Volume 60 | Issue 2 Article 3

10-1-2015

Shut the State Court's Doors: Diversity Jurisdiction over National Banks in the Ninth Circuit's Rouse v. Wachovia Mortgage, FSB

Melissa Siravo Hensinger

Follow this and additional works at: https://digitalcommons.law.villanova.edu/vlr

 Part of the Banking and Finance Law Commons

Recommended Citation

Melissa S. Hensinger, *Shut the State Court's Doors: Diversity Jurisdiction over National Banks in the Ninth Circuit's Rouse v. Wachovia Mortgage, FSB*, 60 Vill. L. Rev. 315 (2015).
Available at: https://digitalcommons.law.villanova.edu/vlr/vol60/iss2/3

This Note is brought to you for free and open access by the Journals at Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

SHUT THE STATE COURT'S DOORS: DIVERSITY JURISDICTION OVER NATIONAL BANKS IN THE NINTH CIRCUIT'S *ROUSE* v. *WACHOVIA MORTGAGE, FSB*

MELISSA SIRAVO HENSINGER*

"One might think that 150 years after Congress established national banks in 1863, the question of their citizenship for purposes of diversity jurisdiction would be well established. Not so."[1]

I. A TREASURY OF INFORMATION: AN INTRODUCTION TO DIVERSITY JURISDICTION OVER NATIONAL BANKS

Congress first established national banks over 150 years ago, yet questions still exist over where national banks are domiciled for purposes of diversity jurisdiction.[2] Originally, federal district courts had jurisdiction over any action dealing with national banks.[3] However, this practice

* J.D. Candidate, 2015, Villanova University School of Law; B.S., 2012, Kutztown University of Pennsylvania. I would like to thank my family and friends for their continued support and encouragement. I would also like to thank the staff of the *Villanova Law Review* for all of their advice and input in the publication of this Note.

1. Rouse v. Wachovia Mortg., FSB, 747 F.3d 707, 708 (9th Cir. 2014).

2. *See* Paul E. Lund, *National Banks and Diversity Jurisdiction*, 46 U. LOUISVILLE L. REV. 73, 77–81 (2007) (describing general development of national banks in United States); *see also* Joseph Lam, Note, *Where Are National Banks "Located"?*, 4 U.P.R. BUS. L.J. 35, 37–39 (2012), *available at* http://www.uprblj.com/wp/wp-content/uploads/2013/01/4-UPRBLJ-1-Joseph-Lam-Where-Are-National-Banks-Located-2013.pdf (tracing historical background of national banks and section 1348). According to the Federal Reserve, a national bank is "[a] Commercial Bank whose charter is approved by the Office of the Comptroller of the Currency (OCC) rather than by a State Banking Department." *All Institutional Types Defined*, NAT'L INFO. CTR., FED. RESERVE, http://www.ffiec.gov/nicpubweb/content/help/institution%20type%20description.htm (last visited Feb. 6, 2015). Further, "National Banks are required to be members of the Federal Reserve System and belong to the Federal Deposit Insurance Corporation." *Id.* Diversity jurisdiction is controlled by two statutes: 28 §§ U.S.C. 1332, 1348. Pursuant to section 1332, parties must be completely diverse and meet the amount in controversy requirement of $75,000. 28 U.S.C. § 1332(a), (c) (2012). To determine if parties are completely diverse, courts look at the states with which the parties are most closely identified. For individuals, courts determine diversity based upon the person's domicile, while for corporations, courts look to the corporation's principal place of business and state of incorporation. *See, e.g.*, Mas v. Perry, 489 F.2d 1396, 1399 (5th Cir. 1974) (discussing domicile requirements); *see also* 28 U.S.C. § 1332(c)(1). Section 1348 controls diversity jurisdiction involving banks. *See id.* § 1348.

3. *See* Mercantile Nat'l Bank at Dallas v. Langdeau, 371 U.S. 555, 565–66 (1963) (noting that national banks were allowed "to sue and be sued in the federal district and circuit courts solely because they were national banks, without regard to diversity, amount in controversy or the existence of a federal question in the usual sense"); *see also* Petri v. Commercial Nat'l Bank of Chi., 142 U.S. 644, 648–49

changed in the late 1880s, when Congress decided to put national and state banks on equal footing regarding access to the federal courts.[4]

For national banks, bringing cases to federal court generally creates more favorable outcomes.[5] Currently, 28 U.S.C. § 1348[6] governs diversity jurisdiction of national banks, but there is a conflict as to whether "citizens of the States in which they are respectively located" means only a bank's main office or both a bank's main office and principal place of business.[7]

(1892) (stating state-chartered banks were only allowed to sue in federal court on basis of diversity jurisdiction or federal question jurisdiction). When Congress first authorized national banks, it also provided " 'suits, actions, and proceedings by and against [them could] be had' " in federal court. First Nat'l Bank of Canton, Pa. v. Williams, 252 U.S. 504, 510 (1920) (quoting Act of Feb. 25, 1863, § 59, 12 Stat. 665, 681).

4. *See* Wachovia Bank v. Schmidt, 546 U.S. 303, 310 (2006) (citing *Petri*, 142 U.S. at 649) (stating that national banks lost power to automatically sue and be sued in federal court due to their origin); *see also* Leather Mfrs.' Nat'l Bank v. Cooper, 120 U.S. 778, 780 (1887) (noting that Congress changed statute in order to put national banks "on the same footing as the banks of the state where they were located"). Diversity jurisdiction for state-chartered banks and other corporations is governed by 28 U.S.C. § 1332(c)(1), and under this provision, state banks and corporations are citizens of both their state of incorporation and principal place of business. *See* 28 U.S.C. § 1332(c)(1).

5. *See* Michael Podolsky, Note, *Determining Diversity Jurisdiction of National Banks After* Wachovia Bank v. Schmidt, 81 FORDHAM L. REV. 1447, 1453–55 (2012) (discussing importance of option to litigate in federal courts and noting that having option to choose forum is "always an advantage"); *see also* Kevin M. Clermont & Theodore Eisenberg, *Do Case Outcomes Really Reveal Anything About the Legal System? Win Rates and Removal Jurisdiction*, 83 CORNELL L. REV. 581, 606–07 (1998) (stating that plaintiffs' odds of winning case are 50% without removal and 39% with removal).

6. 28 U.S.C. § 1348 (2012). The text of section 1348 reads "[a]ll national banking associations shall, for the purposes of all other actions by or against them, be deemed citizens of the States in which they are respectively located." *Id.*; *see also* Amy L. Levinson, *Developments in Diversity Jurisdiction*, 37 LOY. L.A. L. REV. 1407, 1427 (2004) ("A national bank is organized under federal law pursuant to the National Banking Act. As a result, national banks have no state of incorporation, and Congress enacted a statute to specifically address their citizenship." (footnote omitted)).

7. *Compare* Rouse v. Wachovia Mortg., FSB, 747 F.3d 707, 715 (9th Cir. 2014) (holding "located" means national banks' main office only), *and* Wells Fargo Bank, N.A. v. WMR e-Pin, LLC, 653 F.3d 702, 709 (8th Cir. 2011) (same), *with* Horton v. Bank One, N.A., 387 F.3d 426, 429 (5th Cir. 2004) (holding "located" refers to both national bank's principal place of business and main office), *and* Firstar Bank, N.A. v. Faul, 253 F.3d 982, 986 (7th Cir. 2001) (same). The principal place of business test is used under section 1332(c)(1) as part of determining the citizenship of corporations. *See* 28 U.S.C. § 1332(c)(1). Congress originally enacted this provision to relieve the federal courts' caseload and prevent federal courts from hearing cases from local corporations who satisfy complete diversity solely because they have a different state of incorporation. *See* Kelly v. U.S. Steel Corp., 284 F.2d 850, 852 (3d Cir. 1960) (discussing purpose of section 1332(c)(1)); S. REP. NO. 85-1830 (1958), *reprinted in* 1958 U.S.C.C.A.N. 3099, 3101–02 ("This fiction of stamping a corporation a citizen of the state of its incorporation has given rise to the evil whereby a local institution, engaged in a local business and in many cases locally owned, is enabled to bring its litigation into the federal courts simply because it has obtained a corporate charter from another state.").

However, conflicting interpretations of the statute have resulted in it being applied inconsistently.[8] Certain jurisdictions have held that a national bank is a citizen of only the state in which its main office is located.[9] Other jurisdictions say that a national bank is a citizen of both the state in which its main office is located and the state of its principal place of business.[10] National banks are frequently sued, and this inconsistency can create problems during litigation.[11] While the circuit conflict is not an issue for national banks that have their main office and principal place of business located in the same state, many national banks' principal places of business and main offices are located in different states.[12]

Recently, in *Rouse v. Wachovia Mortgage, FSB*,[13] the Ninth Circuit held that a national bank is only a citizen of the state where its main office is located for purposes of diversity jurisdiction.[14] In this case, the Ninth Circuit joined the Eighth Circuit in holding that a national bank is only a citizen of the state in which its main office is located.[15] Conversely, both the Fifth Circuit and the Seventh Circuit have held that a national bank is a citizen of both the state in which its main office is located and where its principal place of business is located.[16]

---

8. *Compare Rouse*, 747 F.3d at 715 (holding "located" means national banks' main office only), *and WMR e-Pin*, 653 F.3d at 709 (same), *with Horton*, 387 F.3d at 429 (holding "located" refers to both national bank's principal place of business and main office), *and Firstar Bank*, 253 F.3d at 986 (same).

9. *See, e.g.*, *Rouse*, 747 F.3d at 715 (holding national bank is only citizen of state where its main office is located); *WMR e-Pin*, 653 F.3d at 709 (rejecting assertion that national bank is citizen of state where its main office is located *and* citizen of state where its principal place of business is located).

10. *See, e.g.*, *Horton*, 387 F.3d at 436 ("We hold that the definition of 'located' is limited to the national bank's principal place of business and the state listed in its organization certificate and its articles of association."); *Firstar Bank*, 253 F.3d at 994 (holding national bank is located in state where "principal place of business is found and the state listed on its organization certificate").

11. *See* Kevin M. Clermont & Theodore Eisenberg, *Xenophilia in American Courts*, 109 HARV. L. REV. 1120, 1142 (1996) (noting main conflict is in which court system bank will be sued in). Generally, defendants get more favorable outcomes in federal forums. *See id.* According to Clermont and Eisenberg, "[a]n out-of-state corporation suing a corporation either incorporated or having its principal place of business in the forum state has a win rate of 84.47%, whereas an in-state corporation suing an out-of-state corporation has only a 66.66% win rate." *Id.*

12. *See, e.g.*, *Rouse*, 747 F.3d at 715 (noting that Wells Fargo Bank's principal place of business is located in California, while its main office is in South Dakota); Excelsior Funds, Inc. v. JP Morgan Chase Bank, N.A., 470 F. Supp. 2d 312, 313 (S.D.N.Y. 2006) (noting that Chase's principal place of business is located in New York and its main office is located in Ohio).

13. 747 F.3d 707 (9th Cir. 2014).

14. *See id.* at 715 ("[U]nder § 1348, a national banking association is a citizen only of the state in which its main office is located . . . .").

15. *See id.*; *see also* Wells Fargo Bank, N.A. v. WMR e-Pin, LLC, 653 F.3d 702, 709 (8th Cir. 2011) (holding the word "located" in section 1358 means national banks' main office as designated by its articles of association).

16. *See* Horton v. Bank One, N.A., 387 F.3d 426, 426 (5th Cir. 2004) (holding "located" refers to national banks' principal place of business and main office);

This Note argues that the Ninth Circuit incorrectly decided *Rouse* because its decision restricts citizens' access to state courts and is contrary to both historical and recent Supreme Court precedent.[17] Part II of this Note traces the development and scope of the legal landscape of diversity jurisdiction for national banks.[18] Part III describes the facts of *Rouse* and analyzes the Ninth Circuit's holding that national banks are only citizens of the state in which the bank's main office is located.[19] Part IV argues that *Rouse* incorrectly gives national banks greater access to federal courts, thereby restricting citizens' access to the state court system.[20] Part V concludes with a discussion of the likely impact of the Ninth Circuit's decision.[21]

II. EMPTYING THE VAULT: THE HISTORICAL BACKGROUND OF NATIONAL BANKS, SECTION 1348, AND THE MEANING OF "LOCATED"

Under the original diversity statute, Congress intended national banks to have greater access to federal courts than their state counterparts.[22] However, Congress subsequently amended the diversity statute to place national banks on equal footing with state banks.[23] What remains unclear is the meaning of the word "located" in section 1348, and whether Congress intended to continue jurisdictional parity when it did not amend section 1348 after mandating that state banks and other banks are citizens of their state of incorporation and principal of business.[24] This section traces the evolution of national banks' diversity jurisdiction, pursuant to amendments to section 1348, and summarizes the current legal landscape.[25]

Firstar Bank, N.A. v. Faul, 253 F.3d 982, 982 (7th Cir. 2001) (holding national bank is citizen of both state in which its main office is located and where its principal place of business is located).

17. For a further discussion of the need to reject the Eighth and Ninth Circuits' approach and adopt a different reading of section 1348 regarding the diversity jurisdiction of national banks, see *infra* notes 135–77 and accompanying text.

18. For a further discussion of the development and legal landscape of diversity jurisdiction for national banks, see *infra* notes 22–101 and accompanying text.

19. For a further discussion of the Ninth Circuit's holding and rationale in *Rouse*, see *infra* notes 102–34 and accompanying text.

20. For a critical analysis of the federalism issues presented by *Rouse* and other similar decisions, see *infra* notes 135–77 and accompanying text.

21. For a further discussion of the likely impact and reach of *Rouse*, see *infra* notes 178–81 and accompanying text.

22. For a discussion of the original National Banking Act, see *infra* notes 30–31 and accompanying text.

23. For a discussion of the 1882, 1887, and 1948 amendments to section 1348, see *infra* notes 32–34 and accompanying text.

24. For a discussion of the controversy concerning the concept of jurisdictional parity, see *infra* notes 49–90 and accompanying text.

25. For a discussion of the statutory evolution of section 1348 and the current legal landscape, see *infra* notes 26–101 and accompanying text.

A. *Account History: The Historical Development of National Banks in the United States*

The precursor to national banks was the First Bank of the United States, which was chartered by the United States Congress in 1791.[26] Alexander Hamilton was the most well-known proponent of the Bank of the United States.[27] Hamilton believed a national bank was necessary to establish financial order and credit in the new nation.[28] After the charter for the Second Bank of the United States expired in 1836, former Treasury Secretary Samuel P. Chase was the first to propose "a national banking system under which commercial banks chartered by the federal government would be authorized to issue federal bank notes secured by government bonds."[29] In response, Congress passed Chase's proposal in 1863, and thus authorized the creation of national banks.[30]

---

26. *See* Carl Felsenfeld, *The Bank Holding Company Act: Has It Lived Its Life?*, 38 VILL. L. REV. 1, 8–10 (1993) (describing development of First Bank of the United States and Second Bank of the United States). Through the First Bank of the United States and later the Second Bank of the United States, Congress chartered the Bank and the federal government provided a portion of the initial funding. *See id.* The system used for the Bank of the United States differs from the modern national banking system, where the federal government has no ownership interest in the national banks. *See id.*; *see also* 7B MICHIE B&B NATIONAL BANKS § 220b (2014) (describing function of Bank of the United States and how it differs from modern national banks).

27. *See* THOMAS JEFFERSON, THE COMPLETE ANAS OF THOMAS JEFFERSON 30 (Franklin B. Sawvel ed., 1903); *see also* Felsenfeld, *supra* note 26, at 7–8 (describing opposing views of Jefferson, Madison, and Hamilton). Hamilton faced opposition from Thomas Jefferson and James Madison who believed that the centralization of power away from local banks to the national government was dangerous. *See* JEFFERSON, *supra*, at 30–31.

28. *See* Alexander Hamilton, *Report on a National Bank, American State Papers: Finances*, *in* A CENTURY OF LAWMAKING FOR A NEW NATION: U.S. CONGRESSIONAL DOCUMENTS AND DEBATES, 1774–1875, at 67 (Gales & Seaton eds., 1832), *available at* http://memory.loc.gov/cgi-bin/ampage?collId=llsp&fileName=009/llsp009.db&Page=67 (describing purposes of Bank of United States). Hamilton also favored the Bank of the United States to resolve the issue of fiat currency that was issued by the Continental Congress prior to the Revolutionary War. *See* Letter from Alexander Hamilton to George Washington (Feb. 23, 1791), *available at* http://founders.archives.gov/documents/Hamilton/01-08-02-0060-0003; *see also* Richard Sylla, *Political Economy of Supplying Money to a Growing Economy: Monetary Regimes and the Search for an Anchor to Stabilize the Value of Money*, 11 THEORETICAL INQUIRIES L. 1, 20 (2010) (describing issuance of fiat money during Revolutionary War and problems it caused in Post-Revolutionary Period).

29. Lund, *supra* note 2, at 76–77 (discussing failure of Second Bank of United States and discussing 1863 Act that created national banks); *see also* Podolsky, *supra* note 5, at 1451 (discussing Samuel Chase's proposal to develop national banking system).

30. *See* Lund, *supra* note 2, at 76; *see also* Wells Fargo Bank, N.A. v. WMR e-Pin, LLC, 653 F.3d 702, 706 (8th Cir. 2011) (discussing Congress's authorization and noting that originally national banks could be sued in federal courts solely because they were national banks and did not need either diversity or federal question jurisdiction); Comment, *Expanding Concepts of Federal Jurisdiction over National Banks*, 59 IOWA L. REV. 1030, 1034 (1974) (discussing scope and statutory language of Act of 1863).

Under the National Bank Act of 1863, Congress allowed national banks to have access to federal courts merely by being established as a national bank.[31] Subsequently, in 1882, Congress enacted the forerunner to the modern diversity jurisdiction statute for national banks and made national banks' access to federal courts no greater than that of state courts.[32] In 1887, Congress amended the law to deem national banks "citizens of the States in which they are respectively located."[33] In 1948, the

31. *See* National Bank Act of 1863, ch. 58, § 59, 12 Stat. 665, 681 (codified at 28 U.S.C. § 1348 (2012)). The National Bank Act reads " 'suits, actions, and proceedings by and against any association under [the] act may be had in any circuit, district, or territorial court of the United States . . . .' " Mercantile Nat'l Bank at Dallas v. Langdeau, 371 U.S. 555, 567–68 (1963) (quoting National Bank Act of 1863, 12 Stat. 668) (discussing that under original statute, national banks had access to federal courts solely because they were national banks and did not need either diversity or federal question jurisdiction); *see also* Jill Holly, Comment, *The Circuit Split over the Citizenship of National Banks for Diversity Jurisdiction Purposes Under 28 U.S.C. § 1348*, 46 SANTA CLARA L. REV. 205, 212–13 (2005) (noting that original statute gave national banks national corporate powers including right to sue and be sued); Lam, *supra* note 2, at 37–39 (discussing purpose of original statute and inequality of access to federal courts by state banks); Michelle E. O'Leary, Note, *The Preservation of Diversity Jurisdiction for National Banks*, 10 N.C. BANKING INST. 133, 140–41 (2006) (discussing National Bank Act and automatic entry of national banks to federal courts).

The main explanation for this access to federal courts was that because national banks were federally chartered, any suits involving the banks arose under federal law, implicating federal question jurisdiction. *See* Petri v. Commercial Nat'l Bank of Chi., 142 U.S. 644, 648 (1892) (citing Leather Mfrs.' Nat'l Bank v. Cooper, 120 U.S. 778, 781 (1887); Union Pac. Ry. Co. v. Myers, 115 U.S. 1 (1885); Osborn v. Bank of U.S., 22 U.S. 738, 823 (1824)) (noting that national banks fall under federal question jurisdiction because "they were created by congress, and could acquire no right, make no contract, and bring no suit, which was not authorized by a law of the United States, a suit by or against them was necessarily a suit arising under the laws of the United States").

32. *See* Act of July 12, 1882, ch. 290, § 4, 22 Stat. 162. The 1882 amendment reads:

> [T]he jurisdiction for suits hereafter brought by or against any association established under any law providing for national-banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national-banking associations may be doing business when such suits may be begun: And all laws and parts of laws of the United States inconsistent with this proviso be, and the same are hereby, repealed.

Langdeau, 371 U.S. at 570 (quoting Act of July 12, 1882, 22 Stat. 162); *see also* Wachovia Bank, N.A. v. Schmidt, 546 U.S. 303, 309 (2006) (discussing purpose of amendment); *Petri*, 142 U.S. at 650–51 ("No reason is perceived why it should be held that Congress intended that national banks should not resort to federal tribunals as other corporations and individual citizens might.").

33. *See* Act of Mar. 3, 1887, ch. 373, § 4, 24 Stat. 552, 554, *amended by* Act of Aug. 13, 1888, ch. 866, § 25, 25 Stat. 433, 436. The 1887 amendment reads:

> That all national banking associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located; and in such cases the circuit

most recent amendment to section 1348 was made, but the integral language from the 1887 amendment remains in the present-day statute.[34]

While diversity jurisdiction of national banks is controlled by section 1348, diversity jurisdiction of state banks and other corporations is governed by 28 U.S.C. § 1332(c)(1).[35] Pursuant to section 1332, state banks and corporations are citizens of the state in which they are incorporated and where their principal place of business is located.[36] Originally, under section 1332, state banks *and* corporations were citizens of only the state in which they were incorporated.[37] In 1958, section 1332 was amended to add principal place of business citizenship for the first time.[38] Congress amended section 1332 because the previous version gave corporations regular access to federal courts.[39] Under the previous statutory scheme, a corporation that carried on all of its business in one state could remove a case to federal court based on diversity against local parties, merely be-

---

> and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State.

Langdeau, 371 U.S. at 571 (quoting Act of Mar. 3, 1887, 24 Stat. 552). This addition to the Act has been interpreted by the Supreme Court to maintain jurisdictional parity between state banks and national banks. *See id.* at 555–56 (stating 1887 amendment limited national banks' access to federal courts); *see also* Robert C. Eager & C. F. Muckenfuss, III, *Federal Preemption and the Challenge to Maintain Balance in the Dual Banking System*, 8 N.C. BANKING INST. 21, 27 (2004) (discussing history of jurisdictional parity between national and state banks).

34. *See* 28 U.S.C. § 1348 (2012); Podolsky, *supra* note 5, at 1453 (noting existence of same language in present-day statute).

35. *See* 28 U.S.C. § 1332(c)(1).

36. *See id.* ("[A] corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business . . . .").

37. *See* Act of June 25, 1948, ch. 646, 62 Stat. 930. Originally, a corporation was a "resident where its members or officers inhabit or reside." Bank of U.S. v. Deveaux, 9 U.S. 61, 66 (1809). As corporations rapidly grew, this method became impractical due to the vast number of members and officers. *See* William Murphy, Note, *Insurer-Initiated Direct Actions and the Section 1332(c) Proviso: Maintaining the Spirit of Diversity Jurisdiction*, 49 FORDHAM L. REV. 307, 307 n.3 (1980) (citing Louisville, Cincinnati, & Charleston R.R. Co. v. Letson, 43 U.S. 497, 554 (1844)). Courts rectified this issue by holding that shareholders were citizens of the corporation's state of incorporation. *See id.* (citing Marshall v. Baltimore & Ohio R.R. Co., 57 U.S. 314, 328 (1853)). Congress eventually followed suit, codifying this presumption under the Judiciary Act of 1887. *See id.* (citing Judiciary Act of 1887–88, ch. 373, § 1, 24 Stat. 552).

38. *See* Pub. L. No. 85-554, § 2, 72 Stat. 415 (1958) (amending statute to include "where it has its principal place of business").

39. *See* Murphy, *supra* note 37, at 307 n.3 (discussing necessity of 1958 amendment in order to restrict access to federal courts); *see also* Richard A. Simon, Note, *Attributing Too Much: The Fifth Circuit Perverts the Scope of Diversity Jurisdiction*, 19 CARDOZO L. REV. 1857, 1863 (1998) (noting that 1958 amendment prevented corporation whose principal place of business is located in one state from removing based on diversity because they were incorporated in another).

cause it was incorporated in another state.[40] This amendment to section 1332 occurred ten years after the last amendment to section 1348.[41] While it may seem like a minor detail, this ten-year difference becomes vastly important when courts debate the issue of congressional intent regarding jurisdictional parity between the two statutes.[42]

Under the original National Banking Act, Congress prohibited national banks from operating any branch offices.[43] Pursuant to the National Banking Act, only state banks that converted to national banks could keep their local branches.[44] It was not until Congress enacted the McFadden and Glass-Steagall Acts, over seventy years later, that national banks were allowed to operate branches.[45] However, these Acts limited a national bank's operation of branches to only its "home State."[46] It was not until 1994, with the enactment of the Riegle-Neal Interstate Banking and Efficiency Act, that national banks were allowed to establish and acquire branches in other states.[47] In the years that followed, bank branches rapidly flourished throughout the nation.[48]

---

40. *See* Murphy, *supra* note 37, at 307 n.3 (noting "[t]his was viewed as an abuse of diversity jurisdiction"); Simon, *supra* note 39, at 1863 (discussing "misuse of diversity jurisdiction by corporations truly nondiverse from their adversaries").

41. *Compare* Act of July 5, 1958, § 2, 72 Stat. 415 (amending section 1332), *with* Act of June 25, 1948, ch. 646, 62 Stat. 933 (amending section 1348).

42. For a discussion of jurisdictional parity, see *infra* notes 49–101 and accompanying text.

43. *See* Act of Feb. 25, 1863, ch. 58, § 11, 12 Stat. 665, 668; *see also* Lund, *supra* note 2, at 76 (describing Act of 1863); Explanation, *Development of Branch Banking Authority*, FED. BANKING L. REP. (CCH) ¶¶ 45–521 (2009) (noting National Banking Act was construed for almost fifty years to prohibit use of branches).

44. *See* Lund, *supra* note 2, at 79 n.38 (noting exception was created by Act of Mar. 3, 1865, ch. 78, § 7, 13 Stat. 469, 484).

45. *See* Glass-Steagall Act, ch. 89, § 23, 48 Stat. 162, 189–90 (1933); McFadden Act, ch. 191, § 7(c), 44 Stat. 1224, 1228 (1927); Lund, *supra* note 2, at 79 n.38 ("These acts were intended to bring about a 'policy of competitive equality' . . . .").

46. *See* Wachovia Bank v. Schmidt, 546 U.S. 303, 307 n.2 (2006) (observing that under McFadden and Glass-Steagall Acts, national banks were only allowed to bank in other states under grandfather provisions). Under the McFadden Act, there were three requirements for branches:

> (1) The national bank had to be located in a state which by law expressly authorized state banks to have branches . . . (2) The national bank had to be located in a city having a population of 25,000 or more . . . [and] (3) The branch or branches could not be established outside of the limits of the city, town, or village where the main office was located.

Development of Branch Banking Authority, *supra* note 43.

47. *See* Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, § 101, 108 Stat. 2338, 2039. For history and background information on Riegel-Neal, see Eager & Muckenfuss, *supra* note 33, at 45–55; Collette N. Ross, Comment, *Around the Corner but Still Out-of-State? Whether National Banks' Branches Destroy Diversity Jurisdiction*, 52 LOY. L. REV. 195, 207 (2006) (noting prior to Riegel-Neal Act, question of interpreting section 1348 was much simpler because banks' main offices and branches were in same state).

48. *See* Ross, *supra* note 47, at 208–09 ("Between 1994 and 2004 [the number of] bank offices grew eight percent in non-metropolitan areas, slightly lower than the eleven percent growth . . . in metropolitan areas."). In 1900, a mere 87 banks

B. *Valuable Assets: The Legal Landscape Prior to the Supreme Court's Decision in* Wachovia Bank v. Schmidt

Prior to 2006, the circuit courts were split as to whether national banks were considered citizens of every place they operated a branch.[49] The First and Fourth Circuits have held that national banks are citizens of every state in which they operate branches.[50] Conversely, the Fifth and Seventh Circuits have held that a national bank is a citizen of only the states in which its main office and principal place of business are located.[51]

1. *Citizens of Every State Where the Bank Operates a Branch*

The Second Circuit was the first federal appellate court to hold that a national bank is "located" in every state in which the bank operates a branch; however, it did not provide the reasoning behind its decision.[52] The Fourth Circuit, in *Wachovia Bank v. Schmidt*,[53] also held that national

---

in the United States had more than one branch. *See id.* In 1920, only "530 of the 29,087 banks had more than a single office." *Id.* By 2004, 9,066 banks operated 89,814 offices throughout the country. *Id.*

49. *See Schmidt*, 546 U.S. at 309 (recognizing disagreement between courts of appeals regarding diversity jurisdiction of national banks and meaning of 28 U.S.C. § 1348); Horton v. Bank One, N.A., 387 F.3d 426, 429 (5th Cir. 2004) (recognizing disagreement among courts regarding citizenship of national banks for diversity jurisdiction).

50. *See, e.g.*, Wachovia Bank, N.A. v. Schmidt, 388 F.3d 414 (4th Cir. 2004) (concluding national banks are citizens of each state in which branch is located), *rev'd*, 546 U.S. 303 (2006); World Trade Ctr. Props., LLC v. Hartford Fire Ins. Co., 345 F.3d 154 (2d Cir. 2003) (holding national bank should be citizen of every state in which it has branch).

51. *See, e.g.*, *Horton*, 387 F.3d at 426 (holding, for purposes of section 1348, national bank is citizen of state of its principal place of business and state listed in its organization certificate); Firstar Bank, N.A. v. Faul, 253 F.3d 982, 994 (7th Cir. 2001) (holding, for diversity jurisdiction purposes, "located" means state where national bank's principal place of business is and state listed in its organization certificate).

52. *See World Trade Center Properties*, 345 F.3d at 154. The Second Circuit did not expand upon its reasoning, and it merely stated that a national bank "by statute is deemed to be a citizen of every state in which it has offices." *Id.* at 161. In *World Trade Center Properties*, holders of various property interests in the World Trade Center sued insurance companies over recovery after the destruction of the World Trade Center on September 11, 2001. *See id.* Wells Fargo was one of the many defendants in the case. *Id.* Ultimately, the court concluded that even if Wells Fargo was a citizen of several unidentified states, it did not make a difference because SR International Business Insurance, one of the plaintiffs/counter-defendants in the case, was a foreign party. *See id.*

53. 388 F.3d 414 (4th Cir. 2004), *rev'd*, 546 U.S. 303 (2006). Two years after the Fourth Circuit decision, the Supreme Court granted certiorari and subsequently reversed the decision. See *Schmidt*, 546 U.S. at 319. The Supreme Court rejected the Fourth Circuit's holding that national banks were citizens of every state in which they operated a branch, holding instead that they were citizens of only the state where the main office was located. *See id.* at 312–15.

banks are citizens of every state in which the bank operates a branch.[54] But unlike the Second Circuit, the Fourth Circuit expanded upon its reasoning and focused on the use of "located" and "establish" in section 1348.[55] First, the court found that "establish" is used in the context of enjoining the Comptroller of Currency or his receiver under chapter 2 of title 12, and it "grants the district courts jurisdiction over 'any banking association *established* in the district' . . . ."[56] Second, the court found that "located" is used in the context of general jurisdictional purposes and says, "national banks shall be 'deemed citizens of the States in which they are respectively *located*.' "[57]

The Fourth Circuit determined that a national bank is originally and permanently established at its main office, which cannot be moved more than thirty miles.[58] After a bank is established, it is permanently located at its main office and temporarily located at its branch offices, which it has the freedom to move.[59] The Fourth Circuit also reasoned that "located" must be construed in accordance with its ordinary meaning of "physical presence," and thus, it naturally follows that a bank is located in any state where it operates a branch.[60]

To further support its reasoning, the Fourth Circuit invoked the Supreme Court's decision on a venue statute in *Citizens and Southern National Bank v. Bougas*.[61] In *Bougas*, the Supreme Court determined that, for venue purposes in state court, the word "located" means anywhere the bank maintains a branch.[62] The Fourth Circuit also rejected the argu-

54. *See Schmidt*, 388 F.3d at 432 (holding Wachovia is citizen of South Carolina because it operates branch in state).

55. *See id.* at 419 (explaining meanings of "located" and "established" in section 1348).

56. *See id.* (quoting 28 U.S.C. § 1348) (discussing meaning of "established" as place national bank designates in its organizational certificate).

57. *See id.* (quoting 28 U.S.C. § 1348) (defining "located" as place or places where it has physical presence).

58. *See id.* (noting, even when moved thirty miles, location change of main office must still be approved by two-thirds of shareholders and Comptroller of Currency).

59. *See id.* (mentioning that this meaning of "established" is in unison with its ordinary meaning, which is defined as " 'to place, install, or set up *in a permanent or relatively enduring* position' . . . ." (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 778 (reprint 1993) (1981))).

60. *See id.* at 432 (holding word "located" must be interpreted with its ordinary meaning of "presence" and, as result, "located" in section 1348 means "any state where it operates branch").

61. 434 U.S. 35 (1977); *see also Schmidt*, 388 F.3d at 419–20 (discussing holding in *Bougas*).

62. *See Bougas*, 434 U.S. at 45–46 (holding "located" means anywhere bank operates branch office). The first case to apply *Bougas* to diversity jurisdiction was *Connecticut National Bank v. Iacono*. *See* Conn. Nat'l Bank v. Iacono, 785 F. Supp. 30, 32 (D.R.I. 1992) (holding "located" in section 1348 includes every state where national bank operates branch). The majority of district courts throughout the country adopted *Iacono*'s interpretation of section 1348. *See* Firstar Bank, N.A. v. Faul, 253 F.3d 982, 985 (7th Cir. 2001) (noting split at district court level).

ment that diversity jurisdiction was meant to prevent "bias in the courts of the states," stating there was not "a shred of evidence" to support this claim.[63] Based upon analysis of the statutory language and the Supreme Court's holding in *Bougas*, the Fourth Circuit determined that "located," for diversity purposes, means anywhere the bank operates a branch.[64]

2. *The Fifth and Seventh Circuits: Citizens of States Where Main Office and Principal Place of Business Are Located*

The Fifth and Seventh Circuits disagreed with the Second and Fourth Circuits' line of reasoning, instead finding that a national bank is a citizen only of the states in which its main office and principal place of business are located.[65] In *Firstar Bank, N.A. v. Faul*,[66] the Seventh Circuit looked at principles of statutory interpretation and prior precedent to determine that "located" referred to a more limited number of jurisdictions.[67]

---

63. *See Schmidt*, 388 F.3d at 424–25. In rejecting this claim, the Court stated:

> The notion that Congress believed that national banks that actively conduct business in a state cannot get a fair adjudication of state-law claims in that state's courts is rank speculation, as even the dissent would have to acknowledge. In fact, if one were to engage in surmise, it would be just as defensible to conclude that Congress believed it entirely reasonable in such circumstances to deny national banking associations resort to the federal courts, over the courts of the states in which the banks have chosen to locate branch offices; for it might have appeared unseemly to permit the national banks to seek and receive the trust and business of a state's citizens, but at the same time to permit them to refuse, out of distrust of those citizen-customers, to subject themselves to the courts created by those citizens to protect their rights against those who seek, receive, and breach their trust reposed. In all events, we certainly would not indulge the former inference as to congressional belief where there is absolutely no evidence of such belief and the language chosen by Congress all but confirms the contrary.

Id.

64. *See id.* at 432 (holding statutory interpretation and case law weigh in favor of national bank being citizen of every state where it operates branch); *see also id.* at 421 ("In sum, if Congress wishes to specify *principal* place of business and thereby exclude branch locations, it can easily do so. And in fact it has done so elsewhere.").

65. *Compare* Horton v. Bank One, N.A., 387 F.3d 426, 436 (5th Cir. 2004) ("We hold that the definition of 'located' is limited to the national bank's principal place of business and the state listed in its organization certificate and its articles of association."), *and Firstar Bank*, 253 F.3d at 994 (holding, for diversity jurisdiction purposes, "located" means state where national bank's principal place of business is found and state listed in its organization certificate), *with Schmidt*, 388 F.3d at 432 (holding national bank should be citizen of every state in which it has branch), *and* World Trade Ctr. Props., LLC v. Hartford Fire Ins. Co., 345 F.3d 154, 161 (2d Cir. 2003) (same).

66. 253 F.3d 982 (7th Cir. 2001).

67. *See id.* at 988 (stating "[m]oving away from generalized or specialized definitions, other principles of statutory construction weigh heavily in favor of construing 'located'" in more limited manner than every state in which it operates branch).

The Seventh Circuit, recognizing that the term "located" is ambiguous, looked to the statute's historical meaning to determine the background against which Congress amended the law.[68] Applying this statutory interpretation, the court concluded that Congress intended "jurisdictional parity" between state and national banks. The court found the re-use of the phrase "be deemed citizens of the States in which they are respectively located," throughout the statutory amendments to section 1348, to be persuasive.[69] Furthermore, at the time Congress enacted the 1948 amendment, jurisdictional parity between state and national banks had existed for more than sixty years.[70] The Seventh Circuit held that the history of jurisdictional parity constituted "interpretive background" that colored the language of the statute.[71] The court also believed that the language had a "settled meaning through judicial interpretation" prior to the recodification of the statutory language in 1948.[72] Using these canons of statutory interpretation, the court held that "located" under section 1348 means the state in which the bank's principal place of business is located and the state listed on the bank's organization certificate.[73]

Subsequently, the Fifth Circuit, in *Horton v. Bank One, N.A.*,[74] also held that a national bank is a citizen of both the state in which its principal place of business is located and the state in which its main office is lo-

68. *See id.* ("Statutory words or phrases ambiguous in their common or contextual definitions can achieve settled meaning through judicial interpretation."). This canon of statutory interpretation is known as *pari materia*, meaning "in the same matter." *See* BLACK'S LAW DICTIONARY (9th ed. 2009) ("It is a canon of construction that statutes that are *in pari materia* may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject."); *see also* Holly, *supra* note 31, at 210 (discussing use of *pari materia* in statutory interpretation).

69. *See Firstar Bank*, 253 F.3d at 988 (discussing use of same phrase throughout subsequent amendments); *see also* Petri v. Commercial Nat'l Bank of Chi., 142 U.S. 644, 650–51 (1892) (holding Congress intended jurisdictional parity between national and state banks).

70. *Compare Firstar Bank*, 253 F.3d at 988–89 (noting long time period over which phrase has been used), *with* Act of Mar. 3, 1887, ch. 373, § 4, 24 Stat. 552, 554, *amended by* Act of Aug. 13, 1888, ch. 866, § 25, 25 Stat. 433, 436 (codified at 28 U.S.C. § 1348); *see also* Ross, *supra* note 47, at 207 (noting courts "had established and followed the doctrine of jurisdictional parity for over sixty years" when section 1348 was adopted).

71. *See Firstar Bank*, 253 F.3d at 988–89 ("Thus, Congress passed 28 U.S.C. § 1348 against an interpretive background which assumed that national banks were to have the same access to the federal courts as state banks and corporations.").

72. *See id.* at 988 ("[W]e assume that Congress intended these words to have the same meaning as was given to them in [the earlier cases that] provided that national banks were to be treated the same as any other corporation for diversity purposes.").

73. *See id.* at 989 (noting if Congress intended to alter established background, it would have added language recognizing or suggesting it).

74. 387 F.3d 426 (5th Cir. 2004).

cated.[75] The court in *Horton* primarily employed the same reasoning as the Seventh Circuit in *Firstar Bank*.[76] In addressing the concept of jurisdictional parity, the Fifth Circuit noted that to render a national bank a citizen of every state in which it operates a branch would restrict national banks' access to federal courts to a much greater extent than state banks and other corporations.[77] The Fifth Circuit's decision in *Horton* solidified the circuit split that would ultimately be resolved by the Supreme Court.[78]

C. Wachovia Bank v. Schmidt*: Divesting One Circuit Split, Funding Another*

In *Wachovia Bank v. Schmidt*,[79] the United States Supreme Court granted certiorari to resolve the then-existing circuit split regarding whether a national bank is a citizen of every state in which the bank operates a branch.[80] In *Schmidt*, the Supreme Court resolved this issue, concluding that Wachovia Bank was only a citizen of South Carolina, where its main offices were located.[81] In reaching its decision, the Supreme Court reasoned that making a national bank a citizen of every state in which it operates a branch would unfairly restrict national banks' access to federal courts compared to other corporations.[82] Additionally, the Supreme Court stated that Congress would not have intended such an unequal outcome.[83]

Further, the Supreme Court rejected the Fourth Circuit's reasoning that *Bougas* applied to the interpretation of section 1348.[84] The Court noted that under the canons of statutory construction, statutes addressing

---

75. *See id.* at 436 (holding that "located" under section 1348 means state of principal place of business and state where bank's main office is located).

76. *See id.* at 429 ("We follow *Firstar*'s holding that a national bank is not 'located' in, and thus not a citizen of, every state in which it has a branch.").

77. *See id.* at 433 (noting plaintiff's view "would lead to a narrow concept of 'parity'" and only way "a national bank would enjoy access to diversity jurisdiction . . . [is] when sued by or suing a citizen of a state in which the bank maintains no branch at all").

78. *See* Wachovia Bank v. Schmidt, 546 U.S. 303 (2006) (resolving circuit split).

79. 546 U.S. 303 (2006).

80. *See id.* at 309 ("We granted certiorari to resolve the disagreement among Courts of Appeals on the meaning of § 1348.").

81. *See id.* at 312–15 (rejecting Fourth Circuit's reasons as to why national banks are citizens of every state in which they operate branches).

82. *See id.* at 307 (discussing how national banks' access to federal forum would be "drastically curtailed" compared to that of state courts and other corporations).

83. *See id.* at 319 (holding Congress would not intend to create such "incongruous outcome" that "rendered national banks singularly disfavored corporate bodies with regard to their access to federal courts").

84. *See id.* at 315 (holding *Bougas* and its interpretation of now-repealed revenue statute does not apply to section 1348).

the same subject matter should be read together.[85] The Court noted that venue is a matter of convenience, while subject matter jurisdiction is a mandatory consideration.[86] Based on this distinction, the Court found that subject matter jurisdiction and venue are separate concepts, and thus *Bougas* did not apply.[87]

The Court did not address the issue of whether a national bank can be a citizen of both the states in which its main office and principal place of business are located.[88] Instead, the Court merely mentioned in a footnote that, in most cases, the distinction would not make a difference because the locations are almost always the same.[89] The Supreme Court did not address the Fifth and Seventh Circuits' approach, which remain good law after *Schmidt*, thus leaving the issue ripe for yet another circuit split.[90]

D. *The Eighth Circuit's Approach in* Wells Fargo Bank v. WMR e-Pin, LLC*: Heisting Access to State Courts*

The Eighth Circuit was the first federal court of appeals to address the issue left open by the Supreme Court in *Schmidt*.[91] In *Wells Fargo Bank v. WMR e-Pin, LLC*,[92] the appellants challenged the district court's finding of a lack of diversity jurisdiction, arguing that Wells Fargo was a citizen of both South Dakota and California, the respective locations of its main office and principal place of business.[93] The Eighth Circuit, however, rejected the appellants' argument and concluded that Wells Fargo was a citizen only of South Dakota, the location of its main office.[94]

---

85. *See id.* (noting differences between section 1348 and now-repealed revenue statute 12 U.S.C. § 94 (1976)).

86. *See id.* at 316 ("Subject-matter jurisdiction [ ] does not entail an assessment of convenience. It poses a 'whether,' not a 'where' question: Has the Legislature empowered the court to hear cases of a certain genre?").

87. *See id.* (noting "[v]enue is largely a matter of litigational convenience" that can be waived, while subject matter jurisdiction is more weighty and must be considered by court regardless of whether party raises objection).

88. *See* Rouse v. Wachovia Mortg., FSB, 747 F.3d 707, 711 (9th Cir. 2014) (noting *Schmidt* "did not address whether a national bank is also a citizen of the state where it has its principal place of business").

89. *See Schmidt*, 546 U.S. at 317 n.9 (noting this issue "may be of scant practical significance for, in almost every case . . . the location of a national bank's main office and of its principal place of business coincide").

90. *See* Wells Fargo Bank, N.A. v. WMR e-Pin, LLC, 653 F.3d 702, 707–08 (8th Cir. 2011) (discussing *Schmidt*'s failure to address issue and noting *Horton* and *Firstar* are not overruled). *But see* Hicklin Eng'g, L.C. v. Bartell, 439 F.3d 346, 348 (7th Cir. 2006) (reading *Schmidt* to reject *First Bank*'s proposition that national bank's principal place of business is independent basis for citizenship).

91. *See WMR e-Pin*, 653 F.3d at 708 (noting case at hand was "outlier scenario" described in footnote nine of *Schmidt*).

92. 653 F.3d 702 (8th Cir. 2011).

93. *See id.* at 704 (noting appellant's challenge and argument on appeal).

94. *See id.* at 709 (holding district court did not err in determining that it had diversity jurisdiction over this matter).

In reaching its decision, the court first analyzed the term "located" as it reads in section 1348.[95] Noting that the meaning of "located" in the realm of banking law changes depending on its context, the court determined that an analysis of the statutory history was needed.[96] The main issue was whether Congress intended there to be jurisdictional parity between nationally-chartered and state-chartered banking institutions after it amended the statute governing diversity jurisdiction for state banks and corporations in 1958.[97]

The Eighth Circuit concluded that, had Congress intended jurisdictional parity between the two statutes, it would have amended section 1348 to include the principal place of business test when it amended section 1332(c)(1).[98] Based upon this historical statutory analysis, the court determined that Congress intended to put national and state banks on the "same footing," by restricting national banks' access to the federal court system.[99] As a result, the court held that, for purposes of diversity jurisdiction, national banks are citizens of only the state in which they are incorporated.[100] This result laid the foundation for the Ninth Circuit's holding in *Rouse*.[101]

III. CRACKING THE SAFE: *ROUSE V. WACHOVIA MORTGAGE, FSB*

In *Rouse v. Wachovia Mortgage, FSB*, the Ninth Circuit, relying on the Eighth Circuit's reasoning in *WMR e-Pin*, decided that national banks are citizens of only the state in which their main office is located.[102] Again,

95. *See id.* at 706 (noting that every court that has addressed this issue has begun with analysis of word "located").

96. *See id.* (noting located "is a chameleon word; its meaning depends on the context in and purpose for which it is used" (quoting Wachovia Bank v. Schmidt, 546 U.S. 303, 318 (2006)) (internal quotation marks omitted)).

97. *See id.* at 707 (quoting 28 U.S.C. § 1332(c)(1)). Section 1332(c)(1) reads that a corporation (which includes state banks) is a "citizen of every State . . . by which it has been incorporated and of the State . . . where it has its principal place of business." 28 U.S.C. § 1332(c)(1) (2012).

98. *See WMR e-Pin*, 653 F.3d at 707 (noting conclusion is not derived from statutory text, nor is it derived from any canon of statutory interpretation). The last amendment to section 1348 was in 1948, ten years prior to Congress creating the principal place of business test for corporations. *See id.* (reconciling sections 1348 and 1332(c)(1)). Alternatively, the court noted that Congress could have included the incorporation by reference that section 1348's predecessors used. *See id.* at 709 (noting jurisdiction for suits involving bank associations "shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States" (quoting Act of July 12, 1882, ch. 290, § 4, 22 Stat. 162, 163)).

99. *See id.* at 706 (demonstrating three predecessors to section 1348 all show Congress's intent to put state and national banks on equal footing).

100. *See id.* at 707 (discussing satisfaction of diversity jurisdiction).

101. *See* Rouse v. Wachovia Mortg., FSB, 747 F.3d 707, 709 (9th Cir. 2014) (adopting reasoning of Eighth Circuit in *WMR e-Pin*).

102. *See id.* ("The dispositive issue in this appeal is whether, under 28 U.S.C. § 1348, a national bank is a citizen of both the state in which its principal place of

the court was asked to decide the meaning of the word "located" as used in section 1348.[103] Ultimately, the court's decision hinged on whether the legislature intended jurisdictional parity between national banks and state banks and other corporations under sections 1348 and 1332 respectively.[104]

A. *Facts and Procedural History*

In *Rouse*, Robert and Victoria Rouse sued Wells Fargo Bank, its Wachovia Mortgage division, and NDeX West in California state court, claiming state and federal causes of action relating to their deed and home mortgage.[105] In response, Wells Fargo removed the case to federal court, claiming subject matter jurisdiction under both section 1332 (diversity of citizenship) and section 1331 (federal question jurisdiction).[106] The district court granted Wells Fargo and NDeX's motions for failure to state a claim and dismissed the complaint, allowing the Rouses leave to amend.[107] Subsequently, the Rouses re-filed the complaint, claiming only issues of state law.[108]

The district court subsequently remanded the case back to the California Superior Court due to a lack of diversity jurisdiction.[109] In doing so, "the district court held that national banks are citizens of the state where their principal place of business is located as well as of the state where their main office is located as designated in their articles of association."[110] The district court reasoned that while Wells Fargo's main office is located in South Dakota, its principal place of business is located in California.[111] The court also determined that the Rouses were domiciled in California.[112] As a result, diversity of citizenship was destroyed and the

---

business is located and the state where its main office is located as designated in the bank's articles of association.").

103. *See id.* at 710 (deciding that because "located" was facially ambiguous, court must look beyond ordinary meaning).

104. *See id.* at 713 (discussing concept of jurisdictional parity between section 1348 and section 1332).

105. *See id.* at 709 (noting background and causes of action brought in Rouses' lawsuit).

106. *See id.* (describing Wells Fargo's removal to district court).

107. *See id.* (discussing district court's granting of Wells Fargo's motion to dismiss).

108. *See id.* (noting, in their decision to re-file, Rouses did not include any federal law claims in order to prevent Wells Fargo from removing case to district court for second time).

109. *See id.* (discussing district court's decision to remand case back to state court system).

110. *Id.* (explaining district court's reasoning for remanding).

111. *See id.* (describing holding of district court in applying section 1348 to suit).

112. *See id.* (describing district court's analysis in deciding that it did not have subject matter jurisdiction).

district court was unable to hear the case.[113] Wells Fargo appealed to the Ninth Circuit.

B. *The Ninth Circuit's Decision in* Rouse*: Embezzling Congress's Intent*

On appeal, the Ninth Circuit reversed the district court's decision to remand the case back to state court due to a lack of diversity jurisdiction.[114] In reaching this decision, the court concluded that although *Schmidt* dealt with a slightly different question, it nevertheless addressed and rejected the issue of whether a national bank is also a citizen of the state in which its principal place of business is located.[115] Next, the Ninth Circuit determined that principal place of business citizenship was not appropriate because Congress did not intend for there to be jurisdictional parity between the two statutes.[116] Therefore, the Ninth Circuit held that a national bank is only a citizen of the state in which its main office is located.[117]

1. Schmidt *Contemplated Whether the Principal Place of Business Test Is Applicable*

The Ninth Circuit began its analysis by looking to the text of section 1348.[118] In *Schmidt*, the Supreme Court held that the word "located" is facially ambiguous.[119] Because the Supreme Court in *Schmidt* found the text of section 1348 to be ambiguous, the Ninth Circuit was required to look beyond the ordinary meaning of the text and apply other canons of statutory construction to determine the meaning of "located."[120]

---

113. *See id.* (describing district court's decision that it did not have subject matter jurisdiction to hear case).

114. *See id.* (reversing decision of district court to remand case back to state court).

115. *See id.* at 711 (deciding that Supreme Court's recognition of principal place of business argument in footnote meant that it did not overlook issue).

116. *See id.* at 714–15 (analyzing statutory amendments to and congressional intent behind section 1348).

117. *See id.* at 715 (holding national bank "is a citizen only of the state in which its main office is located").

118. *See id.* at 709 (noting that national banks' citizenship is governed under section 1348).

119. *See id.* at 710.

120. *See id.* (discussing *Schmidt* Court's conclusion that "located" is "chameleon word" and is facially ambiguous, thus requiring court to look beyond plain text and ordinary meaning). The Ninth Circuit was the first federal appellate court to interpret the meaning of the word "located" as used in 28 U.S.C. § 41, the statutory predecessor to section 1348. *See* Am. Sur. Co. v. Bank of Cal., 133 F.2d 160, 161–62 (9th Cir. 1943) ("[A] logical interpretation of the phraseology of 28 U.S.C.A. § 41(16) leads to the conclusion that the 'States in which they (national banking associations) are respectively located' are those states in which their principal places of business are maintained.").

Next, the court analyzed the Supreme Court's reasoning in *Schmidt* regarding diversity jurisdiction over national banks.[121] In *Schmidt*, the Supreme Court held that a national bank is not located in every state in which it operates a branch, but instead is only located in the state in which its main office is situated, as designated under its articles of incorporation.[122] The Ninth Circuit concluded that because the Supreme Court mentioned principal place of business citizenship, but did not include it in the clear-cut rule, the Court in *Schmidt* intended to limit national bank citizenship to the state of incorporation only.[123] In support of this notion, the court first determined that the main purpose behind *Schmidt* was to protect national banks' access to federal courts.[124] Moreover, the court determined that because the Supreme Court mentioned national banks' principal place of businesses in a footnote, it "did not overlook the issue . . . ."[125]

2. *Congress Did Not Intend Jurisdictional Parity Between National and State Banks*

Lastly, the court analyzed the historical landscape and legislative history to determine Congress's intent in enacting section 1348.[126] The main issue the court addressed in its historical analysis was whether Congress intended to keep jurisdictional parity between the current versions of section 1348 and section 1332.[127] The Ninth Circuit's primary observation was that the most recent version of section 1348 was amended in 1948, when state banks and corporations were citizens only of their state of incorporation.[128] The principal place of business provision was not included in section 1332 until 1958, a full decade after the amendments to section 1348.[129] The court decided that, since Congress did not subsequently amend section 1348 to reflect the changes to section 1332, it did not intend for a national bank to be a citizen of the state of its principal

121. *See Rouse*, 747 F.3d at 709 (discussing issue decided in *Schmidt*).

122. *See id.* at 710 (stating holding of Supreme Court in *Schmidt*).

123. *See id.* at 711 (analyzing Supreme Court's reasoning in *Schmidt*).

124. *See id.* (holding that although issue was not directly addressed, *Schmidt* was decided to protect "right of national banks to remove cases to federal courts").

125. *See id.* (deciding Supreme Court's recognition of principal place of business argument in footnote: "[S]trongly suggest[s] that the Court did not overlook the issue of whether a national bank is a citizen of both the state in which its main office is located and the state where it maintains its principal place of business in crafting its clear and unqualified statement limiting citizenship for diversity jurisdiction purposes to a national bank's main office.").

126. *See id.* at 712–13 (discussing historical backdrop and congressional intent behind section 1348).

127. *See id.* at 714 (comparing language and time of last amendments to section 1348 and section 1332).

128. *See id.* (noting last time section 1348 was amended was in 1948, prior to change of section 1332, to include principal place of business).

129. *See id.* (discussing 1958 amendment to section 1332(c)(1), adding principal place of business component).

place of business. Therefore, the court reasoned that Congress did not intend to keep jurisdictional parity between the two statutes.[130] As a result, the Ninth Circuit held that a national bank is only a citizen of the state in which its main office is located.[131]

Judge Gould dissented, arguing that Wells Fargo should be viewed as a citizen of both South Dakota and California for diversity jurisdiction purposes.[132] He rejected the majority's conclusion that the holding in *Schmidt* meant that a bank is a citizen only of the state in which its main office is located. Instead, Judge Gould argued that the majority's holding "places national banks on superior footing," contrary to the underlying intent of *Schmidt*.[133] Judge Gould also noted that there are policy and federalism implications inherent in allowing Wells Fargo to remove a matter to federal court, even though the bank most closely identified with California.[134]

IV. CRITICAL ANALYSIS: *ROUSE* ROBS STATE BANKS AND NATIONAL BANKS' ADVERSARIES OF ACCESS TO STATE COURTS

By holding that a national bank is a citizen of only the state in which its main office is located, the Ninth Circuit created an unfair advantage for national banks, to the detriment of both their litigation adversaries and state banks.[135] First, concerns over state court bias, a primary reason be-

130. *See id.* (rejecting claim of jurisdictional parity and noting that "[n]o principle of statutory interpretation suggests that we should look to a later-passed statute not involving national banks to divine congressional intent regarding a completely different statute passed ten years earlier"); *id.* at 715 (noting Congress began with treatment of jurisdictional parity, but then deleted it from statute, stating "[n]othing in the current version of the statute or in its history suggests that Congress intended to revive the principle of jurisdictional parity between state-chartered banks and national banks").

131. *See id.* ("[A] national banking association is a citizen only of the state in which its main office is located.").

132. *See id.* at 715–16 (Gould, J., dissenting) (asserting that district court's decision should be affirmed).

133. *See id.* ("It is one thing to say that a national bank is not a citizen of every state where it has any branch operations. It is quite another to say what the majority says here: that a bank is only a citizen of the state designated as its main office." (footnote omitted) (citation omitted)).

134. *See id.* at 716 (discussing policy implications of allowing national banks to rule out state courts in their principal place of business where they are "closely identified and understood to operate," and noting federalism concerns of not "giv[ing] state courts a say in resolving their residents' disputes").

135. *See* Podolsky, *supra* note 5, at 1482–83 ("It is inequitable to allow national banks to invoke diversity jurisdiction in states where they have the most ties simply to statistically lower the plaintiffs' chances of winning, to burden plaintiffs and to reduce the value of potential settlements."); Seth M. Gerber, *Ninth Circuit Holds that a National Bank Is "Located" Only in the State of its Main Office for the Purposes of Diversity Jurisdiction*, BINGHAM MCCUTCHEN LLP (Apr. 9, 2014), http://www.bingham.com/Alerts/2014/04/Ninth-Circuit-Holds-that-a-National-Bank-Is-Located-Only-in-the-State-of-its-Main-Office (discussing implications for litigation and advantage to national banks by hearing case in federal forum).

hind the need for diversity jurisdiction, are not implicated.[136] Secondly, the Ninth Circuit's approach encourages national banks to forum shop and remove matters to federal court in order to gain advantages from federal procedural law.[137] Additionally, this approach is contrary to historical precedent and the Supreme Court's holding in *Schmidt* regarding Congress's intention to put national and state banks on equal jurisdictional footing.[138] Finally, original concerns surrounding the inclusion of diversity jurisdiction in the Constitution, about state court bias and harmony among the states, are not implicated because a national bank is familiar with the state where its principal place of business is located.[139]

A. *Concerns over State Court Bias Are Not Implicated*

While the Supreme Court in *Schmidt* wanted to protect national banks' right to access the federal courts, the approach used by the Eighth and Ninth Circuits gives national banks greater access to federal courts than their state-chartered peers and thus goes too far in the opposite direction.[140] Under the First and Second Circuit's approach before *Schmidt*, it would be nearly impossible for national banks to gain access to federal courts.[141] This restrictive access gave an unfair advantage to the opposing party.[142] According to one commentator, "[t]he generally accepted reason for diversity jurisdiction in the Constitution is fear that state courts would unduly favor local citizens, whereas federal courts . . . would be less

136. *See* Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 553–54 (2005) (describing purpose of diversity jurisdiction).

137. *See* Gerber, *supra* note 135 (discussing procedural advantages gained by removing to federal court, including unanimous jury, mandatory disclosures, and more limited discovery process).

138. *See* Wachovia Bank v. Schmidt, 546 U.S. 303, 319 (2006) (explaining that if national banks were citizens of every state in which they operated branches it would "render[ ] national banks singularly disfavored corporate bodies with regard to their access to federal courts").

139. *See* Adrienne J. Marsh, *Diversity Jurisdiction: Scapegoat of Overcrowded Federal Courts*, 48 BROOK. L. REV. 197, 203–04 (1982) (noting harmony and bias are not implicated when in-state citizen is victim of local bias).

140. *See* Ross, *supra* note 47, at 240 (noting that this approach gives national banks jurisdictional advantage over state counterparts and fails to account for "trend toward consolidation and merger," where increasing number of banks will have different locations for their main office and principal place of business).

141. *See Schmidt*, 546 U.S. at 318–19 (discussing incongruous outcome of denying national banks access to federal courts if they were citizens of every state where they operated branch and concluding that "[t]he language of § 1348 does not mandate that incongruous outcome").

142. *See* O'Leary, *supra* note 31, at 147 (noting largest national banking branch network has branches in thirty states, meaning bank would only be able to remove for diversity in twenty-one states). One banking expert states, "'state courts are too prone to large verdicts and don't have tight controls on awards and damages, and perhaps even let suits carry on and sustain a life of their own. . . [sic] It's more of a known commodity in federal courts. State courts are often a crapshoot.'" *See id.* at 148 (alteration in original) (quoting Karen Krebsbach, *What Would All the Lawyers Do?*, U.S. BANKER, Mar. 1, 2005, at 20, 2005 WLNR 3098738).

inclined to be biased in favor of local citizens."[143] Diverse parties were concerned about unfair treatment in an unfamiliar state court forum.[144] Under removal statutes, such as 28 U.S.C. § 1441,[145] defendants are able to remove actions to federal court if they meet the diversity requirements of section 1332 or section 1348, in order to flee this potential local bias.[146] When a national bank has its principal place of business in one state and main office in another, like Wachovia Mortgage in *Rouse*, this concern of bias is not a problem.[147] When a corporation or national bank has established a principal place of business within a state, there is no bias because it is familiar with the state law, the courts, and the potential juror pool.[148]

B. *The Ninth Circuit's Approach Encourages Forum Shopping*

Forum shopping occurs on a fairly regular basis, and as long as it is done in accordance with the statutory rules, it is a legitimate and widely accepted litigation strategy.[149] However, the current system gives national

143. Alan B. Morrison, *The Necessity of Tradeoffs in a Properly Functioning Civil Procedure System*, 90 OR. L. REV. 993, 999 (2012); *see also* Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 553–54 (2005) (noting purpose of diversity jurisdiction "is to provide a federal forum for important disputes where state courts might favor, or be perceived as favoring, home-state litigants"); Jonathan Remy Nash, *On the Efficient Deployment of Rules and Standards to Define Federal Jurisdiction*, 65 VAND. L. REV. 509, 535 n.115 (2012) (discussing diversity jurisdiction's general goal of preventing state court bias); Suzanna Sherry, *The Four Pillars of Constitutional Doctrine*, 32 CARDOZO L. REV. 969, 990 (2011) (discussing purpose of diversity jurisdiction as analyzed in *Exxon Mobil*).

144. *See* Rodney K. Miller, *Article III and Removal Jurisdiction: The Demise of the Complete Diversity Rule and a Proposed Return to Minimal Diversity*, 64 OKLA. L. REV. 269, 284 (2012) ("The key aspect of the bias argument is that state courts (and legislatures) could potentially be prone to bias against out-of-state parties when entertaining suits involving their own residents.").

145. *See* 28 U.S.C. § 1441 (2012). For another example of a removal statute, see *id.* § 1446.

146. *See id.* § 1441(a) ("Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.").

147. *See* Flynn v. Teak Associated Invs. No. 2, Inc., 98 F. Supp. 2d 1081, 1085 (E.D. Mo. 2000) ("Congress' intent in including principal place of business in diversity statute was to give effect to reality that a corporation that conducted business in a state was as much of a local in that state as in the state where it filed its papers . . . ." (citing Caribbean Mushroom Co., Inc. v. Gov't Dev. Bank, 980 F. Supp. 620, 625 (D.P.R. 1997))).

148. *See id.* (describing lack of reason for bias).

149. *See* Emily L. Buchanan, *A Comity of Errors: Treading on State Court Jurisdiction in the Name of Federalism*, 55 S. TEX. L. REV. 1, 1–2 (2013) (discussing frequency and legitimacy of forum shopping in litigation). The practice of forum shopping arises because state and federal courts have concurrent jurisdiction over certain cases. *See* Tafflin v. Levitt, 493 U.S. 455, 458 (1990) ("We begin with the axiom that, under our federal system, the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause. Under this system of dual sovereignty, we have consistently held that state

banks an unfair advantage over their adversaries.[150] Under this system, plaintiffs are able to choose their forum by carefully selecting which claims to plead.[151] Defendants may be able to remove the case to federal court based upon diversity. This is precisely what occurred in *Rouse*.[152] The Rouses decided to sue in state court and wanted the case to remain there. Once Wells Fargo removed the action to federal court based upon both federal question and diversity jurisdiction, the Rouses decided to re-file their suit and dropped the federal law claim, in order to ensure that a state court would hear the case. Wells Fargo then countered by claiming diversity, and the case was removed to federal court.

Under *Erie Railroad Co. v. Tompkins*,[153] removal to federal court does not escape the application of state law.[154] Nevertheless, the problem presented in *Rouse*, and in other cases involving national banks, is not trying to escape state substantive law, but rather gaining access to more bank-friendly, federal procedural law.[155] Under federal procedural law, national bank defendants benefit from "mandatory disclosures, more limited discovery and a requirement that jury verdicts are unanimous."[156] These procedural benefits, along with the unbalanced economic resources that favor national banks, create an unfair balance of power in favor of

---

courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States.").

150. *See* Podolsky, *supra* note 5, at 1482–83 (discussing current system and how it gives unfair advantage to national banks over adversaries and state banks).

151. *See* Scimone v. Carnival Corp., 720 F.3d 876, 882 (11th Cir. 2013) ("[P]laintiffs are 'the master of the complaint' and are 'free to avoid federal jurisdiction,' by structuring their case to fall short of a requirement of federal jurisdiction." (citation omitted) (quoting Hill v. BellSouth Telecomms., Inc., 364 F.3d 1308, 1314 (11th Cir. 2004))).

152. For a further discussion of the procedural history and facts of Rouse, see *supra* notes 105–13 and accompanying text.

153. 304 U.S. 64, 78–80 (1938) (acknowledging absence of federal common law and therefore applying state law to actions in federal court).

154. *See id.* at 77–78 ("Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state."). The issue in *Erie* concerned whether state law is applied in federal court. *See id.* at 71 (detailing issue before Supreme Court). Under the "twin aims" of *Erie*, a federal court must apply the "forum state['s] law if it is necessary to avoid 'forum shopping' and 'the inequitable administration of the laws.'" *See* Michael Steven Green, *The Twin Aims of Erie*, 88 NOTRE DAME L. REV. 1865, 1865 (2013) (analyzing *Erie* doctrine).

155. *See* Neal Miller, *An Empirical Study of Forum Choices in Removal Cases Under Diversity and Federal Question Jurisdiction*, 41 AM. U. L. REV. 369, 400 (1992) (highlighting rationale behind forum selection for both plaintiff and defense attorneys). According to this study, defense attorneys reported that judge qualities (85.4%), jury impact (57.6%), and court rules (60.4%) were the biggest outcome determinative factors in forum selection. *See id.* (reporting top factors defense attorneys take into consideration when forum shopping).

156. Gerber, *supra* note 135 (discussing favorable aspects to banks in federal courts).

banks.[157] Essentially, the Ninth Circuit's approach is encouraging banks to forum shop into a more favorable court system.[158]

C. *Federalism Implications*

The Ninth Circuit's approach also acts contrary to the Founding Fathers' desire to preserve harmony among the states and infringes upon a state's right to have its citizens' claims adjudicated in the state's court system.[159] The purpose of diversity jurisdiction—according to statements made by delegates at the Constitutional Convention and subsequently illustrated in the Federalist Papers—was to ensure harmony among the states, and thus keep the union between the states at peace.[160] The

157. *See* Podolsky, *supra* note 5, at 1482–83 (noting inequitable results produced in favor of national banks under one-state approach).

158. *See* Lyle Washowich, *National Banks Beware: Your Branches May Carry Greater Risk than You Realize*, 122 BANKING L.J. 699, 700 (2005) ("In litigation of state law claims, the strategic option of removing an action to federal court serves as a weapon to diluting those claims."); *see also* Louise Weinberg, *Against Comity*, 80 GEO. L.J. 53, 71 (1991) ("[L]itigation has little neutral ground. A single litigation is a zero-sum game."). Furthermore, national banks may take unfair advantage of their greater access to federal courts. *See* Ross, *supra* note 47, at 239. As Ross notes:

> [N]ational banks may take unfair advantage of their limited citizenship. As aforementioned, a national bank's "main office" is a legal construction with no business significance. A national bank may assign its main office to a state where it is usually less involved in litigation. Thus, the bank could assure a federal forum based on diversity in states where it experiences high volumes of litigation.

Id. at 240 (footnote omitted).

159. For a further discussion of the goal of ensuring harmony among the states, see *infra* notes 160–64 and accompanying text. For a further discussion of states' concern over their citizens' claims, see *infra* notes 165–70 and accompanying text.

160. *See* Taylor Simpson-Wood, *Has the Seductive Siren of Judicial Frugality Ceased to Sing?:* Dataflux *and Its Family Tree*, 53 DRAKE L. REV. 281, 289 (2005) (discussing creation of federal judiciary during Constitutional Convention). At the Constitutional Convention, the creation of a federal judiciary was important to many Founding Fathers, since it was one of the major downfalls of the Articles of Confederation. *See* Douglas G. Smith, *An Analysis of Two Federal Structures: The Articles of Confederation and the Constitution*, 34 SAN DIEGO L. REV. 249, 269 n.59 (1997). One founder, Edmund Randolph, stated:

> [The judiciary's] next object is to perpetuate harmony between us and foreign powers. . . . Harmony between the States is no less necessary than harmony between foreign states and the United States. Disputes between them ought, therefore, to be decided by the federal judiciary.

3 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION AS RECOMMENDED BY THE GENERAL CONVENTION AT PHILADELPHIA 570–71 (Jonathan Elliot ed., 2d ed. 1866). Randolph would help draft the final text of the Diversity Clauses in the Committee of Detail. *See* Jesse M. Cross, *National "Harmony": An Inter-Branch Constitutional Principle and Its Application to Diversity Jurisdiction*, 93 NEB. L. REV. 139, 156 (2014). Both Hamilton and Madison, in the Federalist Papers, emphasized this idea of harmony. *See* THE FEDERALIST NO. 42, at 235 (James Madison), NO. 80, at 445–46 (Alexander Hamilton) (Clinton Rossiter ed., 1999). In Madison's Federalist No. 42, diversity jurisdiction was a

Founding Fathers were concerned that, once a party lost in state court, it would blame the state and it would produce ill will toward the state courts, therefore disrupting the harmony.[161] This rationale is also a reason why removal statutes are narrowly construed.[162] This situation presents the issue of federal courts infringing upon a state court's right to hear a case within its jurisdiction.[163] Additionally, almost any removal under diversity jurisdiction takes away a state's sovereign right to adopt and develop issues interpreting its laws.[164]

The Ninth's Circuit's approach in *Rouse* also frustrates principles of federalism involving a state's right to have "a say in resolving [its] residents' disputes . . . ."[165] Since the inception of the Constitution, there have been concerns over states' rights versus the rights of the federal gov-

---

"power[ ] of the judicial department" meant to provide "harmony and proper intercourse among the States." THE FEDERALIST NO. 42, at 235 (James Madison). In Federalist No. 80, Hamilton explained that diversity jurisdiction was required to address "practices [that] may have a tendency to disturb the harmony between the States . . . ." THE FEDERALIST NO. 80, at 445–46 (Alexander Hamilton).

161. *See* Marsh, *supra* note 139, at 201 n.22 ("'[I]ts purpose was, to extend the judicial power to those controversies into which local feelings or interests might so enter as to disturb the course of justice, or give rise to suspicions that they had done so, and thus possibly give occasion to jealousy or ill will between different States, or a particular State . . . .'" (second alteration in original) (quoting Scott v. Sandford, 60 U.S. 393, 580 (1856))).

162. *See* Long v. Bando Mfg. of Am., Inc., 201 F.3d 754, 757 (6th Cir. 2000) ("Furthermore, because they implicate federalism concerns, removal statutes are to be narrowly construed."); Scott R. Haiber, *Removing the Bias Against Removal*, 53 CATH. U. L. REV. 609, 638 n.245 (2004) ("'Because removal jurisdiction raises significant federalism concerns, we must strictly construe removal jurisdiction.'" (quoting Mulcahey v. Columbia Organic Chems. Co., 29 F.3d 148, 151 (4th Cir. 1994))); *see also id.* (noting removal statutes are "strictly construed 'to prevent encroachment on state courts' jurisdiction and to preserve comity . . . .'" (quoting Bristol-Myers Squibb Co. v. Safety Nat'l Cas. Corp., 43 F. Supp. 2d 734, 740 (E.D. Tex. 1999))).

163. *See* Dolores K. Sloviter, *A Federal Judge Views Diversity Jurisdiction Through the Lens of Federalism*, 78 VA. L. REV. 1671, 1675–84 (1992) (critiquing current diversity system that forces federal courts to make "*Erie* guesses," where federal courts sitting in diversity often incorrectly guess how state supreme courts would resolve novel issues); *see also* Buchanan, *supra* note 149, at 2–3 (discussing "*Erie* guesses" and tension between state and federal courts in diversity cases).

164. *See* Sloviter, *supra* note 163, at 1671 ("[T]he maintenance of state law claims in federal court merely because the parties are from different states . . . results in the inevitable erosion of the state courts' sovereign right and duty to develop state law as they deem appropriate."); *see also* E. Farish Percy, *Making a Federal Case of It: Removing Civil Cases to Federal Court Based on Fraudulent Joinder*, 91 IOWA L. REV. 189, 201 (2005) ("Diversity jurisdiction ensures that a 'state's judicial power is less extensive than its legislative power' because federal courts are authorized to decide cases based on state law without the possibility of review by the state's highest court." (quoting ALI, STUDY OF THE DIVISION BETWEEN STATE AND FEDERAL COURTS 99 (1969))).

165. *See* Rouse v. Wachovia Mortg., FSB, 747 F.3d 707, 716 (9th Cir. 2014) (Gould, J., dissenting).

ernment.[166] This debate has carried over to the division of powers between the federal and state judiciaries as well.[167] While most of this debate centers on the ability of federal courts to hear state court claims and vice versa, states still have an interest in having their citizens' claims heard in state court, especially where state law claims are concerned.[168] The main federalism issue arising out of diversity jurisdiction is that it "ensures that a 'state's judicial power is less extensive than its legislative power' because federal courts are authorized to decide cases based on state law without the possibility of review by the state's highest court."[169] Although, in *Rouse*, the state court was in a better position to decide the case because the only claims revolved around state law.[170]

D. *Pursuant to Historical Beliefs and* Schmidt*, National Banks and State Banks Should Be Placed on Even Footing*

The Ninth Circuit's approach in not finding jurisdictional parity between section 1332 and section 1348 is completely contrary to the congressional intent that state and national banks should be put on equal footing.[171] With each of the amendments to section 1348, and the allowance of branches under the Glass-Steagall and (more broadly) under the Riegle-Neal Acts, it becomes clear that each change was made in order to

166. *See* James B. Staab, *The Tenth Amendment and Justice Scalia's "Split Personality"*, 16 J.L. & POL. 231, 239–40 (2000) (describing early debates between Hamilton and Madison regarding scope of federal and state powers in drafting Bill of Rights).

167. *See* Percy, *supra* note 164, at 191 ("'It is essential that we achieve a proper jurisdictional balance between the federal and state court systems, assigning to each system those cases most appropriate in the light of the basic principles of federalism.'" (quoting ALI, *supra* note 164, at 1)).

168. *See* James P. George, *Jurisdictional Implications in the Reduced Funding of Lower Federal Courts*, 25 REV. LITIG. 1, 42 (2006) ("Abstaining from interference with state interests is yet another grounds for declining jurisdiction and thereby denying plaintiff's choice of forum."). One of the main aspects of the dual judicial system in America is "preserv[ing] the state courts' role as the primary judicial body" and the creation of a federal judiciary with limited subject matter jurisdiction. *See id.* at 26 (explaining how Constitution set up judiciary).

169. *See* Percy, *supra* note 164, at 201 (quoting ALI, *supra* note 164, at 99).

170. *See Rouse*, 747 F.3d at 709 (noting plaintiffs only filed state law claims when re-filing after court granted defendants' 12(b)(6) motion).

171. *See* Am. Sur. Co. of N.Y. v. Bank of Cal., 44 F. Supp. 81, 83 (D. Or. 1941) (explaining Congress intended "to confer upon a national bank the right to come into or remove a cause to a United States court in common with private corporations invested with powers by the several states"), *aff'd*, 133 F.2d 160 (9th Cir. 1943); *see also* Ross, *supra* note 47, at 239 ("The Court has repeatedly found that Congress intended to put national banks and state banks on 'equal footing' when it passed section 1348's predecessors.").

give national banks the same rights as their state counterparts.[172] The Ninth Circuit's approach completely rejects this historical significance.[173]

The Supreme Court in *Schmidt* acknowledged that, beginning with the 1882 amendment to section 1348, Congress intended national and state banks to have the same access to state and federal courts.[174] Under section 1332, state banks and other corporations are citizens of multiple states: the state of incorporation and the state in which their principal place of business is located.[175] To keep state banks on equal footing with national banks, the logical conclusion is to interpret section 1348 to mean that a national bank can also be a citizen of more than one state: the state in which its main office is located and the state in which its principal place of business is located.[176] Further, against this historical backdrop, if Con-

---

172. *See* O'Leary, *supra* note 31, at 149 (stating that, historically, Congress wanted to ensure that national and state banks were equal); *see also id.* ("'In 1969, [the Supreme Court] reiterated that the McFadden Act reflects the congressional concern that neither system [state or national] have advantages over the other in the use of branch banking.'" (alterations in original) (quoting Brief for Clearing House Association L.L.C. as Amicus Curiae in Support of Petitioner at 9, Wachovia Bank v. Schmidt, 388 F.3d 414 (4th Cir. 2005) (No. 03-2061))). For a further discussion of the Glass-Steagall Act, McFadden Act, and Riegle-Neal Act, see *supra* notes 45–47 and accompanying text.

173. *See generally Rouse*, 747 F.3d 707 (arguing that once Congress removed specific jurisdictional parity language from section 1348, concept no longer existed). In *Rouse*, the court did not mention the purpose of the Glass-Steagall Act or Riegle-Neal Act. *See generally id.*

174. *See* Wachovia Bank, N.A. v. Schmidt, 546 U.S. 303, 310 (2006) (stating that Congress, in 1882, "placed national banks 'on the same footing as the banks of the state where they were located.'" (quoting Leather Mfrs.' Bank v. Cooper, 120 U.S. 778, 780 (1887))).

175. *See id.* at 318 (discussing holding of *Schmidt*). The *Schmidt* Court stated:

> There is no reason to suppose Congress used those words to effect a radical departure from the norm. An individual who resides in more than one State is regarded, for purposes of federal subject-matter (diversity) jurisdiction, as a citizen of but one State. Similarly, a corporation's citizenship derives, for diversity jurisdiction purposes, from its State of incorporation and principal place of business. It is not deemed a citizen of every State in which it conducts business or is otherwise amenable to personal jurisdiction. Reading § 1348 in this context, one would sensibly "locate" a national bank for the very same purpose, i.e., qualification for diversity jurisdiction, in the State designated in its articles of association as its main office.

Id. (citations omitted).

176. *See* Jay Teitelbaum, *Diversity Jurisdiction: Where Do National Banks Live?*, 124 BANKING L.J. 227, 233 (2007) ("Consistent with Congress' intent, such an application would provide a national bank with neither greater nor less access to federal courts than state chartered corporations."); *see also* Podolsky, *supra* note 5, at 1484 ("Congressional intent and equity considerations demand that a national bank be considered a citizen of the state of its principal place of business in addition to the state where it has its main office, as listed on its charter."); Ross, *supra* note 47, at 239 n.316 ("The possibility exists for corporations, including state banks, to incorporate in several states. For jurisdiction purposes, corporations which freely and voluntarily incorporate in other states are deemed citizens of each of their states of incorporation, in addition to their principal place of business.").

gress no longer intended for there to be jurisdictional parity, it would have subsequently amended section 1348 after the 1958 amendment to section 1332, in order to reflect this principle.[177]

V. CONCLUSION: INVESTING IN THE FUTURE

The Ninth Circuit's ruling in *Rouse* makes it easier for national banks to gain access to federal courts.[178] This has important litigation implications since there are advantages for national banks in federal courts, including "mandatory disclosures, more limited discovery and a requirement that jury verdicts are unanimous."[179] With a growing circuit split regarding the citizenship of national banks, the only likely resolution for this issue is for the Supreme Court to hear and decide the issue.[180] Based upon the federalism implications and historical background of section 1348, the Supreme Court should adopt a dual citizen approach, al-

177. *See* Helvering v. Griffiths, 318 U.S. 371, 389 (1943) (stating that if Congress intended to pass act challenging well-known decision of Court, there would at least be clear statement of that purpose). In the present case, the context behind section 1348 shows that Congress intended parity between state and national banks. *See* Holly, *supra* note 31, at 227–28 ("When and if Congress determines that equal footing is no longer appropriate, it will expressly make its intent clear."); *see also* Bradley J. Johnson & George Brandon, *National Banks and Diversity Jurisdiction Revisited: More Authority for Remaining in Federal Court*, 122 BANKING L.J. 879, 897 (2005) ("For more than 100 years, consistent with [the *Schmidt*] holding and the terms of the statute, courts routinely held that diversity jurisdiction was available to national banks."). *But see Rouse*, 747 F.3d at 715 ("However, should Congress wish to link the jurisdiction for national and state banks, the statute can easily be amended."); Wells Fargo Bank, N.A. v. WMR e-Pin, LLC, 653 F.3d 702, 709 (8th Cir. 2011) ("Had Congress wished to retain jurisdictional parity in 1958, it could have unequivocally done so. It did not, and consequently the concept no longer applies. Whether it ought to be revived is a policy question for Congress, not the federal courts.").

178. *See* Podolsky, *supra* note 5, at 1483 (noting this approach grants national banks greater access to federal courts "in the states where they have the most ties and the least justification" for being in federal forum).

179. *See* Gerber, supra note 135 (describing procedural advantages for defendants in federal court); *see also* Sue Ostrowski, *How Moving Your Case to Federal Court Could Benefit Your Business*, SMART BUS. (Apr. 1, 2012, 1:01 AM), http://www.sbnonline.com/article/how-moving-your-case-to-federal-court-could-benefit-your-business/ (describing benefits of federal court including higher quality judges, more structured discovery, mandatory disclosures, and requirement that jury verdicts be unanimous).

180. *See* Ruth Bader Ginsburg, *Workways of the Supreme Court*, 25 T. JEFFERSON L. REV. 517, 521 (2003) ("[The Supreme Court] take[s] cases primarily to keep federal law fairly uniform, to resolve strong disagreements—splits not likely to heal—among federal or state tribunals over the meaning of a federal statute or executive regulation, or constitutional provision. Currently, about 70 percent of the cases [the Court] agree[s] to hear involve deep divisions of opinion among federal courts of appeals or state high courts.").

lowing a national bank to be a citizen of the state in which its main office is located and the state of its principal place of business.[181]

181. For a further discussion of the historical background and federalism concerns implicated by the Ninth Circuit's approach, see *supra* notes 159–70 and accompanying text.