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Colorado ex rel. State Banking Board v. First National Bank and Independent Bankers Association of America v. Smith: Is a Customer-Bank Communication Terminal A Branch Bank within the McFadden Act

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COLORADO ex rel. STATE BANKING BOARD v. FIRST NATIONAL BANK AND *INDEPENDENT BANKERS ASSOCIATION OF AMERICA v. SMITH:* IS A CUSTOMER-BANK COMMUNICATION TERMINAL A BRANCH BANK WITHIN THE McFADDEN ACT?

On May 28, 1975, the United States District Court for the District of Colorado ruled that certain functions of a national bank's off-premises "customer-bank communication terminal" ("CBCT")[1] fell within the McFadden Act definition of branch bank[2] while other functions of the CBCT did not.[3]

On July 31, 1975, the United States District Court for the District of Columbia ruled that a national bank's off-premises CBCT was a branch within the terms of the McFadden Act for all the functions which it performed.[4]

In *Colorado ex rel. State Banking Board v. First National Bank,*[5] the state sought a declaratory judgment and a permanent injunction

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1. The Comptroller of the Currency gave a basic definition of the customer-bank communication terminal in an interpretive ruling:

> In general, these terminals permit an existing bank customer to initiate transactions resulting in a cash withdrawal from his account, a crediting of funds to his account, a transfer between his checking and saving accounts, and payment transfers from his account into accounts maintained by other bank customers.
>
> Both manned and unmanned CBCT's are now in use. The CBCT typically involves: (a) A card issued to and carried by the customer which is inserted into the machine; and (b) a keyboard by which the customer or operator of the CBCT can insert information as to the transaction the customer wished to accomplish. The customer's card sometimes contains information as to what transactions are authorized for that particular customer, and some CBCT's are capable of updating that information at the completion of the transaction. The CBCT may be self-contained, or it may be connected by wire (or line) to a bank's central computer at a remote location.

39 Fed. Reg. 44416-17 (1974).

2. 12 U.S.C. § 36(f) (1970) provides:

> (f) The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.

3. Colorado *ex rel.* State Banking Bd. v. First Nat'l. Bank, 394 F. Supp. 979 (D. Colo. 1975).

4. Independent Bankers Ass'n of America v. Smith, No. C.A. 75-0089 (D.D.C. July 31, 1975).

5. 394 F. Supp. 979 (D. Colo. 1975).

against the allegedly illegal branch banking operations of the national bank. The bank had established a CBCT 2.8 miles from the location of the main bank building. The court had to decide if the CBCT constituted a branch bank under the McFadden Act. If the CBCT constituted such a facility, the bank was in violation of Colorado laws[6] dealing with detached banking facilities. A violation of the Colorado laws concerning branch banking would also be a violation of section 36(c) of title 12 of the United States Code[7] which allows national banks to establish branch banks only when they could be established under state law by state banks.

The district court declared that to the extent the CBCT performed the function of receiving deposits it constituted a branch bank,[8] and relied on previous case law[9] in deciding that this function of the CBCT was within the definition of branch bank. The judge ruled there was no functional difference between the making of a deposit in a CBCT and the making of a deposit in a stationary receptacle. The United States Supreme Court had previously decided that making deposits in stationary receptacles constituted branch banking.[10]

Judge Matsch determined that the other functions of the CBCT did not constitute branch banking. After defining the word check[11] the judge noted that there was a difference between the presentation of a check at a teller station and at a CBCT.

> To instruct the bank by depressing keys on this Docutel machine is not the writing of an order for the bank to pay on demand. It is comparable to the wire transfer of funds by com-

6. COLO. REV. STAT. ANN. § 11-6-101(1) (1973).

7. 12 U.S.C. 36(c) (1970) provides in part:

(c) A national bank association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks.

8. 394 F. Supp. at 984.

9. First Nat'l. Bank v. Dickinson, 396 U.S. 122 (1969).

10. *Id.* at 137, 394 F. Supp. at 983-84.

11. The word "check" is defined in Webster's Third New International Dictionary, Unabridged, 1968, as "A written order directing a bank or banker to pay money as therein stated . . . ." The definition given to "check" in the Uniform Commercial Code is ". . . a draft drawn on a bank and payable on demand."

394 F. Supp. at 984.

mercial customers and that is not considered to be the payment of a check.[12]

Judge Matsch also concluded that the machine was not a place where money was lent. He explained that the use of a card to receive currency was not essentially different from using such a card to obtain cash, services or products from a retailer,[13] and continued, "[t]o conclude that this function of the machine is branch banking would therefore require conclusion that any such use of bank credit cards is also branch banking."[14]

In *Independent Bankers Association of America v. Smith*,[15] plaintiffs sought judicial review of an interpretive ruling of the Comptroller of the Currency.[16] The Comptroller decided the CBCT was not a branch

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12. *Id.* at 985.
13. *Id.*
14. *Id.*
15. Independent Bankers Ass'n of America v. Smith, No. C.A. 75-0089 (D.D.C. July 31, 1975).
16. 12 C.F.R. § 7.7491 (1975) provides:

> (a) A national bank may make available for use by its customers one or more electronic devices or machines through which the customer may communicate to the bank a request to withdraw money either from his account or from a previously authorized line of credit, or an instruction to receive or transfer funds for the customer's benefit. The device may receive or dispense cash in accordance with such a request or instruction, subject to verification by the bank. Such devices may be unmanned or manned by a bona fide third party under contract to the bank. The bank for a reasonable period of time may provide one of its employees to instruct and assist customers in the operation of the device. Any transactions initiated by such a device shall be subject to verification by the bank either by direct wire transmission or otherwise.
>
> (b) Use of such devices at locations other than the main office or a branch office of the bank does not constitute branch banking. A bank may provide insurance protection under its bonding program for transactions involving such devices.
>
> (c) The establishment and use of these devices is subject to the following limitations:
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> (1) Written notice must be given to the Comptroller's Office and to the office of the appropriate regional administrator 30 days before any such device is put into operation. Such notice shall describe with regard to the device or machine:
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> (i) The location;
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> (ii) A general description of the area where located (e.g., shopping center, gasoline station, supermarket) and the manner of installation (e.g., free standing, exterior wall, separate interior booth);
>
> (iii) The manner of operation, including whether the device is on-line;
>
> (iv) The kinds of transaction which will be performed;
>
> (v) Whether the device will be manned, and, if so, by whose employee;
>
> (vi) Whether the device will be shared, and, if so, under what terms and with what other institutions and their location;
>
> (vii) The manufacturer and, if owned, the purchase price or, if leased, the lease payments and the name of the lessor;
>
> (viii) The distance from the nearest banking office and from the nearest similar device of the reporting bank; and

within the meaning of the McFadden Act. The court examined the legislative history of the Act and pertinent case law and decided CBCTs did fall within the definition of branch bank. Judge Robinson referred to *First National Bank v. Dickinson*[17] where the United States Supreme Court said that "the term 'branch bank' at the very least includes *any* place for receiving deposits or paying checks or lending money apart from the chartered premises; it may include more."[18] In the Comptroller's opinion, a CBCT was not a branch bank, branch office, branch agency, additional office or any branch place of business because it lacked certain physical characteristics of such facilities. However, Judge Robinson, relying on the Court's language in *Dickinson*, found that the Comptroller's contention lacked merit.[19]

The Comptroller's determination that a CBCT did not receive deposits, cash checks, or make loans was also found to be without merit. After taking notice of the transactions which the Comptroller had stipulated the CBCTs were capable of completing,[20] the court referred to the definitional section of the Act, and the following comment by Representative McFadden: "Any place outside of or away from the main office where the bank carries on the business of receiving deposits, paying checks, lending money or transacting any business carried on at the main office, is a branch."[21] Judge Robinson ruled that "[t]he Court is compelled to conclude that since a CBCT 'transacts business which is carried on at the main office' it is a 'branch' under the McFadden Act."[22]

THE LEGISLATIVE HISTORY OF THE MCFADDEN ACT

To fully understand the opposing viewpoints presented in the two district court opinions it is necessary to understand the legislative history

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(ix) The distance from the nearest banking office and nearest similar device of another commercial bank, which will not share the facility, and the name of such other bank or banks.

(2) National banks are urged prior to July 1, 1975, not to establish a CBCT in any state in which state law would prohibit a state chartered bank from establishing a similar facility.

(3) To the extent consistent with the antitrust laws, national banks are permitted, but not required, to share such devices with one or more other financial institutions.

17. 396 U.S. 122 (1969).

18. *Id.* at 135 (emphasis in original).

19. Independent Bankers Ass'n of America v. Smith, No. C.A. 75-0089 (D.D.C. July 31, 1975) at 5.

20. See definition note 1 *supra.*

21. Independent Bankers Ass'n of America v. Smith, No. C.A. 75-0089 (D.D.C. July 31, 1975) at 6 *quoting from* 68 CONG. REC. 5816 (1927).

22. *Id.*

of section 36(c) and (f) of title 12 of the United States Code and the courts' interpretation of those sections.

In 1923 there appeared to be a developing problem concerning branch banking in the United States. Wherever state law permitted branch banking the state banks were opening new branches. At the same time, national banks were unable to open branches because, under the existing banking law, there was no statutory authority for such action. In his Annual Report for 1923,[23] the Comptroller of the Currency warned of the problems likely to be encountered by unlimited branch banking on the part of state banks. The Comptroller noted that if such branching continued "it will mean the eventual destruction of the national banking system . . . ."[24]

Representative McFadden responded to the problem in 1924 by introducing legislation to equalize the ability of both national and state banks to develop branches.[25] The McFadden Act, eventually adopted in 1927, provides:

> A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) within the limits of the city, town, or village in which said association is situated if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question . . . .[26]

Representative McFadden later described the bill by saying "[c]*ompetitive equality* has been established among all member banks of the Federal Reserve System."[27]

During the 1930's Congress again took an interest in the branch banking issue. Senator Carter Glass proposed legislation to allow national banks to establish branches, regardless of state law, beyond the municipality in which the main bank was located.[28] The senator's proposal was strongly opposed in Congress, and he was forced to alter his original bill in order to obtain the support necessary for its accept-

23. H.R. Doc. No. 90, 68th Cong., 1st Sess. 6 (1924) *construed in* First Nat'l Bank v. Walker Bank & Trust Co., 385 U.S. 252, 257 (1966).

24. 385 U.S. at 257.

25. Representative McFadden's first bill H.R. 8887, 68th Cong., 1st Sess. (1924), did not pass. It was reintroduced as H.R. 2, 69th Cong., 1st Sess. (1925). *See* Comment, *Customer-Bank Communication Terminals and the McFadden Act Definition of a "Branch Bank"*, 42 U. CHI. L. REV. 362, 372 n.46 (1975).

26. 12 U.S.C. 36(c)(1) (1970).

27. 68 CONG. REC. 5815 (1927) *construed in* First Nat'l Bank v. Walker Bank & Trust Co., 385 U.S. 252, 258 (1966).

28. First Nat'l Bank v. Walker Bank, 385 U.S. 252, 259 (1966).

ance by Congress. His revised bill became the Banking Act of 1933,[29] which provides the current regulations for branch banking contained in section 36(c) of title 12 of the United States Code. The major change in the McFadden Act allowed national banks to establish branches at any point within the state if state law allowed state banks to establish such branches. Senator Glass made it clear that the establishment of the national bank branches was to "be under the regulations required by State law of State banks."[30] Senator Lang in his description of the bill said "[w]e have only undertaken to secure equal treatment for State banks."[31]

The legislative history of the McFadden Act and the Banking Act of 1933 discloses that the attempt to establish competitive equality among the two banking systems was the primary congressional motive. The McFadden Act was a reaction to competitive advantages which state banks had gained by 1923. It was intended to create competitive equality between the banks so that both banking systems could continue. The Banking Act of 1933 demonstrated congressional reinforcement of the theory of competitive equality in branch banking legislation. In addition, Senator Glass' proposal to eliminate any consideration of state law faced imminent defeat until it was revised to contain language assuring competitive equality. The entire legislative history points to competitive equality as the cornerstone of section 36(c).

JUDICIAL INTERPRETATION OF THE MCFADDEN ACT

The courts have also interpreted the legislative history of section 36(c) as an attempt by Congress to establish competitive equality between national and state banking systems. In *First National Bank v. Walker Bank & Trust Co.*,[32] Justice Clark said:

> It appears clear . . . that Congress intended to place national and state banks on a basis of "competitive equality" insofar as branch banking was concerned. . . . To us it appears beyond question that the Congress was continuing its policy of equalization first adopted in the National Banking Act of 1864.[33]

29. 12 U.S.C. 36(c)(2) (1970).
30. 77 CONG. REC. 3726 (1933) *construed in* First Nat'l Bank v. Walker Bank & Trust Co., 385 U.S. 252, 259 (1966).
31. 77 CONG. REC. 5862 (1933) *construed in* First Nat'l Bank v. Walker Bank & Trust Co., 385 U.S. 252, 260 (1966).
32. 385 U.S. 252 (1966).
33. *Id.* at 261.

In *Dickinson*, the Supreme Court reaffirmed its interpretation of congressional intent by concluding that "[t]he policy of competitive equality is therefore firmly embedded in the statutes governing the national banking system."[34] The Court's interpretation of the McFadden Act has at all times appeared to stress the fact that the congressional intent was the creation of competitive equality.

Section 36(f) of title 12 of the United States Code is the definitional section of the McFadden Act, and there is little legislative history for this section as compared to the congressional statements concerning section 36(c). The most important interpretation of this section is found in the *Dickinson* decision where the Supreme Court attempted to clarify the definition of branch in section 36(f) by concluding that more must be taken into consideration in the definition of branch banks than merely the words and the phrases making up the language of the section. The concept that the McFadden Act was created to insure competitive equality became a focal point in the Court's definition of branch bank. In recognition of this concept, Chief Justice Burger said: "In short, the definition of 'branch' in § 36(f) must not be given a restrictive meaning which would frustrate the congressional intent this Court found to be plain in *Walker Bank* . . . ."[35] The Court also noted the description Representative McFadden gave the statute: "Any place outside of or away from the main office where the bank carries on its business of receiving deposits, paying checks, lending money, or transacting any business carried on at the main office, is a branch."[36] It is clear that the Court intended to develop a broad definition of what would qualify as a branch bank under the Act.

In relation to what exact activities an establishment would have to be engaged in to fall within the definition of branch bank, Chief Justice Burger found that "the term 'branch bank' at the very least includes *any* place for receiving deposits or paying checks or lending money apart from the chartered premises; it may include more."[37] That statement could have far-reaching effects and discloses a belief by the Court that the offering of any one of the three services mentioned would qualify an establishment as a branch. However, the concluding phrase "it may include more" goes much further. The statement is so open-ended that it

34. 396 U.S. at 133.

35. *Id.* at 134. The court in *Walker Bank* had found that the congressional intent was clearly to establish competitive equality. First Nat'l Bank v. Walker Bank & Trust Co., 385 U.S. 252, 261 (1966).

36. 396 U.S. at 134 n.8.

37. *Id.* at 135 (emphasis in original). See note 18 *supra.*

may be used by many courts in the future to classify a whole number of other services as branch banking. It is evident that the Court has gone far in making sure that there will be no restriction of the definition of branch bank.

In addition, the Court attempted to clarify whether the term branch bank should be interpreted in accordance with applicable state law. It held that state law could control the operation of branch banks but not the definition of branch bank. The Chief Justice reasoned that "to allow states to define the content of the term 'branch' would make them the sole judges of their own powers."[38]

APPLICATION OF LEGISLATIVE HISTORY AND PRIOR CASE LAW

Three major rules concerning the branch banking law emerge from a review of the legislative history and case law concerning section 36(c) and (f): (1) competitive equality is to be of primary importance in deciding whether an establishment constitutes a branch bank; (2) the definition of branch bank must be broad and unrestricted so that the factor of competitive equality may be freely taken into consideration; and (3) the state law definitions of branch banking are not to have any effect in deciding what constitutes branch banking under the federal definition.

Independent Bankers adheres to the essence of these rules and is consistent with the past history and interpretation of the McFadden Act.[39] The *Independent Bankers* court applied a broad definition of branch bank, branch office, or additional office and did not restrict its interpretation by considering only physical characteristics, as did the Comptroller, but looked instead to the legislative history and case law. The Comptroller asserted that the CBCT was not a branch because it lacked the physical characteristics of a bank. However, Judge Robinson relying on *Dickinson* specifically rejected this argument. The court was not persuaded that the mere appearance of something could displace the fact that the machinery functioned as a branch bank, and emphasized function rather than allowing form to control. Referring to Representative McFadden's description of section 36(f) the justice said: "[S]ince a CBCT 'transacts business which is carried on at the main office' it is a

38. *Id.* at 133.

39. In *Independent Bankers* the question of whether the state law definition of branch bank would be the definition used in the federal law was never at issue. Therefore, it is impossible to determine how the court would have ruled in that matter.

'branch' under the McFadden Act."[40]

While the theory of competitive equality was never mentioned in *Independent Bankers* it may be assumed that it was taken into consideration. The court noted that it was basing its decision upon *Dickinson* and *Walker Bank*. In both cases, the Supreme Court relied heavily on the theory of competitive equality.[41]

Although *Independent Bankers* never runs counter to the rules which seem to be established by the past history of section 36, Judge Robinson found it unnecessary in much of his opinion to use those guidelines. It appears that Judge Robinson was able to find that the CBCT was a branch bank by adhering to a literal interpretation of sections 36(c) and (f).

Unlike *Independent Bankers, Colorado ex rel. State Banking Board v. First National Bank* does not come within the framework of the rules which the legislative history and the case law of section 36(c) and (f) appear to mandate. The court in *State Banking Board* applied a very restrictive test in deciding whether a CBCT is a place where checks are paid. Judge Matsch admitted that the depressing of keys to obtain cash and the presentation of a check for payment at a teller station are quite similar.[42] However, he overlooked the similarity in result and based his decision on technical form. The judge used the definition of check[43] to find that "the depressing of keys . . . is not the writing of an order to pay on demand."[44] In short, the form of the transaction overcame the obvious similarity of the results.

While the distinction drawn in *State Banking Board* may be valid in terms of the entire history surrounding section 36(f), it appears to be too insignificant to be made the controlling factor in the decision. It is obvious, that the drafters used the word check in 1927 because they did not foresee the technological advances which were to occur forty years later. It is unlikely that the legislators who were instrumental in the passage of the McFadden Act would have been as interested as the court in the difference between the writing of a check and the depressing of keys on a machine. What would have interested them, as the legislative history indicates, is the result. The United States Supreme Court has also

40. Independent Bankers Ass'n of America v. Smith, No. C.A. 75-0089 (D.D.C. July 31, 1975) at 6.
41. *Id.* at 4.
42. 394 F. Supp. at 985.
43. *Id.* at 984. Judge Matsch's definition is reprinted in note 11 *supra.*
44. *Id.* at 985.

shown more interest in the result than in the form of the transaction.[45] The result of the transaction is the same whether the check is presented at a teller window or whether the keys of a machine are depressed at a CBCT. In either case, an individual is able to receive money at a bank-owned installation away from the bank's main office. Another result of such a transaction at a national bank is to create a competitive advantage in favor of the national bank if state banks are not permitted this function by state law. Therefore, if a CBCT is found not to constitute a branch bank the result is the very opposite of what the legislators intended. The court's opinion in *State Banking Board* lacks the use of a broad definition as well as an analysis of the competitive effect both of which are considerations imposed by the legislative history and pertinent case law. Judge Matsch decided that the CBCT was not a branch bank by comparing it to bank credit cards which operate with a prearranged line of credit as the CBCT does.[46] He found no functional difference between obtaining money from a CBCT and obtaining money, services, or goods from a retailer by the use of a bank credit card; and thus to maintain that a CBCT is the equivalent of a branch would necessitate a finding that all such uses of bank credit cards constitute branch banking.[47] This interpretation involves too superficial a look at the two services.

While the ability to obtain money from a CBCT is similar to obtaining cash, services, and goods from a retailer, the services are by no means equivalent. The act of receiving goods, services, or cash from a retailer is not enough to make the use of a credit card branch banking. That action only satisfies one part of the definition of branch banking. A retailer's store would also have to be considered a branch office or

45. First Nat'l Bank v. Dickinson, 396 U.S. 122 (1969). The court ruled in *Dickinson* that an armored car would fall within the definition of branch bank. The bank had argued that it entered into contractual agreements with its customers which provided that there would be no deposit until the money collected by the armored car was delivered to the bank teller. The court found that such private contracts would not be the controlling factor in deciding whether the armored car would be considered a branch bank under section 36. Justice Burger said:

> Because the purpose of the statute is to maintain competitive equality, it is relevant in construing "branch" to consider, not merely the contractual rights and liabilities created by the transaction, but all those aspects of the transaction that might give the bank an advantage in its competition for customers. Unquestionably, a competitive advantage accrues to a bank that provides the service of receiving money for deposit at a place away from its main office; the convenience to the customer is unrelated to whether the relationship of debtor and creditor is established at the moment of receipt or somewhat later.

Id. at 136-37.

46. 394 F. Supp. at 985.

47. *Id.*

additional office before the use of a bank credit card could constitute branch banking. However, a retailer's store, garage, or office does not fit the definition of a branch office or additional office. Obviously, additional offices or branch offices are either owned or rented by the main bank. Since a retailer's establishment is owned by the retailer and not by the bank, it does not constitute a branch office and the use of such cards cannot be considered branch banking.

The CBCT provides cash as does a bank credit card. It also is a branch office or additional office because it is owned or rented by the bank. It fits both parts of the definition of a branch bank and constitutes a place where branch banking is carried on. Thus, the use of the CBCT qualifies as branch banking but the use of a credit card does not.

It is not known if Judge Matsch used a broad definition of branch bank or if he took competitive equality into consideration in deciding that the CBCT was a branch bank when its function included receiving deposits. However, based upon Judge Matsch's previous interpretations concerning the CBCT, it may be assumed that his decision was based more on a reluctance to go against firmly established precedent in the *Dickinson* case than on his acceptance of the competitive equality theory or the idea that branch bank should be given an unrestricted definition.

The legislative history and decisions dealing with section 36(c) and (f) appear to clearly suggest that a CBCT is a branch bank within that statute. It could be assumed that by finding the CBCT to be a branch bank the competitive equality intended by Congress would be preserved. However, competitive equality is undermined by the fact that a certain number of states have laws which disallow branch banking. Those states define the CBCT as something other than a branch bank or specifically exempt it from the branch banking statutes.[48] If a national

48. A number of states have laws which allow CBCT systems while at the same time disallowing branch banks or more severely restricting them. North Dakota allows the establishment of paying stations which have area restrictions and are not allowed in cities and towns where there are already banking establishments in existence. N.D. CENT. CODE § 6-03-14 (1975). At the same time North Dakota has allowed the Bank of North Dakota to establish electronic funds transfer systems that would provide the transfer service to its customers and customers of other state and federally chartered banks. The Act does not specifically limit the area in which the Bank of North Dakota may establish these systems. N.D. CENT. CODE § 6-09-34 (1975). Washington allows branch banks, outside the county in which the main bank is located, only if the main bank has a paid-in surplus of a certain amount. Also, branches are allowed only in cities and towns which do not already have a banking office. WASH. REV. CODE ANN. § 30.40.020 (Supp. 1974). Washington allows unmanned "satellite" facilities to be established anywhere in the state. The "satellite" facilities are specifically defined as not being branches. WASH. REV. CODE ANN. § 30.43.010, 30.43.020 (Supp. 1974). Minnesota statutes specifically prohibit branch banks. MINN. STAT. ANN. 48.34 (1970). However,

bank uses a CBCT it may be found to be a branch bank under the federal definition in section 36(f), and if the state law forbids branch banking the national bank would be forced to discontinue its use of the CBCT. Yet, state law may define the CBCT as something other than a branch bank and by doing so permits the state banks to use the device. This creates a definite competitive advantage in favor of the state banks.

Courts dealing with the branch banking issue in the future will be faced with a definite dilemma. If they rule that the CBCT is not a branch then a competitive advantage will be given to the national banking system in states where branch banking is disallowed and the states find that a CBCT is a branch bank. If the courts find that a CBCT is a branch bank within section 36(f) then a competitive edge will be given to the state banking system where state law disallows branch banking but defines the CBCT as something other than a branch bank.

There is a solution to the courts' dilemma which would assure the competitive equality Congress intended. The Supreme Court ruled in *Dickinson* that the state law definitions of what constitutes branch banking would not control the federal definition of branch banking.[49] If the Supreme Court had decided instead to uphold the Fifth Circuit's determination that state law defintions could control,[50] competitive equality would continue to exist between the two banking systems. By allowing state law definitions to control neither the state banking system would be able to gain an unfair advantage. In support of the view that state law should be controlling, the Fifth Circuit stated in *Dickinson v. First National Bank*: "To be sure, national banks may well fear the authority of the state comptrollers to make extreme use of this defining process, but their recourse must be to Congress which legislated 'competitive equality,' not to the courts who must follow it."[51] Chief Justice Burger was correct in finding that there are problems in allowing state

Minnesota does allow one remote controlled mechanical device, called a detached facility, within 3,000 feet of the main bank building. MINN. STAT. ANN. § 47.52 (Supp. 1975). Nebraska also prohibits branch banking. NEB. REV. STAT. § 8-157 (1974). At the same time, Nebraska has passed statutes which allow CBCT systems to be used by state banks but provide specifically that the systems are not to be considered branch banks. 40 Fed. Reg. 21701 (1975). The Attorneys General of a number of states have also become involved in the determination of whether CBCTs are branches within the law of their state. The Attorneys General of Texas, Kansas, and Florida have authorized certain CBCT systems to be established in those states even though state law prohibits branch banking. 39 Fed. Red. 44419 (1974).

49. 396 U.S. at 133-34. See text accompanying note 39 *supra.*

50. Dickinson v. First Nat'l Bank, 400 F.2d 548, 557 (5th Cir. 1968), *aff'd on other grounds,* 396 U.S. 122 (1969).

51. *Id.* at 557.

law definitions of branch bank to control the federal law definition. However, there are even greater problems in attempting to have competitive equality without the use of the state law definitions. With the increased use of computer terminals and other nontraditional methods of banking, the courts will be forced to recognize that state definitions of branch banking must be applied in order to achieve competitive equality between federal and state banks.

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