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THE CIRCUIT SPLIT OVER THE CITIZENSHIP OF NATIONAL BANKS FOR DIVERSITY JURISDICTION PURPOSES UNDER 28 U.S.C. § 1348

Jill Holly*

I. INTRODUCTION

Jurisdiction in federal courts may be invoked if the action is between "citizens of a State and citizens or subjects of a foreign state" and the matter in controversy exceeds $75,000.1 To maintain jurisdiction on this basis, there must be complete diversity of citizenship, which requires that all parties on one side of the controversy are citizens of a state to which all parties on the other side are alien.2 Congress enacted 28 U.S.C. § 13483 to define a national bank's4 citizenship for jurisdictional purposes.5 This statute

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2. Id.
4. A national bank is an agency or instrument of the government created for the purpose of providing a national currency secured by a pledge of United States bonds. Davis v. Elmira Sav. Bank, 161 U.S. 275, 283-84 (1896). In the early 1800's, state governments supervised banking. Comptroller of the Currency, National Banks and the Dual Banking System 5 (2003), http://www.occ.treas.gov/DualBanking.pdf (last visited Oct. 21, 2005). At that time, each bank made loans by issuing its own notes, "which were designed to be the new national currency that would hold a stable value and could be used, reliably, across the nation." About the OCC: National Banking System Created (1832-1864), http://www.occ.treas.gov/exhibits/histor3.htm (last visited Oct. 24, 2005). This required a bank examiner to certify that the bank held enough currency to exchange the notes. Id. However, this did not always happen, leaving many bank note holders with worthless paper. Id. In response to this
states in relevant part: "[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." Today there are over 1900 national banks in the United States that have the ability to open a branch in any state. This federal banking system poses problems for courts in determining the citizenship of a national bank with a principal place of business in one state, but with branch banks spanning the country.

Differing judicial interpretations of § 1348 have made it unclear whether cases based solely on state law and involving branch locations of a national bank may be removed to federal court when diversity jurisdiction otherwise exists.

problem, the National Bank Act created a federal national banking system, by which a single currency was distributed and guaranteed by the government. Id. This system is based on a federal bank charter, powers defined under federal law, operation under federal standards, and oversight by a federal supervisor. Comptroller of the Currency, supra, at 5. For a more detailed discussion of national banks, see S. REP. No. 103-240 (1994).

5. See 28 U.S.C. § 1348 (providing the federal district courts with original jurisdiction in civil actions commenced by the United States against a national bank, any civil action to wind up the affairs of a national bank, and any action by a national bank to enjoin the Comptroller of Currency).

6. Id. Section 1348 states in full:
The district courts shall have original jurisdiction of any civil action commenced by the United States, or by direction of any officer thereof, against any national banking association, any civil action to wind up the affairs of any such association, and any action by a banking association established in the district for which the court is held, under chapter 2 of Title 12, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by such chapter.

All 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.


9. Compare Schmidt, 388 F.3d at 417 (holding that "located" includes branch banks), and World Trade Ctr. Props., L.L.C. v. Hartford Fire Ins. Co., 345 F.3d 154, 161 (2d Cir. 2003) (stating that defendant as a national bank is deemed to be a resident in every state it has offices), with Horton v. Bank One, N.A., 387 F.3d 426, 436 (5th Cir. 2004) (holding that national banks are "located" at their principal place of business), Firstar Bank, N.A. v. Paul, 253 F.3d 982, 993-94 (7th Cir. 2001) (holding that "located" refers only to a bank's principal place of business and the office listed in its organization certificate),
Indeed, the federal courts of appeals are split on whether the term "located," as used in § 1348, establishes the citizenship of a national bank in every state in which it operates a branch. While two circuits have held that a national bank is a resident of every state in which it operates a branch, the remaining circuits that have addressed the issue have held that, for diversity jurisdiction, a national bank is analogous to a corporation. As a result, in these circuits, a national bank has citizenship in both the state in which its principal place of business is located and the state listed in its organization certificate or articles of association. Until the Supreme Court addresses the proper statutory interpretation of § 1348, the conflicting rules in the various circuits will induce forum shopping and may have a long-term impact on national banks that use the federal forum, and its tendency to apply greater scrutiny in the application of law to fact, as a way to dilute state law claims.

10. See cases cited supra note 9.


13. See Horton, 387 F.3d at 436; Faul, 253 F.3d at 993-94; Am. Sur. Co., 133 F.2d at 161-62. The articles of association specify in general terms:

[T]he object for which the association is formed, and may contain any other provisions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. These articles shall be signed by the persons uniting to form the association, and a copy of them shall be forwarded to the Comptroller of the Currency, to be filed and preserved in his office.


15. Forum shopping has been criticized as being unfair because it may subject the defendant to unanticipated and unforeseeable risks. See George D. Brown, The Ideologies of Forum Shopping—Why Doesn't a Conservative Court Protect Defendants?, 71 N.C. L. REV. 649, 666 (1993). "[T]he system frustrates rational planning. Parties cannot know when they act what law governs their behavior, for that depends upon post-act events such as the plaintiff's choice of forum." Michael H. Gottesman, Draining the Dismal Swamp: The Case for Federal Choice of Law Statutes, 80 GEO. L.J. 1, 12 (1991). For more information on forum shopping, see Brown, supra.

16. Lyle Washowich, National Banks Beware: Your Branches May Carry
This comment will discuss the circuit split over the meaning of the term "located" in § 1348 for determining national bank citizenship and propose an interpretation for adoption by the Supreme Court. First, because both sides of the circuit split relied on canons of statutory interpretation, this comment will give an overview of the basic principles of statutory interpretation used in analyzing the federal statute. Next, this comment will introduce the development of § 1348 and the case law that has interpreted the statute. After identifying the diverging interpretations of § 1348, this comment will compare various court interpretations and analyses of the statute with regard to national bank citizenship and diversity jurisdiction. Finally, this comment will propose that a national bank should be treated as a corporation for jurisdictional purposes, with its citizenship in both the state of its principal place of business and the state listed in its articles of association.

II. BACKGROUND

Underlying the conflict of the proper statutory construction of the term "located" as used in § 1348 are principles of statutory interpretation and the statute's history. To understand the legal issues surrounding the term "located," it will be helpful first to consider the principles of statutory interpretation and the development of the statute and case law.

Greater Risk Than You Know, 122 BANKING L.J. 699, 700 (2005). Because of the federal forum's stricter scrutiny in its application of law to fact, national banks may reduce the worth of a plaintiff's state-law claim by removing it to federal court via diversity jurisdiction. Id.; see discussion infra Part III.

17. See discussion infra Part II.A.
18. See discussion infra Part II.B-C.
19. See discussion infra Part III.
20. See discussion infra Part IV.
21. See discussion infra Part IV.
22. See Wachovia Bank, N.A. v. Schmidt, 388 F.3d 414, 416 (4th Cir. 2004) ("Three traditional tools of statutory interpretation in combination . . . confirm 'located' should be construed so as to render banking associations citizens of the states in which they operate branch offices."), cert. granted, 125 S. Ct. 2904 (U.S. June 13, 2005) (No. 04-1186); Firstar Bank, N.A. v. Faul, 253 F.3d 982, 988 (7th Cir. 2001) (analyzing the statutory and jurisprudential history of § 1348 based on statutory interpretation principles).
A. The Principles of Statutory Interpretation: An Overview

Courts have utilized differing tools of statutory interpretation to determine the meaning of the term "located" in § 1348.23 While a detailed discussion of the methods of statutory interpretation exceeds the scope of this comment, it is necessary to present a brief overview of the various methods.

One of the most frequently used rules of statutory interpretation is that the courts cannot interpret a statute that is clear and unambiguous.24 Ambiguity arises when a statute may be interpreted by reasonably well-informed persons as having two or more different meanings.25 When a statute is deemed ambiguous and interpretation of the statute is necessary, the intent of the legislature must be examined and the statute must be construed accordingly.26

To determine legislative intent, a court will use both intrinsic and extrinsic aids.27 Intrinsic aids are those that derive meaning from the internal structure of the text and common dictionary meanings.28 Extrinsic aids, on the other hand, are those outside of the statute itself, including the legislative history and related statutes.29

1. Determining Legislative Intent Using Intrinsic Aids

Using intrinsic aids to interpret a statute involves

23. See discussion infra Part II.B.
25. 2A SINGER, supra note 24, § 46:04.
26. See 2A id. § 45:05 ("This rule has undergone numerous restatements, rephrasings, and reformulations, but the essence of it [is] that the legislative will governs decisions on the construction of statutes . . . .").
27. See 2A id. § 45:14 (stating that resource material for statutory construction are divided into "intrinsic" and "extrinsic" aids). "Extrinsic aids generally are useful to decisions based on the intent of the legislature, while intrinsic aids have greater significance for decisions based on the meaning of the statute as understood by people in general." 2A id. (internal quotations omitted). However, the use of intrinsic aids to interpret a statute has been criticized in recent years as offering little help in the determination of the legislative intent. See 2A id. "It has been fashionable in recent years to belittle the worth of the rules and canons pertaining to the use of intrinsic aids." 2A id.
28. 2A id.
29. 2A id.
examining the statute so that the meaning may be extracted from its composition and structure.\textsuperscript{30} This includes exploring elements such as punctuation,\textsuperscript{31} the title of the statute,\textsuperscript{32} the statute's context,\textsuperscript{33} and the meaning of associated words in the statute.\textsuperscript{34} For example, when two words that ordinarily have similar meanings are grouped together in a statute, they must be construed so that each word is given an independent meaning.\textsuperscript{35} Hence, intrinsic aids confine interpretation to the four corners of the statute.\textsuperscript{36}

2. Determining Legislative Intent Using Extrinsic Aids

Sources used in statutory interpretation that are outside the text of the statute are known as extrinsic aids.\textsuperscript{37} These resources provide the necessary background information relevant to determining legislative intent.\textsuperscript{38} A statute's legislative history, for example, may provide important insight into the purpose for its creation.\textsuperscript{39} However, if the history lacks any indication of the legislature's intended interpretation, courts may assume that the legislature was aware of then-existing statutes, rules of statutory interpretation, and prior judicial decisions.\textsuperscript{40}

Indeed, when a statute has a judicially interpreted meaning, the Supreme Court has stated that courts should not presume that the legislature overrules this established interpretation when it reenacts the statute, unless the

\begin{footnotesize}
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\item[30.] See 2A id. § 47:01 (stating that a court undertaking the interpretation of a statute should begin by reading and examining the text in order to draw inferences of the meaning from its composition and structure).
\item[31.] See 2A SINGER, supra note 24, § 47:15.
\item[32.] See 2A id. § 47:03 (explaining that the title cannot control plain words of the statute, but a court may consider it in resolving the meaning of an ambiguous word).
\item[33.] See 2A id. § 47:02.
\item[34.] See 2A id. § 47:16 (asserting that if congressional intent is not clear, the meaning of uncertain words may be determined by reference to other associated words and phrases).
\item[35.] See 2A id.
\item[36.] See 2A id. § 47:01.
\item[37.] 2A SINGER, supra note 24, § 48:01.
\item[38.] See 2A id. ("Extrinsic aids consist of background material about the circumstances which led to the enactment of a statute, events surrounding enactment, and developments pertinent to subsequent operation.").
\item[39.] See 2A id. § 48:02. The events occurring prior to the time when an act becomes law is an instructive source that may indicate what the legislature's intent might have been. 2A id. § 48:04.
\item[40.] See 2A id. § 45:12.
\end{itemize}
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legislature does so by express declaration.\textsuperscript{41} As such, reenacting a statute without any change in its language indicates legislative approval of judicial interpretations established prior to the reenactment.\textsuperscript{42} Accordingly, if a court must choose between two possible interpretations of a statute, considerable weight will be given to the prior judicial interpretation.\textsuperscript{43}

In addition, the statutory canon \textit{in pari materia}\textsuperscript{44} may also be used when there is no indication of intent in the legislative history.\textsuperscript{45} Under this canon, a court may assume that when two statutes use the same vocabulary to discuss the same or similar subject matter, the legislature intended the terms to have the same meaning.\textsuperscript{46} "[I]t proceeds upon the supposition that the several statutes were governed by one spirit and policy, and were intended to be consistent and harmonious in their several parts and provisions."\textsuperscript{47}

\textbf{B. The Statutory and Jurisprudential History of § 1348}

National banks are organized under federal law pursuant to the National Banking Act\textsuperscript{48} and, consequently, are not incorporated under any state.\textsuperscript{49} Because they lack a state of

\textsuperscript{41} Helvering v. Griffiths, 318 U.S. 371, 389 (1943) ("We think if Congress had passed or intended to pass an Act challenging as well known constitutional decision of this Court there would be at least one clear statement of that purpose either from its proponents or its adversaries.").

\textsuperscript{42} See \textit{id}.

\textsuperscript{43} See 2A SINGER, \textit{supra} note 24, § 45:12 ("When the court must choose between equally plausible interpretations of ambiguous statutory language . . . [a] long standing interpretation of a statute should be accorded considerable weight.").

\textsuperscript{44} Latin for "in the same matter." \textbf{BLACK'S LAW DICTIONARY} 807 (8th ed. 2004).

\textsuperscript{45} See 2A SINGER, \textit{supra} note 24, § 45:12.

\textsuperscript{46} See 2A \textit{id}. § 46:05. However, the fact that two statutory provisions contain similar or identical language does not automatically render them subject to the same interpretation. 2A \textit{id}. The legislative history, the purpose, and the context of the legislation must also be considered. \textit{See} 2A \textit{id}.

\textsuperscript{47} 73 AM. JUR. 2D \textit{Statutes} § 103 (2001).


incorporation, national banks do not fall under the same definition of "citizens" as corporations under 28 U.S.C. § 1332(c)(1).\textsuperscript{50} Section 1332(c)(1) provides that, for diversity jurisdiction, a corporation is a citizen of both the state where it has its principal place of business and its state of incorporation.\textsuperscript{51} Because they are not corporations governed by § 1332(c)(1), Congress codified a national bank's citizenship for jurisdictional purposes with § 1348.\textsuperscript{52}

1. Section 1348's Predecessors and the Supreme Court's Determination of the Congressional Intent Behind the Statute.

Codification of a national bank's citizenship for jurisdictional purposes began with the Acts of 1863,\textsuperscript{53} 1882,\textsuperscript{54} and 1887.\textsuperscript{55} The Act of 1863 was the first comprehensive statute regulating national banks.\textsuperscript{56} It gave national banks general corporate powers, including the right to sue and be sued in federal court.\textsuperscript{57} Approximately twenty years later,

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51. 28 U.S.C. § 1332(c)(1). Congress intended for this double citizenship test to reduce the number of diversity jurisdiction cases in the federal courts as a means of easing the workload of federal judges. See Egan v. Am. Airlines, Inc., 324 F.2d 565, 566 (2d Cir. 1963); Kelly v. U.S. Steel Corp., 284 F.2d 850, 852 (3d Cir. 1960); S. REP. NO. 85-1830 (1958), as reprinted in 1958 U.S.C.C.A.N. 3099-100. The "principal place of business" provision was thought necessary to remedy the situation where a local operation had complete diverse citizenship because it was incorporated in another state. Egan, 324 F.2d at 566.


56. See Comment, Expanding Concepts of Federal Jurisdiction Over National Banks, 59 IOWA L. REV. 1030, 1034 (1974) The Act stated in relevant part: "[S]uits, actions, and proceedings by and against any association under this act may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established." Act of Feb. 25, 1863, ch. 58, § 59, 12 Stat. 681.

57. Act of Feb. 25, 1863, ch. 58, §§ 11-12, 12 Stat. 668. After the enactment of this statute, commentators thought that federal courts might have exclusive jurisdiction over suits involving national banks because nothing in the provision provided for state jurisdiction. See Comment, supra note 56, at 1035. However, when the statute was reenacted in 1864, it added concurrent state and federal jurisdiction. See Act of June 3, 1864, ch. 106, § 57, 13 Stat. 99, 116-17. This did
Congress enacted the Act of 1882, providing that "the 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 . . . ."\textsuperscript{58} This statute established that a national bank is subject to the same jurisdictional requirements as state banks or other corporations, thus eliminating the Act of 1863's codification of federal jurisdiction of national banks solely on the basis of their federal charter.\textsuperscript{59}

Unlike the previous two statutes, the Act of 1887 has a direct bearing on where a national bank is "located" because it expressly defines national bank citizenship using language similar to that presently found in § 1348: "[A]ll national banking associations established under the laws of the United States shall, for the purposes of all actions by or against them . . . be deemed citizens of the States in which they are respectively located . . . ."\textsuperscript{61} In Petri v. Commercial National Bank,\textsuperscript{62} the Supreme Court interpreted the Act of 1887 as prescribing that national banks could resort to federal tribunals under the same circumstances as would a corporation or individual citizen.\textsuperscript{63} The Court stated that "[n]o reason is perceived why it should be held that [C]ongress intended that national banks should not resort to federal tribunals as other corporations and individual citizens might."\textsuperscript{64} As such, the Act of 1887 treated national banks and corporations as similar for jurisdictional purposes.\textsuperscript{65}

\textsuperscript{58} Act of July 12, 1882, ch. 290, § 4, 22 Stat. 162, 163.

\textsuperscript{59} See id. In Leather Manufacturers' Bank v. Cooper, 120 U.S. 778, 780 (1887), the Supreme Court interpreted the 1882 Act as putting national banks on the same footing as state banks for jurisdictional purposes. The Court asserted that national banks could no longer remove suits to federal courts merely on the ground that they are federal corporations. \textit{id.} at 780-81.

\textsuperscript{61} Act of Mar. 3, 1887, ch. 373, § 4, 24 Stat. 554.

\textsuperscript{62} Petri v. Commercial Nat'l Bank, 142 U.S. 644 (1892).

\textsuperscript{63} See \textit{id.} at 650-51.

\textsuperscript{64} \textit{id.}

\textsuperscript{65} \textit{id.} This addition to the Act of 1887 has been consistently interpreted by the Supreme Court to maintain jurisdictional parity between national banks.
2. **The Current Circuit Split over the Meaning of the Term “Located” in § 1348**

Although the Act of 1887 expressly defined a national bank’s citizenship for jurisdictional purposes, current law is unclear about whether a national bank is “located” in every state in which it has a branch.66 Five circuit courts have addressed the issue with divided results.67 The Ninth, Seventh, and Fifth Circuits held that a national bank is “located” in both the state in which it has its principal place of business and the state listed in either its organization certificate or articles of association.68 Conversely, the Second and Fourth Circuits concluded that a national bank is a citizen in every state in which it operates a branch.69

i. “Located” Means Principal Place of Business

The Ninth Circuit was the first to address whether a national bank is “located” within a state by virtue of a branch location, consequently destroying diversity jurisdiction.70 In *American Surety Co. v. Bank of California*, a New York corporation and an Oregon resident brought suit against a national bank operating a branch in Oregon.71 The court held that under § 1348’s predecessor, a national bank is “located” only in the state of its principal place of business.72 In doing so, the court compared a national bank to a corporation and concluded there was no reason to treat the two differently and depart from the general rule that the term “located” refers to the principal place of business.73

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66. *See discussion supra* Part II.B.
68. *See cases cited supra* note 12.
69. *See cases cited supra* note 11.
71. *See id.* at 161.
72. *See id.* at 162.
73. *See id.* (“There would appear to be a close analogy between such a bank and a corporation national in scope.”).
Similarly, the Seventh Circuit in *Firstar Bank, N.A. v. Faul* held that for purposes of § 1348, a national bank is “located” in both the state where it maintains its principal place of business and the state listed in its organization certificate. In *Faul*, a national bank with its principal place of business in Ohio and branch locations in Illinois filed a breach of contract suit against two defendants, both citizens of Illinois. The court stated that Congress’s intent in enacting § 1348 was to put national banks on the same footing as state banks and corporations for jurisdictional purposes. It concluded that national banks would be on equal footing with state banks and corporations if a national bank was a citizen of both the state listed in its organization certificate and the state of its principal place of business. Subsequently, the Fifth Circuit in *Horton v. Bank One Corp.* adopted *Faul’s* holding and rationale.

### ii. “Located” Means Every State with a Branch

A circuit split was created when the Second and Fourth

75. *Id.* at 994.
76. *Id.* at 984.
77. *Id.* at 988.
78. *Id.* at 993-94 (stating that because a national bank is analogous to a corporation, but is not incorporated in any state, the state listed in its organization certificate serves as an adequate substitute to the state of incorporation).
80. *See id.* at 429 (“We follow *Faul’s* holding that a national bank is not ‘located’ in, and thus not a citizen of, every state in which it has a branch.”). The Fifth Circuit additionally held that the national bank is also a citizen of the state listed in its articles of association, thus agreeing with the Office of the Comptroller of Currency and a district court in Alabama. *Id.* at 436. The Fifth Circuit noted that following *Faul*, the Office of the Comptroller of Currency issued an interpretive letter indicating its support for the fundamental reasoning in *Faul*, but added that a “more thorough articulation” of the citizenship of a national bank would be based on its principal place of business and the state of both its organization certificate and articles of association. *Id.* at 431 n.26; Comptroller of the Currency, *supra* note 50, at 2. This rationale was also adopted by an Alabama district court in *Evergreen Forest Products, of Georgia, L.L.C. v. Bank of America, N.A.*, 262 F. Supp. 2d 1297, 1307 (M.D. Ala. 2003) (holding that the state listed in a national bank’s articles of association more accurately indicates a bank’s true location for establishing citizenship because a bank must amend its articles of association if it moves location, unlike its organization certificate).
Circuits held that for jurisdictional purposes, a national bank is a citizen of every state in which it operates a branch location. 81 In World Trade Center Properties, L.L.C. v. Hartford Fire Insurance, Co., the Second Circuit gave no rationale for its holding beyond stating that, “[d]efendant Wells Fargo is a national bank . . . and by statute is deemed to be a citizen of every state in which it has offices.” 82 On the other hand, in Wachovia Bank, N.A. v. Schmidt, the Fourth Circuit largely based its holding on various canons of statutory interpretation and the Supreme Court’s interpretation of “located” in a parallel statute in Citizens & Southern National Bank v. Bougas. 83

In Bougas, the Supreme Court addressed whether a national bank is “located” in a county in which it operates a branch, within the meaning of the former version of the national bank venue statute. 84 The Court stated that because the venue statute used both “established” and “located,” the words were distinct and had to be given different meanings. 85 It declined to define “established.” 86 However, the Court held that for purposes of venue under 12 U.S.C. § 94, a national bank is “located” in any county in which it has a branch. 87


82. See World Trade Ctr. Props., L.L.C., 345 F.3d at 161.

83. See Schmidt, 388 F.3d at 416 (stating that three traditional tools of statutory interpretation were used to render its holding: the ordinary meaning of “located,” the juxtaposition of “located” with a contrasting term in the preceding sentence of § 1348, and the Supreme Court’s interpretation of “located” in Citizens and Southern National Bank v. Bougas, 434 U.S. 35 (1977)).

84. Bougas, 434 U.S. at 35. The venue statute at issue in Bougas states:

[A]ctions and proceedings against any association under this chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the country or city in which said association is located having jurisdiction in similar cases.

Rev. Stat. § 5198 (determining in which district a suit may be brought), amended by Act of Feb. 18, 1875, ch. 80, § 1, 18, pt. 3 Stat. 316, 320 (current version at 12 U.S.C. § 94 (2000)).

85. Bougas, 434 U.S. at 44.

86. However, the Court stated that the lower federal courts unanimously held that, under § 94, a national bank is “established” in the federal district encompassed by the place specified in the bank’s charter. Id. at 39.

87. Id. at 44. The Court stated that “[t]here is no enduring rigidity about
Thus, Bougas provided a significant basis for the Fourth Circuit's conclusion that under § 1348, a national bank is "located" in every state in which it operates a branch.88

In Schmidt, a national bank operating branch locations in South Carolina filed a motion to compel arbitration against a resident of that state.89 The Fourth Circuit based its analysis on various tools of statutory interpretation.90 First, the court used dictionary definitions and found that the term "located" is not ambiguous and has an ordinary meaning of "physical presence."91 It reasoned that because branch locations are physically present in a state, a national bank is deemed "located" in any state in which it has a branch.92 Next, invoking Bougas, the Fourth Circuit concluded that because the statute uses the two similar terms "established" and "located," they must be given different meanings.93 "Established" was interpreted more narrowly, referring only to the charter location, while "located" was given a broader definition that included branch locations.94 Finally, under the in pari materia canon,95 the Fourth Circuit stated that because § 1348 and the former venue statute refer to similar

the word 'located.'” Id. In enacting the venue statute, Congress was concerned with an inconvenient interruption of a national bank's business if compelled to produce documents for distant litigation. Id. However, that concern is not as relevant "when the venue of a state-court suit coincides with the location of an authorized branch.” Id. The venue statute was amended in 1983 to allow only suits brought in the district in which the national bank maintains its principal place of business. See 12 U.S.C. § 94 (2000).

88. See Schmidt, 388 F.3d at 418 (“The Supreme Court's decision in [Bougas] gives authoritative support to our reliance on the ordinary meaning of ‘located’ in section 1348.”).
89. See id. at 415.
90. See id. at 416.
91. Id. at 416-18 (“It is an axiom of statutory interpretation that the plain meaning of an unambiguous statute governs, barring exceptional circumstance.”). If the statute does not provide an express definition for the term in question, it should be construed in accordance with its ordinary meaning. Id.
92. Id. at 417.
93. See id. at 418-19.
94. Schmidt, 388 F.3d at 419. The court stated that the Supreme Court in Bougas attributed the same two definitions to "established" and "located." Id. at 419-20. However, the Court in Bougas specifically stated that although the lower federal courts have unanimously held "established" only to encompass the place specified in the bank's charter, "we have no occasion here to review these rulings.” Citizens & S. Nat'l Bank v. Bougas, 434 U.S. 35, 39-40 (1977).
95. See supra notes 44-47 and accompanying text.
III. IDENTIFICATION OF THE PROBLEM

The circuit split over § 1348 creates uncertainty for all national banks that have branches in multiple jurisdictions, particularly those in the Second and Fourth Circuits. Because national banks in the Second and Fourth Circuits will have to resort increasingly to state courts, they may receive inconsistent and contradictory decisions under state and federal law, based only on the circuit in which the suit was filed. Consequently, this will dramatically increase forum shopping and may have serious consequences for national banks. These organizations often take advantage of the federal forum’s tendency to apply greater scrutiny in the application of law to fact, and as a result, national banks use the federal forum as a way to dilute the value of state law claims. In addition, plaintiff counsel’s view of the value to assign a given case will vary depending on whether it is in the federal or state forum. The conflict among courts and its consequences demonstrate the need for a fixed and accepted statutory interpretation of § 1348 in national bank diversity jurisdiction cases.

Both sides of the circuit split agree that the debate over whether to extend the citizenship of a national bank to every state in which it operates a branch centers on the proper statutory interpretation of § 1348. The Fourth Circuit reasons that the term “located” in the statute has a plain and ordinary meaning of “physical presence,” while the Fifth and Seventh Circuits assert that the term is ambiguous and

96. See Schmidt, 388 F.3d at 422 (stating that both statutes relate to the location of national banking associations in relation to their capacity for suit).
97. Id.
98. See Washowich, supra note 16, at 700, 702-03.
99. Id. at 702-03.
100. See id. at 700, 702-03. The federal forum is also less likely to have a bias in favor of the “hometown” plaintiff. Id. at 700.
101. Id. at 700.
102. Id. The federal forum also plays a significant role in creating uniform rules applicable to national banks. Id.
103. See supra notes 14-16 and accompanying text.
104. See supra note 22.
that Congress intended national and state banks, as well as other corporations, be placed on equal footing for jurisdictional purposes.\textsuperscript{106} The remainder of this comment will analyze the arguments on both sides of the circuit split and propose an interpretation for adoption by the United States Supreme Court.\textsuperscript{107}

IV. ANALYSIS

A. Is the Term “Located” in § 1348 Ambiguous?

It is an axiom of statutory interpretation that the ordinary meaning of an unambiguous statute controls unless Congress has provided an express definition.\textsuperscript{108} The Supreme Court has stated that “the meaning of the statute must, in the first instance, be sought in the language in which the act is framed, and if it is plain, . . . the sole function of the courts is to enforce it according to its terms.”\textsuperscript{109} The Fourth Circuit concluded that when the term “located,” as defined by dictionary definitions, is analyzed in its plain and ordinary meaning in light of both § 1348 and the former venue statute, it is unambiguous.\textsuperscript{110} The Seventh Circuit, on the other hand, concluded that the term “located” in § 1348 has an ambiguous dictionary definition and, consequently, analyzed the term’s statutory and jurisprudential history.\textsuperscript{111} The findings of both sides have merit, but the more persuasive conclusion is that the term “located” in § 1348 is ambiguous.

1. The Dictionary Definitions of the Term “Located”

The Fourth Circuit, which based its holding in large part on the conclusion that the term “located” in § 1348 is unambiguous, began its analysis by examining dictionary definitions.\textsuperscript{112} It cited Black’s Law Dictionary, which emphasized that the term “located” meant “physical

\textsuperscript{106} Horton v. Bank One, N.A., 387 F.3d 426, 429-32 (5th Cir. 2004); Firstar Bank, N.A. v. Faul, 253 F.3d 982, 987-89 (7th Cir. 2001).
\textsuperscript{107} See discussion infra Parts IV, V.
\textsuperscript{110} See Schmidt, 388 F.3d at 416-25.
\textsuperscript{111} See Faul, 253 F.3d at 987-89.
\textsuperscript{112} See Schmidt, 388 F.3d at 416-18.
presence."\textsuperscript{113} The court stated that "[i]n ordinary parlance, the word 'located' is a general term referring to physical presence in a place."\textsuperscript{114} Thus, it concluded that the term "located" was unambiguously defined as any place in which a national bank is physically present, including any state in which it operates a branch office.\textsuperscript{115}

In contrast, the Seventh Circuit concluded that because the term "located" has numerous vague and unhelpful dictionary definitions, the term is ambiguous in § 1348.\textsuperscript{116} The court found that "locate" could be defined as "to determine or indicate the place of" or "to fix or establish in a place."\textsuperscript{117} The existence of multiple definitions does not lead to a consistent interpretation of the statute because the relevant inquiry regarding the meaning of the term "located" refers to "the number or scope of places where a national bank is fixed or established."\textsuperscript{118}

In view of the vagueness of these definitions, the Seventh Circuit's conclusion is superior to that of the Fourth Circuit.\textsuperscript{119} Under each definition, it is possible that a national bank's principal place of business, the state named in its organization certificate, the state named in its articles of association, and any state in which a branch is located, could fulfill the defining parameters.\textsuperscript{120} Given these possibilities, it

\begin{itemize}
\item \textsuperscript{113} \textit{Id.} at 417 (citing \textsc{Black's Law Dictionary} 940 (6th ed. 1990)) ("Moreover, the sixth edition of \textsc{Black's Law Dictionary}, one of the few sources to consider the past participle "located" separately as a general term, emphasized the connotation of physical presence."). The most recent edition of \textsc{Black's Law Dictionary} defines "location" as the "specific place or position of a person or thing." \textsc{Black's Law Dictionary} 958 (8th ed. 2004).
\item \textsuperscript{114} \textit{Schmidt}, 388 F.3d at 416. The court also cited \textsc{Webster's Third New World Dictionary}'s definition of "locate" as "to set or establish in a particular spot or position," and "location" as "a position or site occupied or available for occupancy." \textit{Id.} at 416-17 (quoting \textsc{Webster's Third New World Dictionary} 1327 (1993)).
\item \textsuperscript{115} \textit{Id.} at 417.
\item \textsuperscript{116} \textit{Faul}, 253 F.3d at 987.
\item \textsuperscript{117} \textit{Id.} (citing \textsc{The American Heritage Dictionary} 1026 (4th ed. 2000); \textsc{Webster's Third New World International Dictionary} 1327 (1993); \textsc{8 The Oxford English Dictionary} 1081 (2d ed. 1989)).
\item \textsuperscript{118} \textit{Id.}
\item \textsuperscript{119} \textit{See id.} ("Unfortunately, such definitions do not provide much aid in our inquiry—what we are trying to determine is the number and scope of places where a national bank is fixed or established.").
\item \textsuperscript{120} \textit{See Wachovia Bank, N.A. v. Schmidt}, 388 F.3d 414, 434 (4th Cir. 2004) (King, J., dissenting) ("In this proceeding, 'located' could refer either to Wachovia's principal place of business (North Carolina), to the place named in

is evident that reasonably well-informed persons could differ as to the meaning of the term "located" in § 1348, creating ambiguity.  

2. The Context of § 1348 and a Parallel Venue Statute

In addition to dictionary definitions, the Fourth and Seventh Circuits also compared the use of the term "located" in § 1348 and the former venue statute. Both courts used this dichotomy to support their respective positions that the term "located" is ambiguous or has an ordinary meaning of "physically present." The Fourth Circuit stated that the framework of § 1348, which uses both "established" and "located," strengthened its finding that "located" must be given a broad interpretation that includes branch locations. The court reasoned that because the principles of statutory interpretation require that different words used in the same statute be assigned different meanings, "located" may be given its ordinary and broad definition of "physical presence." In contrast, "established," which designates an original and permanent location, must refer to the state in which a national bank has filed its charter. However, this argument is weakened by the Seventh Circuit's contention that this tool of statutory interpretation can also be complied with if the term "established" is defined as the state listed in a national bank's charter and "located" is defined as the bank's principal place of business.

its certificate of organization (North Carolina), or to any state in which Wachovia has established branch offices (such as South Carolina).), cert. granted, 125 S. Ct. 2904 (U.S. June 13, 2005) (No. 04-1186).

121. 2A SINGER, supra note 24, § 46:04.

122. See Faul, 253 F.3d at 987 (stating that the Court in Bougas found the term "located" ambiguous).

123. See Schmidt, 388 F.3d at 418-25. The Fourth Circuit stated that "[t]he Supreme Court's decision in [Bougas] gives authoritative support to our reliance on the ordinary meaning of 'located' in section 1348." Id. at 418. The court also looked at the internal structure of the statute to give meaning to the term "located" by juxtaposing it with another word in the statute. See id. at 418-20.

124. See id. at 418-19.

125. See id.

126. See id. The court relied on Webster's Third New International Dictionary's definition of "establish" as 'to place, install, or set up in a permanent or relatively enduring position..." Id. at 419 (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 778 (1993)).

127. See Faul, 253 F.3d at 992.
The Fourth Circuit further bolstered its view that the term "located" has an ordinary meaning of "physical presence" by applying the statutory interpretation canon in pari materia. In doing so, the court juxtaposed the subject matter and context of § 1348 to that of the venue statute at issue in Bougas, in which the Supreme Court interpreted the term "located" to mean anywhere a branch is located. The Fourth Circuit stated that because the two statutes refer to the same subject matter – the location where a national bank may sue and be sued – the term "located" in § 1348 should be construed consistently, such that it includes any location in which a branch bank is operated.

However, the in pari materia canon has "little persuasive value" in this context because the purposes of the underlying laws are not the same. The Seventh Circuit found that the underlying purpose of the venue statute is to limit the costs to those involved in litigation. In contrast, the purpose behind diversity jurisdiction is to minimize potential bias against out-of-state parties. Since a closer examination of the two statutes reveals that their respective subject matter is only superficially related, the Fourth Circuit’s use of the in pari materia canon does not strengthen its finding that a national

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128. See Schmidt, 388 F.3d at 421-22. For a discussion of the statutory interpretation canon in pari materia, see supra notes 44-47 and accompanying text.
129. See id. at 421 (citing Citizens & S. Nat'l Bank v. Bougas, 434 U.S. 35, 44 (1977)).
130. Id. at 422 ("Since the Supreme Court in Bougas provided the definitive construction of those terms in the venue statute, the in pari materia canon directs us to adopt the same construction for the jurisdiction statute.").
131. See Faul, 253 F.3d at 990-91. Courts have refused to apply the canon when the statutory purposes of the law vary. Id. at 990 (citing United States v. Ganderson, 511 U.S. 39, 50-51 (1994) (refusing to apply the in pari materia canon to the supervised release revocation prescription and the probation revocation proviso because supervised release, in contrast to probation, is not a punishment in lieu of incarceration); Fort Stewart Schs. v. FLRA, 495 U.S. 641, 647-48 (1990) (refusing to apply in pari materia in a wages and fringe benefits case to the National Labor Relations Act and the Postal Reorganization Act because they deal with labor-management relations in entirely different fields of employment)).
132. Id. "Venue rules give defendants some control over the place of trial. Otherwise plaintiff could file suit in some remote district where it might be unreasonably burdensome to defend. The venue rules thus balance the conveniences of the parties with other policy factors in selecting an appropriate forum for trial." JUDGE WILLIAM W. SCHWARZER ET AL., CALIFORNIA PRACTICE GUIDE: FEDERAL CIVIL PROCEDURE BEFORE TRIAL § 4.2 (2005).
133. Faul, 253 F.3d at 990-91.
bank is "located" in every state in which it has a branch.\textsuperscript{134} Beyond its \textit{in pari materia} analysis, the Fourth Circuit relied significantly on the Supreme Court's \textit{Bougas} decision to support its conclusion that the term "located" is unambiguous.\textsuperscript{135} However, the Fourth Circuit overlooked the dicta in \textit{Bougas} declaring that the term "located" in the former venue statute has "no enduring rigidity," while the Fifth and Seventh Circuits took heed of this statement.\textsuperscript{136} Indeed, the Supreme Court in \textit{Bougas} found the term "located" ambiguous and, consequently, proceeded to address the congressional intent behind its enactment.\textsuperscript{137} Accordingly, a stronger argument can be made for the ambiguity of the term "located" in § 1348 because it has "no enduring rigidity,"\textsuperscript{138} and, thus, congressional intent must control its meaning.\textsuperscript{139}

\textbf{B. What Was Congress's Intent in Enacting § 1348?}

If a statutory word or phrase is ambiguous, the court must ascertain the interpretation that best fits the scheme and general purpose intended by Congress.\textsuperscript{140} Because the Fifth and Seventh Circuits found the term "located" ambiguous, congressional intent formed the basis of both courts' conclusion that a national bank is a citizen in the state

\begin{itemize}
\item \textsuperscript{134} See generally \textit{id.} at 990-91. The Fourth Circuit also argued that even if the statutes were not treated as \textit{in pari materia}, the venue statute is still persuasive evidence that the term "located" in § 1348 includes branch banks. \textit{See} Wachovia Bank, N.A. v. Schmidt, 388 F.3d 414, 424 (4th Cir. 2004) (stating that identical words in unrelated statutes should be interpreted the same), \textit{cert. granted}, 125 S. Ct. 2904 (U.S. June 13, 2005) (No. 04-1186). However, the Fifth and Seventh Circuits characterized this argument as weak because the two statutes are in different acts. \textit{See} Horton v. Bank One, N.A., 387 F.3d 426, 433-34 (5th Cir. 2004); \textit{Faul}, 253 F.3d at 990.
\item \textsuperscript{135} See \textit{Schmidt}, 388 F.3d at 418-25.
\item \textsuperscript{137} See \textit{Bougas}, 434 U.S. at 44. In \textit{Bougas}, the Supreme Court concluded that Congress's concern when enacting the venue statute was an interruption of a national bank's business if forced to litigate in distant arenas. \textit{Id.} The Court went on to state that this concern "largely evaporates" when a national bank has a branch in the venue where the litigation is taken place. \textit{Id.}
\item \textsuperscript{138} See \textit{id.}
\item \textsuperscript{139} See 2A \textit{SINGER}, supra note 24, § 45:04.
\item \textsuperscript{140} Cf. 2A \textit{id.} § 46:04 (noting that where language of a statute is ambiguous, the court may examine the scope, history, content, subject matter, and object of the statute to discern legislative intent).
\end{itemize}
of its principal place of business.\textsuperscript{141} These courts relied significantly on interpretations of § 1348's predecessors that equated national banks with corporations for jurisdictional purposes.\textsuperscript{142} Although the Fourth Circuit concluded that the term "located" is unambiguous, it too addressed congressional intent by analyzing § 1348's history and contrasting § 1332(c)(1)'s language.\textsuperscript{143} However, for the reasons given below, the Fourth Circuit's analysis is less persuasive than that of the Fifth or Seventh Circuits.

1. The Historical Purpose of § 1348

To determine Congress's intended meaning of ambiguous words or phrases in a statute, courts may analyze whether the words or phrases have achieved a settled meaning through judicial interpretation.\textsuperscript{144} If a statute containing a judicially interpreted phrase is later amended, but the particular word or phrase remains, it is assumed that Congress intended the statute to retain the judicially-interpreted meaning.\textsuperscript{145}

The Fifth and Seventh Circuits used this principle as the basis of their decisions.\textsuperscript{146} In their view, the phrase proclaiming that national banks shall "be deemed citizens of the States in which they are respectively located"\textsuperscript{147} in § 1348's predecessors had been interpreted by the courts as providing citizenship to national banks in the same manner as state banks and other corporations.\textsuperscript{148} The courts found

\textsuperscript{141} See Horton, 387 F.3d at 429-31; Faul, 253 F.3d at 988-89.

\textsuperscript{142} See Horton, 387 F.3d at 429-31; Faul, 253 F.3d at 988-89.


\textsuperscript{144} See Faul, 253 F.3d at 988.

\textsuperscript{145} See id. at 988. See also Helvering v. Griffiths, 318 U.S. 371, 389 (1943) ("We think if Congress had passed or intended to pass an Act challenging as well known constitutional decision of this Court there would be at least one clear statement of that purpose either from its proponents or its adversaries.").

\textsuperscript{146} See Horton, 387 F.3d at 429-31; Faul, 253 F.3d at 988-89.


that because § 1348 had been amended in light of this judicial interpretation without change, Congress intended to maintain the jurisdictional parity between national banks and corporations. 149

Conversely, the Fourth Circuit rejected this argument, stating that § 1348 repealed any language of its predecessors that equated national banks with state banks or corporations for diversity purposes. 150 The court concluded that it would be a "patently unreasonable interpretation" to assume Congress was ratifying a parity principle when it had dropped the parity language from the statute. 151 Moreover, the court concluded that because Congress readopted the general term "located" in 1943 after branch banking became authorized in 1927, 152 it must not have intended to restrict the term to a bank's principal place of business because it could have used that express language, but did not do so. 153

However, the Fourth Circuit did not address the presumption that "Congress will use clear language if it intends to alter an established understanding about what a law means; if Congress fails to do so, courts presume that the new statute has the same effect as the older version." 154 Without language in the statute to rebut the presumption that § 1348 has the same effect as its predecessors, the Fourth Circuit's conclusion that Congress did not intend to adopt any parity principal between national banks and corporations on the same footing for the purposes of federal jurisdiction. See Petri, 142 U.S. at 650-51.

149. See Faul, 253 F.3d at 988-89 ("Thus we assume that Congress intended these words to have the same meaning as was given them in Petri, which provided national banks were to be treated the same as any other corporation for diversity purposes.") (citation omitted).

150. See Wachovia Bank, N.A. v. Schmidt, 388 F.3d 414, 428 (4th Cir. 2004), cert. granted, 125 S. Ct. 2904 (U.S. June 13, 2005) (No. 04-1186). The Fourth Circuit stated that the Act of 1882 was "couched in terms of jurisdictional parity" between national banks and state banks. Id.

151. Id.


153. See Schmidt, 388 F.3d at 421 ("Congress was aware of this change, having effected the change itself. Because, in reenacting section 1348, Congress did not specify 'principal' or 'branch' location, but instead retained the general term 'located,' history reveals ... that Congress ... did intend to bring branch offices within the scope of the section.").

154. See Faul, 253 F.3d at 988 (citing Cottage Sav. Ass'n v. Comm'r, 499 U.S. 554, 562 (1991); NBD Bank, N.A. v. Bennett, 67 F.3d 629, 632 (7th Cir. 1995)).
corporations when it enacted § 1348 lacks merit.\(^\text{155}\)

2. The Consideration of § 1332(c)(1)

In addition to the Fourth Circuit's reasoning that the statutory history of § 1348 does not support congressional intent to equate national banks and corporations for jurisdictional purposes,\(^\text{156}\) the court also relied on § 1332(c)(1) in concluding that Congress intended for national banks to be citizens of every state in which a branch is located.\(^\text{157}\) It stated that had it been Congress's intention to equate national banks and corporations for diversity jurisdiction, it would have adopted similar language to that espoused in § 1332(c)(1).\(^\text{158}\)

The weakness in this argument lies in the fact that the purpose of § 1348 was not necessarily to make a national bank a citizen of the state of its principal place of business, as the Fourth Circuit suggests.\(^\text{159}\) Rather, it equated national banks with corporations for jurisdictional purposes.\(^\text{160}\) Therefore, if § 1332(c)(1) had instead made a corporation a citizen of every state in which it operated any part of its business, a national bank would be a citizen of every state in which it operates a branch. This would be done to maintain the jurisdictional parity between national banks and corporations. As long as a corporation's citizenship for

\(^{155}\) See Schmidt, 388 F.3d at 431. The Fourth Circuit also reasoned that the judicial interpretation of § 1348's predecessors had been misinterpreted because Petri only addressed whether the Act of March 3, 1887, completely abolished diversity jurisdiction for national banks. See id. at 429-30 (citing Petri v. Commercial Nat'l Bank, 142 U.S. 644, 649-50 (1892)). However, this reasoning is also unpersuasive. In American Surety Co. v. Bank of California, 133 F.2d 160 (9th Cir. 1943), the Ninth Circuit held that the predecessor of § 1348 maintained the jurisdictional parity between national banks and corporations because Congress would have made clear its intent to depart from this general rule. Am. Sur. Co., 133 F.2d at 162. Thus, had Congress disagreed with the Ninth Circuit that Petri established parity between national banks and corporations as the general rule, it would have reflected this in its enactment of § 1348. See Helvering v. Griffiths, 318 U.S. 371, 389 (1943).

\(^{156}\) See Schmidt, 388 F.3d at 421, 425-29.

\(^{157}\) See id. at 431.

\(^{158}\) See id. Because Congress did not make an explicit provision for the singular or dual citizenship of a national bank as it had when it adopted the language in § 1332(c) ten years later, Congress did not intend to adopt the parity relationship between national banks and corporations for diversity purposes. See id.

\(^{159}\) See id.

\(^{160}\) See Firstar Bank, N.A. v. Faul, 253 F.3d 982, 988 (7th Cir. 2001).
diversity jurisdiction remains clear, there is no need for Congress to enact a statute with language similar to §1332(c)(1) for national banks.

V. PROPOSAL

The circuit split over whether a national bank is a citizen of every state in which it operates a branch will be resolved by the Supreme Court in its October 2005 term. This comment proposes an interpretation of §1348 that would solve the problems identified above. In addition, it also proposes that "established" be interpreted to refer to the state listed in the articles of association. These proposed interpretations maintain the parity relationship between national banks and corporations that prior judicial interpretations established and that Congress intended to ratify in §1348.

The Fifth and Seventh Circuit decisions provided strong, well-founded rationales for their conclusions that the term "located" in §1348 is ambiguous. Indeed, contrary to the Fourth Circuit, both adhered to the Supreme Court's admonition in Bougas that the term "located" has "no enduring rigidity," thus rendering it ambiguous. As such, the legislative intent behind §1348 must control its meaning.

Congressional intent can be inferred because Congress clearly enacted §1348 against a judicially interpreted background, establishing that the purpose of the statute was to place national banks and corporations on the same footing without any relevant change in its language. The context of §1348's enactment demonstrates that Congress intended to ratify the parity relationship. When and if Congress

163. See Horton v. Bank One, N.A., 387 F.3d 426, 429-30 (5th Cir. 2004); Faul, 253 F.3d at 987.
164. See Horton, 387 F.3d at 429; Faul, 253 F.3d at 987; see also discussion supra Part IV.A.1.
165. See 2A SINGER, supra note 24, § 45:05.
167. See generally Helvering v. Griffiths, 318 U.S. 371, 389 (1943) (stating that if Congress intended to pass an act challenging a well-known decision of
determines that equal footing is no longer appropriate, it will expressly make its intent clear.\textsuperscript{168}

However, until Congress repeals this established purpose, the goal of jurisdictional parity between a national bank and a corporation is best served if the term "located" is defined as a national bank's principal place of business, and "established" is defined as the state listed in its articles of association. This proposal follows from the Fourth Circuit's observation that "established" refers to an original and permanent location.\textsuperscript{169} In the case of corporations, their original and permanent location is likely their state of incorporation.\textsuperscript{170} If used in the context of a national bank, "established" must refer to the state listed in its articles of association because such documents must always reflect the current location of the bank's main office.\textsuperscript{171}

Moreover, other than a corporation's state of incorporation, its citizenship for diversity jurisdiction is determined by its principal place of business.\textsuperscript{172} As such, to further maintain the parity relationship between national banks and corporations, the term "located" in § 1348 must be defined as a national bank's principal place of business. This proposal solves the conflicting views of the various circuits in a way that keeps with the legislature's intended purpose of allowing national banks the same broad access to federal courts that is enjoyed by state banks and other

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\begin{itemize}
\item \textsuperscript{168} See id.
\item \textsuperscript{169} See Firstar Bank, N.A. v. Faul, 253 F.3d 982, 992 (stating that while not at issue, the meaning of "established" traditionally meant the place specified in the bank's charter).
\item \textsuperscript{170} Jeffrey F. Ghent, Annotation, \textit{Determination of Corporation's Principal Place of Business for Purposes of Diversity Jurisdiction Under 28 U.S.C.A. § 1332(c)}, 6 A.L.R. FED. 436 (2004). Prior to the addition of subsection (c) to 28 U.S.C. § 1332 in 1958, establishing that a corporation is deemed a citizen of both the state if its incorporation and the state of its principal place of business, a private corporation was a citizen of the state of its incorporation only. Id.
\item \textsuperscript{171} See Comptroller of the Currency, \textit{supra} note 50, at 2 ("The location of a national bank for corporate status purposes under the National Bank Act and other banking laws is determined by the place where the national bank's main office is located . . . . [I]f the bank changes the location of its main office to a new place, the new location determines the location of the bank for corporate status purposes. Such changes of location are evidenced in the bank's articles of association . . . .").
\item \textsuperscript{172} See 28 U.S.C. § 1332(c)(1) (2000).
\end{itemize}
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VI. CONCLUSION

Although § 1348 purportedly codified a national bank's citizenship for jurisdictional purposes, differing interpretations of § 1348 have caused courts to recognize diversity jurisdiction inconsistently. Because of the varying interpretations among the circuits, the Supreme Court must determine the meaning intended by Congress. Based on the historical backdrop against which the statute was re-enacted, the Supreme Court should define the term "located" as a national bank's principal place of business and the term "established" as the state listed in the bank's articles of association.

175. See cases cited supra note 9.
176. See discussion supra Part IV.B.
177. See discussion supra Part V.