

The Burger Court Opinion Writing Database

Board of Governors, FRS v. Dimension Financial Corp.

474 U.S. 361 (1986)

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 Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: ~~JAN 8 1995~~

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1274

**BOARD OF GOVERNORS OF THE FEDERAL RE-
SERVE SYSTEM, PETITIONER v. DIMENSION
FINANCIAL CORPORATION ET AL.**

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

[January —, 1986]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to decide whether the Federal Reserve Board acted within its statutory authority in defining "banks" under Section 2(c) of the Bank Holding Company Act of 1956, 12 U. S. C. § 1841 *et seq.*, as any institution that (1) accepts deposits that "as a matter of practice" are payable on demand and (2) engages in the business of making "any loan other than a loan to an individual for personal, family, household, or charitable purposes" including "the purchase of retail installment loans or commercial paper, certificates of deposit, bankers' acceptances, and similar money market instruments." 12 C. F. R. § 225.2(a)(1).

I

A

Section 2(c) of the Bank Holding Company Act defines "bank" as any institution "which (1) accepts deposits that the depositor has a legal right to withdraw on demand, and (2) engages in the business of making commercial loans." 12 U. S. C. 1841(c).

This case is about so-called "nonbank banks"—institutions that offer services similar to those of banks but which until recently have not been under Board regulation because they

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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**

Circulated: _____

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STYLISTIC CHANGES THROUGHOUT

See page 12

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1274

BOARD OF GOVERNORS OF THE FEDERAL RE-
SERVE SYSTEM, PETITIONER *v.* DIMENSION
FINANCIAL CORPORATION ET AL.

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I

A

Section 2(c) of the Bank Holding Company Act defines "bank" as any institution "which (1) accepts deposits that the depositor has a legal right to withdraw on demand, and (2) engages in the business of making commercial loans." 70 Stat. 133, as amended, 12 U. S. C. §1841(c).

This case is about so-called "nonbank banks"—institutions that offer services similar to those of banks but which until recently were not under Board regulation because they con-

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

CHAMBERS OF
THE CHIEF JUSTICE

January 23, 1986

RE: No. 85-193 - U.S. Trust Corporation v. Board of
Governors of the Federal Reserve

MEMORANDUM TO THE CONFERENCE:

This case was held for Board of Governors of the Federal Reserve v. Dimension Financial Corp., No. 84-1274.

In 1981, petitioner received authorization from the Federal Reserve Board and the Florida Department of Banking to establish U.S. Trust Company of Florida, a nondepository subsidiary. In 1983, it sought approval from the Board to expand its Florida subsidiary's "non-bank" activities to include the acceptance of demand deposits and the making of consumer loans. The Board agreed with petitioner that these new activities would not transform the Florida subsidiary into a "bank" for purposes of the Bank Holding Company Act because the subsidiary would not engage in the business of making commercial loans.

The Florida Banking Department brought suit in the United States Court of Appeals for the Eleventh Circuit, claiming that the subsidiary was subject to the Act's limitations on interstate banking, see 12 U.S.C. §1842(d), even though the subsidiary did not meet the two-part definition of a bank. The Court of Appeals agreed, holding that the "commercial loan" element of the "bank" definition was a mere "technical requirement" intended to benefit a single institution, Boston Safe Deposit and Trust Company. "We cannot persuade ourselves to employ literalism in statutory interpretation in order to bootstrap Congress' technical amendment of the definition of bank -- after being told that the amendment would apply to only a single institution -- into a total emasculation of the long held policy giving states control over bank expansion." 760 F.2d 1135, 1141. The court accordingly held that the Board should have exercised its powers to prevent evasion by petitioner of the "fundamental purposes of the Act." Id.

The Eleventh Circuit's decision is not consistent with Dimension Financial. In Dimension we specifically rejected the Board's contention that the "commercial loan" provision was a "technical amendment to the Act designed to create a narrowly circumscribed exclusion from the Act's coverage." Slip op. at 9. We stated, "[t]he statute by its terms ... exempts from regulation all institutions that do not engage in the business of

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 9, 1986

No. 84-1274

Board of Governors
of the Federal Reserve System
v. Dimension Financial
Corporation, et al.

Dear Chief,

I agree.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 9, 1986

84-1274 -

Board of Governors of the Federal Reserve
System v. Dimension Financial Corporation

Dear Chief,

Please show at the foot of your opinion
that I took no part in the consideration or
decision in this case.

Sincerely yours,



The Chief Justice

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 9, 1986

Re: No. 84-1274-Bd of Governors of the Federal
Reserve System v. Dimension Financial Corp.

Dear Chief:

Please join me.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 10, 1986

Re: No. 84-1274, Board of Governors of the Federal Reserve System v. Dimension Financial Corporation

Dear Chief:

Please join me.

Sincerely,

HAB

The Chief Justice

cc: The Conference

32 JAN 10 1986

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 10, 1986

84-1274 Board of Governors v. Dimension Financial

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

.82 JAN 10 1986

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 10, 1986

Re: No. 84-1274 Board of Governors of the Federal Reserve
System v. Dimension Financial Corporation

Dear Chief,

Please join me.

Sincerely,

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 13, 1986

Re: 84-1274 - Board of Governors of The
Federal Reserve System v. Dimension
Financial Corp.

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 9, 1986

No. 84-1274 Bd. of Governors of the Federal
Reserve System v. Dimension Financial Corp.

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

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