WHERE ARE NATIONAL BANKS "LOCATED"?

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I. INTRODUCTION: A MATTER OF LOCATION AND INTERPRETATION

Federal courts have diversity jurisdiction whenever the parties to a case possess different state citizenship. The purpose of diversity jurisdiction has traditionally been to prevent and minimize bias against out-of-state parties; it is founded on "assurance to non-resident litigants of courts free from susceptibility to potential local bias."[1] Federal jurisdiction under 28 U.S.C. § 1332 requires complete diversity and an amount in controversy exceeding $75,000. Thus, in order to successfully invoke the precept, the statute mandates that all plaintiffs must be of different state citizenship than all defendants involved in a particular case.[2] For diversity purposes, a court determines the citizenship of a business association based on standards enacted by Congress, which vary. Under 28 U.S.C. § 1348, "[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."[3] The interpretation of this statutory text not only has jurisdictional consequences for national banks, but also implicates a longer-standing fundamental question about how to read the law.

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[1] Guaranty Trust Co. of N.Y. v. York, 326 U.S. 99, 111 (1945).

[2] *See* 28 U.S.C. § 1332; Lincoln Prop. Co. v. Roche, 546 U.S. 81, 84 (2005); Strawbridge v. Curtiss, 3 Cranch 267 (1806).

[3] 28 U.S.C. § 1348.

II. INTERPRETING THE STATUTE

A state bank is considered a citizen of both its state of incorporation as well as the state in which its principal place of business is located.[4] While state banks are typically chartered as corporate entities by a certain state, national banks, in comparison, are "corporate entities chartered not by any State, but by the Comptroller of the Currency of the U.S. Treasury."[5] In *Wachovia Bank v. Schmidt*, the U.S. Supreme Court held "that a national bank, for § 1348 purposes, is a citizen of the State in which its *main office*, as set forth in its *articles of association*, is located."[6] The Court's decision in *Wachovia Bank* was heavily centered on the definition of "located" set forth in § 1348.[7] The Court noted that "'located' is not a word of 'enduring rigidity,' but one that gains its precise meaning from context."[8] The word "located," as its appearances in the banking laws reveal, is a chameleon word; its meaning depends on the context in and purpose for which it is used."[9]

Focusing on jurisdictional parity, the Court rejected the overly broad notion that a national bank is "a citizen of every State in which it has established a branch."[10] Under such a definition, a national bank's access to a federal judicial forum would be severely limited in comparison to the access afforded to state banks and other state-incorporated entities; Congress created no such anomaly.[11] Therefore, the Court held that a national bank is a citizen of the state of its main office as stated in its articles of association.[12]

However, this definition is not necessarily exhaustive, as the Court acknowledged, but did not decide the issue of whether a national bank is also a citizen of the state where it maintains its principal place of business:

> To achieve complete parity with state banks and other state-incorporated entities, a national banking association would have to be deemed a citizen of both the State of its main office and the State of its principal place of business . . . The absence of a "principal place of business" reference in § 1348 may be of scant practical significance for, in almost every case, as in this one, the location of a

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[4] Wachovia Bank v. Schmidt, 546 U.S. 303, 306 (2006).
[5] *Id*.
[6] *Id*. at 307 (emphases added). Throughout the Comment, the author will refer to "main office" as the place set forth by a national bank's articles of association.
[7] *See id.* at 306 ("The question presented turns on the meaning, in § 1348's context, of the word 'located.'").
[8] *Id*. at 307 (citation omitted).
[9] *Id*. at 318.
[10] *Id*.
[11] *Id*.
[12] *See id.* at 307.

> national bank's main office and of its principal place of business coincide.[13]

However, despite the Court's practical assumption, exceptional cases have arisen in which the central issue is whether a national bank—whose main office is in a different state—is also "located" in the state of its principal place of business.[14]

In *Hertz Corp. v. Friend*, the Supreme Court established a principal-place-of-business jurisdictional test that would be "as simple as possible."[15] Assuming that the Supreme Court was correct in *Hertz*, and indeed a national bank's principal place of business could be easily determined, then the natural question that surfaces would be: is a national bank considered a citizen of the state where it has its principal place of business?

Various federal district and appellate courts have weighed in on the issue and reached different interpretations of § 1348's "located." The conclusive determination of this issue would ultimately decide the jurisdiction of many mortgage and foreclosure cases involving national banks. For a variety of reasons, national banks and other large organizations tend to favor cases in federal court. Therefore, a decisive determination of the definition of "located" would undoubtedly have implications on how national banks litigate foreclosure cases, where they conduct business, and finally, how restricted in their ability to remove cases to federal court.

III. BACKGROUND OF NATIONAL BANKS AND 28 U.S.C. § 1348

In *Wachovia Bank*, the Supreme Court gave a helpful and informative summary of the rules governing a national bank's jurisdiction.[16] Prior to 1882, national banks could sue and be sued in federal court solely because they were national banks. There was no need for diversity, a certain amount in controversy, or even the existence of a federal question.[17] However, state banks did not have the same automatic access to federal court; they could bring actions in federal court solely based on the existence of either diversity of citizenship or a federal question.[18]

In 1882, Congress drastically limited national banks' access to federal courts. A statute from that year stated:

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[13] *Id*. at 317, n.9.
[14] 28 U.S.C. § 1348.
[15] Hertz Corp. v. Friend, 559 U.S. ----, 130 S. Ct. 1181, 1186 (2010) (citations omitted).
[16] Wachovia Bank, 546 U.S. 303, 309-319.
[17] *Id*. at 309-310.
[18] *See id.*; *See also* Petri v. Commercial Nat'l Bank, 142 U.S. 644, 648-49 (1892).

> [T]he jurisdiction for suits hereafter brought by or against any association established under any law providing for national-banking 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 which do or might do banking business where such national-banking associations may be doing business when such suits may be begun[.][19]

Consequently, national banks could not establish federal jurisdiction solely based on the bank's federal origin; instead, national banks were placed in the same category as banks not organized under the laws of the United States.[20]

In 1887, Congress replaced the 1882 statutory provision and for the first time made use of the "located" language seen in § 1348. The 1887 revision provided:

> [A]ll 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 and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State.[21]

Similar to the 1882 revision, the 1887 Act sought to limit national banks' access to federal courts to the same extent that state banks were.[22]

Furthermore, in 1911, Congress combined two discrete provisions regarding national banks, but retained the original clause deeming national banks to be "citizens of the States in which they are respectively located."[23] The current statute governing a national bank's citizenship arose as part of the 1948 Judicial Code, wherein Congress enacted the latest version of 28 U.S.C. § 1348.[24] Tracing this long history, one can see that the pertinent

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[19] Wachovia Bank, 546 U.S. at 310 (alterations in original) (quoting Act of July 12, 1882, § 4, 22 Stat. 163).
[20] Petri, 142 U.S. at 649; *See also* Wachovia Bank, 546 U.S. at 310.
[21] Wachovia Bank, 546 U.S. at 310-311 (alteration and emphases in original) (quoting Act of Mar. 3, 1887, § 4, 24 Stat. 554-555).
[22] *Id*. at 311; *See also* Mercantile Nat'l Bank at Dallas v. Langdeau, 371 U.S. 555, 565-566 (1963).
[23] Act of Mar. 3, 1911, § 24 (Sixteenth), 36 Stat. 1091-1093; *See also* Wachovia Bank, 546 U.S. at 311.
[24] Act of June 25, 1948, 62 Stat. 933; *See also* 28 U.S.C. § 1348; Wachovia Bank, 546 U.S. at 311-12.

"located" language of § 1348 surfaced in 1887, lasted through the multiple revisions of the 1900s, and endures to this day.

IV. THE CASE FOR PRINCIPAL-PLACE-OF-BUSINESS CITIZENSHIP

Two federal appellate cases, decided before *Wachovia Bank*, addressed the issue of what "located" meant in § 1348. The Fifth and Seventh Circuits, in *Horton v. Bank One*[25] and *Firstar Bank v. Faul*,[26] respectively, found it suitable to consider a national bank's citizenship as analogous to that of a state bank or state corporation.[27] As described in 28 U.S.C. § 1332(c)(1), a state corporation is a citizen of: (1) the state of incorporation; and (2) the state where the corporation has its principal place of business.[28] In *Firstar*, the Seventh Circuit held that the national bank analogue to the state of incorporation is the state listed in the bank's organization certificate: "we hold that for purposes of 28 U.S.C. § 1348 a national bank is 'located' in . . . the state listed in its organization certificate."[29] Likewise, in *Horton*, the Fifth Circuit kept in mind the principle of judicial parity, construing § 1348 in light of Congress's "intent to maintain jurisdictional parity between national banks on the one hand and state banks and corporations on the other."[30] In determining a national bank analogue to state of incorporation, the court found 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*."[31]

District courts in the Ninth Circuit have also shown high regard for judicial parity when determining the definition of "located." In the 2011 case *Stewart v. Wachovia Mortg. Corp.*, the Central District of California court held that "[s]ince Congress wished national banks to have the same access to federal courts as state-chartered banks, interpreting § 1348 so as to foreclose the possibility that a national bank is 'located' where it maintains its principal place of business would not further Congress' purposes."[32] Judge S. James Otero of the Central District of California has held a similar view,

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[25] Horton v. Bank One, 387 F.3d 426 (5th Cir. 2004).
[26] Firstar Bank v.Faul, 253 F.3d 982 (7th Cir. 2001).
[27] *See* Horton, 387 F.3d at 436; Firstar, 253 F.3d at 993.
[28] 28 U.S.C. § 1332(c)(1).
[29] *See* Firstar, 253 F.3d at 994.
[30] Horton, 387 F.3d at 436; *See also id.* at 431 ("It follows that we should read section 1348 as retaining its objective of jurisdictional parity for national banks vis-á-vis state banks and corporations. . . . We are persuaded that this goal of jurisdictional parity is best served by interpreting 'located' as referring to a national bank's principal place of business as well as the state specified in the bank's articles of association.").
[31] *Id*. at 436 (emphasis added).
[32] Stewart v. Wachovia Mortg. Corp., No. 11-CV-06108, 2011 WL 3323115, 5 (C.D. Cal. Aug. 2, 2011).

finding that parity for national banks would be achieved by considering them citizens of both the "state where their articles of association list their main office" as well as the "state where their true principal place of business is located."[33] Otero found *Stewart* convincing, but he also considered the fact that national banks will not suffer the same type of prejudice in state court as would other types of outsiders; he notes that "one reason federal courts have subject matter jurisdiction over diversity cases is to alleviate the possibility that state courts will have a bias against 'outsiders.'"[34] In addition, the judge gave weight to the admonition that removal statutes should be strictly construed against removal jurisdiction.[35] Even though its district courts have weighed in, the Ninth Circuit has yet to decide whether a national bank is a citizen of the state in which it has its principal place of business.[36]

Many courts that read "located" in the aforementioned manner have invoked doctrines of caution, parity, and fairness to outsiders. Accordingly, if such notions were to change, the definition of § 1348 may consequently shift as well. If, later on, a state bank's citizenship were to hypothetically include its "secondary place of business," then doctrines of judicial parity and fairness would direct toward tweaking the definition of § 1348 without the need for legislative action. Courts that interpret § 1348 in such a way could very well point to the Supreme Court's acknowledgment that "located," as stated in § 1348, is not a word of "enduring rigidity," but instead a "chameleon" word.[37] Under this view, "located" can change over time depending on its particular context.

V. THE CASE AGAINST PRINCIPAL-PLACE-OF-BUSINESS CITIZENSHIP

In another Central District of California case, *Mireles v. Wells Fargo Bank*, the result came out the other way in opposition to principal-place-of-business citizenship.[38] Ironically, the judge in *Mireles*, Judge Margaret M. Morrow, also wrote the *Stewart* court order, which held that a national bank

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[33] Galindo v. Wells Fargo Bank, No. 12-CV-01256, (C.D. Cal. Feb. 27, 2012).
[34] *Id*.
[35] *See, e.g., id*.; *see also* Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).
[36] Other district courts have also applied this approach, holding that a national bank is also a citizen of its principal-place-of-business state. *See*, *e.g.,* Taheny v. Wells Fargo Bank, N.A., No. 10-2123, 2012 WL 1120140, at *14 (E.D. Cal. Apr 03, 2012); Saberi v. Wells Fargo Home Mortg., 10-CIV-1985, 2011 WL 197860, at *2 (S.D. Cal. Jan. 20, 2011); Mount v. Wells Fargo Bank, N.A., No. 08-CIV-6298, 2008 WL 5046286, at *2 (C.D. Cal. Nov. 24, 2008). Indeed, the Ninth Circuit has specifically refrained from ruling on the issue. *See* Peralta v. Countrywide Home Loans, Inc., 375 F. App'x 784, 785 (9th Cir. 2010) ("The court declines to resolve the complex jurisdictional issue of a national bank's citizenship on a limited record, with abbreviated briefing, and a decisional deadline.").
[37] Wachovia Bank, 546 U.S. at 307, 318.
[38] Mireles v. Wells Fargo Bank, 11-CV-07720, 2012 WL 84723 (C.D. Cal. Jan. 11, 2012).

was also a citizen of its principal-place-of-business state.[39] In *Mireles*, Judge Morrow performed an about-face, holding that a national bank is *not* a citizen of the state in which it has its principal place of business.[40] Morrow recognized her change of heart and essentially abrogated *Stewart*: "[i]n a prior case [*Stewart*], this court decided, in ruling on an ex parte application to remand, that Wells Fargo was a citizen of California. In a later case, where the court had the benefit of fuller briefing, it reached the contrary conclusion."[41] In essence, the court changed course after considering what jurisdictional parity meant at the time of § 1348's enactment.

When enacting § 1348 in 1948, Congress did indeed intend to create parity;[42] however, during 1948, the citizenship of a state bank was determined *only by its state of incorporation*.[43] The concept that a corporation could be a citizen of its "principal place of business" came about with the enactment of 28 U.S.C. § 1332(c)(1) in 1958—approximately ten years after Congress had passed § 1348.[44] Many courts, including the Supreme Court, have held that the most relevant time period for discerning a statutory term's meaning is the time when the law was enacted.[45] Thus, the text of § 1348, which was enacted in 1948, could not be interpreted to include a citizenship concept that was enacted ten years later.

The Southern District of New York also ruled in comparable fashion, employing similar reasoning in *Excelsior Funds, Inc. v. JP Morgan Chase Bank*.[46] The *Excelsior* court wrote:

> . . . the statute does not suggest that the word "located" was intended to have a meaning in § 1348 that changed over time. The statute

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[39] Stewart v. Wachovia Mortgage Corp., No. 11-CV-06108, 2011 WL 3323115 (C.D. Cal. Aug. 2, 2011).

[40] *Id*.

[41] *Id*. at *18 n.115; *See also* Alexander v. Wells Fargo Bank, 11-CIV-05771 (C.D. Cal. Nov. 1, 2011) ("As a result, on further reflection, the court concludes that Wells Fargo is a citizen only of South Dakota, and not California.").

[42] *See* Act of June 25, 1948, 62 Stat. 933.

[43] Mireles, 2012 WL 84723, at *18; *See also* Excelsior Funds, Inc. v. JP Morgan Chase Bank, 470 F. Supp. 2d 312, 319. (S.D.N.Y. 2006) ("At the time § 1348 was enacted, a state bank was a citizen of only one state, the state in which it was incorporated. Thus, allowing a national bank to be sued in a single state in which it was located created jurisdictional parity between such a bank and a state bank.").

[44] *See* Act of July 25, 1958, Pub. L. No. 85-554, 72 Stat. 415.

[45] *See* MCI Telecomm. Corp. v. Am. Tel. & Tel. Co., 512 U.S. 218, 228 (1994); Mireles, 2012 WL 84723, at *18; Excelsior Funds v. JP Morgan Chase Bank, 470 F. Supp. 2d 312, 319 (S.D.N.Y. 2006).

[46] Excelsior Funds, 470 F. Supp. 2d at 319-320 ; *See also* id. at 319 ("The concept of 'principal place of business' as a test for corporate citizenship did not arise until 1958, when 28 U.S.C. § 1332(c)(1) was first enacted.").

> should thus be interpreted consistent with congressional intent at the time it was enacted . . .
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> If Congress intended to achieve jurisdictional parity between national and state banks for all times in § 1348, and thus to include principal place of business as a location for a national bank when it became a basis for citizenship for a state bank, Congress could have provided for that in the statutory language.[47]

This sequence of events offers strong evidence that Congress did not intend that the word "located," as incorporated in § 1348, include principal place of business, since such a concept for corporate citizenship did not yet exist.[48]

Moreover, in *Wells Fargo Bank v. WMR e-PIN, LLC*, the Eighth Circuit held that a national bank is only a citizen of the state where its main office is located.[49] Adhering to a familiar line of reasoning, the Eighth Circuit concluded that Congress last amended § 1348 in 1948. At the time, Congress had not yet applied principal-place-of-business citizenship to banks, therefore, "located" referred to the main-office state.[50] Furthermore, when Congress did in fact apply principal-place-of-business citizenship to state banks and corporations under § 1332(c)(1), it did not refer to either jurisdictional parity, national banks, or § 1348. Finally, the court found that "nothing in § 1348 indicates that it would incorporate by reference any subsequent change in the statutes governing jurisdiction over state banks and corporations. Congress reconfigured the jurisdictional landscape of state banks and state corporations, but left that of national banks undisturbed."[51] Refusing to import the principal place of business jurisdictional concept into § 1348, the court found that such a notion was unknown to lawmakers at the time of the statute's adoption.[52]

It seems fairly well-established that courts should strongly consider judicial parity in the interpretation of § 1348. The courts that interpret "located" to include only the state that is listed in the national bank's articles of association are looking to notions of judicial parity. However, their interpretation of judicial parity involves an inquiry into what was fair and equitable at the time of enactment, not at the current time. Such an

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[47] Excelsior Funds, 470 F. Supp. 2d at 319 (citation omitted).

[48] Several other district courts have held that a national bank is a citizen only of the state in which it has its main office. *See*, *e.g.,* U.S. Bank Nat. Ass'n v. Polyphase Elec. Co., No. 10-CV-4881, 2011 WL 3625102, at *2 (D. Minn. Aug. 17, 2011); Tse v. Wells Fargo Bank, N.A., No. 10-CV-4441, 2011 WL 175520, at *3 (N.D. Cal. Jan. 19, 2011); Ngoc Nguyen v. Wells Fargo Bank, N.A., 749 F. Supp. 2d 1022, 1027 (N.D. Cal. 2010).

[49] Wells Fargo Bank v. WMR e-PIN, LLC, 653 F.3d 702, 709 (8th Cir. 2011).

[50] *Id*. at 708.

[51] *Id*.

[52] *Id*. at 709.

interpretation looks at the statute from the point of view of a reasonable person in 1948 rather than through the lens of a person from the present era.

VI. HOW TO INTERPRET "LOCATED": DUELING METHODS

After diving deeply into the statute, one ultimately concludes that the manner in which a reader interprets "located," ultimately sheds light on his method of interpretation. The main issue of whether a national bank is a citizen of the state in which its principal place of business is based, reveals how two different methods of interpretation can result in two distinct ways of defining "located" in § 1348.

One method of statutory interpretation is Purposivism.[53] In general terms, Purposivism emphasizes general legislative intent as the goal of interpretation. According to this view, enacted text represents the directives of legislators, who have been elected by the People; therefore, judges, citizens, and government agencies should observe said mandates in accordance with the intention of those legislators. Thus, it can be said that those who employ this method rely on Congress' *general intent or purpose* in enacting a statute. Purposive interpretation of statutes was a "conceptual hallmark of the New Deal" that Henry Hart and Albert Sacks explicated in their legal writing.[54] Purposivism does not go into any specific intent of the legislative body but instead inquires into the general goal that the legislature had.[55] Both Justice Brewer and Justice Brennan famously invoked the "spirit" of the law in order to support their respective opinions in *Holy Trinity Church v. United States* and *United Steelworkers of America v. Weber*.[56] At times, Purposivism can even lead to the fulfillment of the statute's purpose by going outside the letter of the law: "It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit nor within the intention of its makers."[57] According to William N. Eskridge, Jr., "Purposivism attempts to achieve the democratic legitimacy of other internationalist theories in a way that renders statutory interpretation adaptable to new circumstances."[58] Across the passing of time, different

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[53] The author recognizes that there are other types or degrees of Purposivism. He has tried to address the most typical and common one.

[54] WILLIAM N. ESKRIDGE, JR., ET AL., LEGISLATION AND STATUTORY INTERPRETATION 229 (2d ed. 2006); *See also* HENRY HART, JR. & ALBERT SACKS, THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW 1374-80 (1994).

[55] *See* ESKRIDGE JR. ET AL., *supra* note 54, at 229.

[56] United Steelworkers of Am. v. Weber, 443 U.S. 193, 201 (1979); Holy Trinity Church v. United States, 143 U.S. 457, 459 (1892).

[57] *Id.* at 459.

[58] *See* ESKRIDGE JR. ET AL., *supra* note 54, at 229 (Eskridge offers a detailed example of how the purpose of an author's intent can overrule the words of a directive). *See also* Kent

circumstances and unforeseeable problems arise that can change the meaning of a certain law even even as its text remains the same.[59]

The other method of interpretation, modern Textualism, stands in stark contrast to Purpositivism.[60] Justice Scalia has ardently defended and promoted this method of interpretation in his judicial opinions and lectures.[61] A Textualist focuses on what a reasonable reader of the English language, in the certain place and time of enactment of the statute, would have understood the enacted text to mean. Scalia claims that the plain meaning of a statute is both the "alpha and the omega" in a judge's interpretation, but he does not ignore context; instead he would define plain meaning as "that which an ordinary speaker of the English language . . . would draw from the statutory text."[62] The Textualist "is willing to consider various sources to provide context: dictionaries, especially those contemporaneous with the statute; other provisions of the statute and how competing interpretations fit with them; *how similar provisions in related or borrowed statutes have been interpreted*; and so forth."[63] For example, in his *Chisom v. Roemer* dissent, by employing Textualism, Justice Scalia concluded that the word "representatives" does not ordinarily include judges. Scalia remarked that "the ordinary speaker in 1982 would not have applied the word ["representatives"] to judges." [64] It can be said that Scalia essentially places himself in a certain time period and location in order to discern what a reasonable person would have understood certain words to mean.

As it is probably clear by now, the Purposivist would interpret "located," as stated in 28 U.S.C. § 1348, to include the states in which the national bank maintains its main office and principal place of business. Assuming that the general goal of Congress was to establish jurisdictional parity between the state banks and national banks, the definition of "located" should change as the state bank's citizenship requirements change. In 1948, jurisdictional parity meant that national banks were only citizens of the state in which its main office was located, since a state bank's citizenship was

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Greenawalt, From the Bottom Up, 82 CORNELL L. REV. 994, 1002-03 (1997) (quoting Eskridge).

[59] *See e.g.,* Train v. Colo. Pub. Interest Research Grp., Inc., 426 U.S. 1, 10 (1976); Nat'l Woodwork Mfrs. Ass'n v. NLRB, 386 U.S. 612, 619-620 (1967); United States v. Am. Trucking Assns., 310 U.S. 534, 543-544 (1940).

[60] The author recognizes that there are other types or levels of textualism. He will try to address the most typical one.

[61] *See* ANTONIN SCALIA, A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW (1997); Bank One Chi. v. Midwest Bank & Trust Co., 516 U.S. 264, 279 (1996) (Scalia, J., concurring in part); Chisom v. Roemer, 501 U.S. 380, 404 (1991) (Scalia, J., dissenting).

[62] WILLIAM N. ESKRIDGE JR., ET AL., CASES AND MATERIALS ON LEGISLATION, STATUTES AND THE CREATION OF PUBLIC POLICY 779 (4th ed. 2007) (quoting SCALIA, A MATTER OF INTERPRETATION).

[63] *See* ESKRIDGE JR. ET AL., *supra* note 54, at 236 (emphasis added).

[64] Chisom, 501 U.S. at 411 (Scalia, J., dissenting).

determined by the closely analogous state-of-incorporation criteria. However, as circumstances changed in 1958—when a state bank's citizenship also included the state in which it has its principal place of business[65]—the definition of "located" in § 1348 should have likewise shifted to include the principal-place-of-business state because doing so would continue to fulfill the general legislative goal of jurisdictional parity between state and national banks. The interpreter achieves democratic legitimacy "in a way that renders statutory interpretation adaptable to new circumstances."[66]

The Textualist is not a strict constructionist who only reads the "literal" meaning of a word; he would interpret § 1348 as a reasonable person would during the time of enactment.[67] Accordingly, the Textualist's definition would be frozen in the 1948 context. Since at the time of enactment, "located" was only understood to include "the state in which the national bank had its main office," the Textualist would interpret national bank citizenship as only comprising the national bank's main-office state—whether it was 1948 or 2048.[68] Under this paradigm, changing circumstances and times will not thaw the frozen definition.

VII. APPROACHING THE CROSSROADS

So what is a reasonable interpreter to do? On one hand, the Textualist method offers an attractively enduring and reliable definition that stands the test of time. After all, the rule of law should create rules that are predictable, since we do not want judges to change the meaning of a statute just because they think the circumstances have sufficiently changed. However, the Textualist method can seem awfully rigid and uncompromising in face of the most unfair results. Indeed, Alexander Hamilton acknowledged that in the case of "unjust and partial laws," courts should respond by "mitigating the severity and confining the operation of such laws."[69] Should there not be at least the potential to consider the equities in extreme circumstances? Notably, regarded scholars have acknowledged that the Framers generally supported an equity-based approach to statutory interpretation.[70]

Nevertheless, the Purposivist method also has its pitfalls. Does Congress—a large multi-member body—ever actually have one general purpose that can be attributed to the legislative branch? Is this less of an

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[65] *See* Act of July 25, 1958, Pub. L. No. 85-554, 72 Stat. 415.
[66] *See* ESKRIDGE JR. ET AL., *supra* note 54, at 229.
[67] SCALIA, *supra* note 61, at 23.
[68] *See* WMR, 653 F.3d at 708.
[69] Alexander Hamilton, The Federalist No. 78.
[70] DAVID EPSTEIN, POLITICAL THEORY OF "THE FEDERALIST" 188-190 (1984); *See also* FRANK B. CROSS, THE THEORY AND PRACTICE OF STATUTORY INTERPRETATION 127 (2009).

interpretative method and more of a practice in divination? In addition, a general purpose can also be achieved in various ways. In *Weber*, Justice Brennan upheld an affirmative action program because it was consistent with the spirit of the Civil Rights Act.[71] However, that same spirit may also be reasonably upheld through the creation of colorblind employment practices that offer "equality of opportunity, not equality of results."[72] Hence, the Supreme Court could have interpreted the statute in a more "conservative" light while invoking the same spirit. The problem with general purposes is that they are often too broad and oversimplified; thus, they allow numerous conflicting but legitimate interpretations to fit under the general purpose's umbrella. Accordingly, the interpretation that the judge opts for can sometimes be a matter of politics rather than law.

Because the author is not inclined to write an inconclusive there-are-good-arguments-on-both-sides paper, he shall choose a method of interpretation—imperfect as it may be—that strikes him as most well-reasoned and grounded in democratic ideals. The author finds that the Textualist theory of interpretation in regard to § 1348 is most appropriate in light of the need for consistency and dependability in the rule of law, and respect for the legislature's role to continually pass laws in accordance with the changing times. As Oliver Wendell Holmes stated: "We do not inquire what the legislature meant; we ask only what the statute means."[73]

Even though it has its noted weaknesses, compared to Purposivism, Textualism better restricts the potential of mischievous and willful judges substituting their policy preferences for those adopted by the legislature. Purposivism intentionally "sets the originalist inquiry at a higher level of generality."[74] When conducting the inquiry at such a general level, the analysis can become more abstract, and the general purpose can become so oversimplified that a jurist would have enough room to use his judicial opinion as a pretext for substituting personal political preferences.[75] Textualism may at times be overly rigid and harsh, but its more stringent methods are harder to circumvent with a straight face; the interpretation

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[71] Weber, 443 U.S. at 201.

[72] *See id.* at 254 (Rehnquist, J., dissenting); *See* ESKRIDGE JR. ET AL., *supra* note 54, at 230.

[73] *See* Oliver Wendell Holmes Jr., *The Theory of Legal Interpretation*, 12 HARV. L. REV. 417, 419 (1899); *See id.* at 417-18 ("Thereupon we ask, not what this man meant, but what those words would mean in the mouth of a normal speaker of English, using them in the circumstances in which they were used, and it is to the end of answering this last question that we let in evidence as to what the circumstances were."); Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384, 397 (1951) (Jackson, J., concurring) (agreeing with Holmes's view of statutory interpretation).

[74] *See* ESKRIDGE JR. ET AL., *supra* note 54, at 229.

[75] *See, e.g., id.* at 229-30 ("Most important, the Court [in Weber] oversimplified the statute´s purpose and suppressed possibly competing purpose.").

should always take place from the point of view of a reasonable reader at the time of the statute's enactment.[76]

Purposivism claims to allow for a more flexible reading of the statute that "nimbly addresses new or unforeseen circumstances" of the times.[77] However, such a role is reserved for and better-suited for the legislature, which in turn has the resources and ability to pass new laws that can specifically address new issues and unforeseen problems of the times. Legislators are equipped with analysts, staffers, and researchers who can help Congress pass new laws that are in tune with the People's will, whereas judges are staffed with law clerks who research the existing law of the land. If times are truly changing, it is in Congress's job description to address those changes with new policies.

In this particular case, analyzing the purpose of a statute can only go so far; as touched on before, if Congress decided to implement a secondary-place-of-business citizenship for state banks today, few would argue for the application of that citizenship to national banks. The reason is because we know that if Congress wanted to establish that type of citizenship for national banks, it would have then done so. Likewise, if Congress intended to promote jurisdictional parity for all time, it did not seize the opportunity in 1958 to perpetuate this goal when it enacted § 1332(c), which applied principal-place-of-business citizenship to state banks but not to national banks.[78] The Textualist approach is fitting when we have a legislative body that enacts two parallel laws and then changes one of those laws without changing the other; in that case, we should not impute the same meaning to both laws because the legislature acted discretely and chose to amend one law and not the other for its own democratically determined reason. Because Congress, when it enacted § 1348, did not understand "located" in the statute to include principal place of business, we should not confer that meaning on "located" now. Just as we would not want the terms in a contract to change meaning, we do not want future jurists changing the originally understood meaning of the text. As Judge Easterbrook wrote: "The fundamental theory of political legitimacy in the United States is contractarian, and contractarian views imply originalist, if not necessarily textualist, interpretation by the judicial branch. Otherwise a pack of lawyers is changing the terms of the deal, reneging on behalf of a society that did not appoint them for that purpose."[79] Therefore, although strong arguments can

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[76] *See id.* at 235-37.
[77] *See id.* at 229.
[78] *Id*. at 707-09; Excelsior Funds, 470 F. Supp. 2d at 319.
[79] Frank H. Easterbrook, *Textualism and the Dead Hand*, 66 GEO. WASH. L. REV. 1119, 1121 (1998); *See also* id. at 1125 ("In this vision courts serve to enforce laws and private bargains.").

be made on both sides, the preponderance of statutory and contextual evidence points to a static 1948 definition of "located" under § 1348.

VIII. CONCLUSION

The interpretation of "located" in § 1348 has important implications for foreclosure cases in both state and federal courts. However, the interpretation of that statute also reflects a more profound age-old battle between two dueling methods of interpretation. There are significant benefits and notable downsides to each method, which is precisely what makes the debate so lasting and contentious. Different brands of Purposivism and Textualism have been employed throughout American history, and though this Article does not settle the hoary issue by any means, the author hopes that he contributed to the continuous discussion.