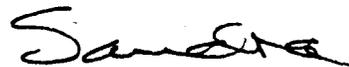
May 24, 1985

No. 84-363 Northeast Bancorp, Inc. v. Board of
Governors of the Federal Reserve

Dear Bill,

Please join me in your opinion. I will probably add a few words of my own by way of concurrence.

Sincerely,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 31, 1985

Re: 84-363 Northeast Bancorp, Inc., et al. v. Board of
Governors of the Federal Reserve System, et al.

Dear Chief,

I still plan to circulate something in this case and it was my understanding that the case would not be handed down this week because of that. I am assuming that the Conference is willing to put it off for one more week.

Sincerely,

SOC/med

The Chief Justice

Copies to the Conference

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

From: Justice O'Connor

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Jun 3 '85

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-363

**NORTHEAST BANCORP, INC., ET AL., PETITIONERS
v. BOARD OF GOVERNORS OF THE FEDERAL
RESERVE SYSTEM ET AL.**

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

[June —, 1985]

JUSTICE O'CONNOR, concurring.

I agree that the state banking statutes at issue here do not violate the Commerce Clause, the Compact Clause, or the Equal Protection Clause. I write separately to note that I see no meaningful distinction for Equal Protection Clause purposes between the Massachusetts and Connecticut statutes we uphold today and the Alabama statute the Court struck down in *Metropolitan Life Insurance Co. v. Ward*, — U. S. — (1985).

The Court distinguishes this case from *Metropolitan Life* on the ground that Massachusetts and Connecticut favor neighboring out-of-state banks over all other out-of-state banks. It is not clear to me why completely barring the banks of 44 States from doing business is less discriminatory than Alabama's scheme of taxing the insurance companies from 49 States at a slightly higher rate. Nor is it clear why the Equal Protection clause should tolerate a regional "home team" when it condemns a state "home team." See *Id.*, at —.

The Court emphasizes that here we do not write on a clean slate as the business of banking is "of profound local concern." *Ante*, at 16. The business of insurance is also of uniquely local concern. *Prudential Insurance Co. v. Benjamin*, 328 U. S. 408, 415-415 (1946). Both industries histori-

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Justice Rehnquist
Justice Stevens

From: Justice O'Connor

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SUPREME COURT OF THE UNITED STATES

No. 84-363

NORTHEAST BANCORP, INC., ET AL., PETITIONERS
v. BOARD OF GOVERNORS OF THE FEDERAL
RESERVE SYSTEM ET AL.

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

[June 10, 1985]

JUSTICE O'CONNOR, concurring.

I agree that the state banking statutes at issue here do not violate the Commerce Clause, the Compact Clause, or the Equal Protection Clause. I write separately to note that I see no meaningful distinction for Equal Protection Clause purposes between the Massachusetts and Connecticut statutes we uphold today and the Alabama statute at issue in *Metropolitan Life Insurance Co. v. Ward*, 470 U. S. ____ (1985).

The Court distinguishes this case from *Metropolitan Life* on the ground that Massachusetts and Connecticut favor neighboring out-of-state banks over all other out-of-state banks. It is not clear to me why completely barring the banks of 44 States from doing business is less discriminatory than Alabama's scheme of taxing the insurance companies from 49 States at a slightly higher rate. Nor is it clear why the Equal Protection clause should tolerate a regional "home team" when it condemns a state "home team." See *Id.*, at ____.

The Court emphasizes that here we do not write on a clean slate as the business of banking is "of profound local concern." *Ante*, at 16. The business of insurance is also of uniquely local concern. *Prudential Insurance Co. v. Benjamin*, 328 U. S. 408, 415-415 (1946). Both industries histori-