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Regional Banking: An Equal Protection Analysis

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CASE COMMENTS

REGIONAL BANKING: AN EQUAL PROTECTION ANALYSIS*

Northeast Bankcorp, Inc. v. Board of Governors of the Federal Reserve System, 105 S. Ct. 2545 (1985)

Respondents were New England bank holding companies which sought to acquire out-of-state banks in Connecticut and Massachusetts.[1] Petitioners were bank holding companies precluded by Connecticut and Massachusetts laws from acquiring banks in those states.[2] Both Connecticut and Massachusetts permitted only New England bank holding companies to acquire banks within their borders.[3] The Bank Holding Company Act[4] required respondents to obtain approval of proposed acquisitions from the Federal Reserve Board.[5] Petitioners urged the Board to deny approval.[6] Petitioners argued the state laws violated the equal protection clause of the United States Constitution[7] by admitting bank holding companies from New England states while excluding those from other states.[8] The Board approved the validity of the acquisitions under the Bank Holding Company Act.[9] Petitioners appealed, and the Second Circuit Court of Appeals

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1. 105 S. Ct. 2545, 2547 (1985). All parties were bank holding companies within the meaning of the Bank Holding Company Act [hereinafter cited as the Act]. The Act defines a bank holding company as any corporation, partnership, business trust, association or similar organization that owns or has control over a bank or another bank holding company. 12 U.S.C. § 1841(a) (1982). A bank is defined as any institution organized under state or federal law that "(1) accepts deposits that the depositor has a legal right to withdraw on demand, and (2) engages in the business of making commercial loans." *Id.* § 1841(c). Respondent Bank of New England sought to merge with a Connecticut bank holding company and thereby acquire a Connecticut bank. 105 S. Ct. at 2549. Respondent Hartford National Corporation sought to acquire a Massachusetts bank holding company that owned a Massachusetts bank. *Id.* Respondent Bank of Boston Corporation sought to merge with a Connecticut bank holding company through which it would acquire a Connecticut bank. *Id.*

2. 105 S. Ct. at 2547-49. Petitioner Citicorp, Inc., New York, New York, was a bank holding company offering financial services on a nationwide basis. *Id.* at 2549. Petitioner Northeast Bankcorp, Inc., New Haven, Connecticut, owned petitioner Union Trust Co., a Connecticut bank, that directly competed with banks respondents sought to acquire. *Id.*

3. *Id.* at 2548-49. *See* 1983 Conn. Acts 411 (Reg. Sess.); MASS. GEN. LAWS ANN. ch. 167A, § 2 (West 1984).

4. 12 U.S.C. §§ 1841-1850 (1982). An amendment to the Act, referred to as the Douglas Amendment, allowed interstate acquisitions in certain circumstances. *Id.* § 1842(d).

5. 105 S. Ct. at 2547-48. *See generally* Securities Indus. Ass'n v. Board of Governors of the Fed. Reserve Sys., 104 S. Ct. 3003 (1984) (Board is the authoritative voice on the meaning of federal banking statutes).

6. 105 S. Ct. at 2547. Petitioners presented their claims during a full administrative hearing, as provided for in 12 U.S.C. § 1842(b). *Id.*

7. U.S. CONST. amend. XIV, § 1.

8. 105 S. Ct. at 2555.

9. *Id.* at 2547-48. The Board's orders are compiled in 70 FED. RES. BULL. 374 (1984).

affirmed the orders of the Board.[10] The United States Supreme Court granted certiorari, affirmed,[11] and HELD, state laws which establish regional banking do not violate the equal protection clause.[12]

The Bank Holding Company Act does not explicitly authorize regional banking.[13] In general, the Act regulates acquisitions of state and national banks by bank holding companies.[14] The Federal Reserve Board reviews all proposed acquisitions according to guidelines designed to prevent anti-competitive tendencies in banking.[15] As originally drafted, the Act completely banned interstate banking[16] to ensure local control.[17] Arguments that states should be able to decide whether to allow interstate banking[18] prompted passage of an amendment to the bill.[19] The amendment permitted interstate acquisitions if authorized by statute in the state in which the target bank was located.[20]

Connecticut and Massachusetts interpreted this amendment as allowing interstate banking on a limited basis.[21] Both states enacted statutes permitting acquisition of domestic banks only by bank holding companies domiciled in one of six New England states.[22] These statutes effectively established regional banking.[23]

The Supreme Court generally defers to the judgment of state legislatures in enacting economic legislation.[24] The equal protection clause requires only

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10. 105 S. Ct. at 2548. The court of appeals decision can be found at Northeast Bancorp., Inc. v. Board of Governors of the Fed. Reserve Sys., 740 F.2d 203 (2d Cir. 1984). *See generally* 12 U.S.C. § 1848 (1982) (providing that a party aggrieved by an order of the Board is entitled to a review of the order in the United States court of appeals where the party has its principal place of business); *id.* § 1850 (prospective competitors are permitted to be aggrieved parties under § 1848); Chase, *The Emerging Financial Conglomerate: Liberalization of the Bank Holding Company Act*, 60 GEO. L.J. 1225, 1249 (1972) (judicial second guessing of the Board's interpretation of any provision of the Bank Holding Company Act is improbable).

11. 105 S. Ct. at 2548. Justice Rehnquist wrote for the majority. Justice O'Connor filed a concurring opinion. *Id.* at 2556 (O'Connor, J., concurring).

12. *Id.* at 2555-56. In response to other claims made by petitioners, the Court affirmed rulings that the statutes complied with 12 U.S.C. § 1842(d), and that they did not violate the commerce clause, U.S. CONST. art. I, § 8, cl. 3, or the compact clause, *id.* art. I, § 10, cl. 3. For a detailed discussion of the commerce clause issue, see Note, *Regional Banking Laws: An Analysis of Constitutionality under the Commerce Clause*, 60 NOTRE DAME LAW. 548 (1985).

13. *See* 12 U.S.C. §§ 1841-1842 (1982).

14. 105 S. Ct. at 2548; *see* 12 U.S.C. §§ 1841-1850 (1982).

15. S. REP. No. 1084, 91st Cong., 2d Sess. 2-3, *reprinted in* 1970 U.S. CODE CONG. & AD NEWS 5519, 5520-21. *See also* S. REP. No. 1095, 94th Cong., 1st Sess. 2 (1955).

16. 105 S. Ct. at 2551.

17. 101 CONG. REC. A2454 (1955). *Id.* at 8030-31. *See also* H.R. REP. No. 609, 84th Cong., 1st Sess. 2-6 (1955).

18. 102 CONG. REC. 6752 (1956).

19. *See generally* Iowa Indep. Bankers v. Board of Governors of the Fed. Reserve Sys., 511 F.2d 1288 (D.C. Cir.) (discussion of legislative history of the amendment), *cert. denied*, 423 U.S 875 (1975).

20. 12 U.S.C. § 1842(d) (1982).

21. 105 S. Ct. at 2548-49

22. 1983 Conn. Acts 411 (Reg. Sess.); MASS. GEN. LAWS ANN. ch. 167A, § 2 (West 1984).

23. 105 S. Ct. at 2548-49; *see* 70 FED. RES. BULL. 374 (1984) (discussion at the administrative level concerning proceedings of regional banking committees).

24. City of New Orleans v. Dukes, 427 U.S. 297, 303 (1976); *see* Katzenbach v.Morgan,

that state laws refrain from impinging upon fundamental rights and from discriminating among suspect classes.[25] Legislation meeting this requirement will withstand an equal protection challenge if the differing treatment of groups rationally relates to a legitimate state purpose.[26] The Supreme Court has yet to articulate a firm definition of a legitimate state purpose.[27]

In *Metropolitan Life Insurance Co. v. Ward*,[28] the Supreme Court identified a specific illegitimate state purpose by striking down economic legislation on equal protection grounds. The statute in *Metropolitan Life* imposed lower taxes on domestic insurance companies than on similar out-of-state companies.[29] The state justified its tax scheme on the broad authority of a state to promote its economy.[30] The Court held that promotion of domestic business, standing alone, was not a legitimate state purpose.[31] The court found such a purpose was discriminatory and violated the equal protection clause.[32]

Economic legislation regarding banking withstood an equal protection challenge, in *Iowa Independent Bankers v. Board of Governors of the Federal Reserve System*.[33] The District of Columbia Court of Appeals upheld an Iowa statute which allowed out-of-state bank holding companies presently owning two or more banks in Iowa to continue to maintain and expand their operations.[34] All other banks

384 U.S. 641 (1966) (legislatures may implement their economic programs in separate stages); Williamson v. Lee Optical Co., 348 U.S. 483 (1955) (states may adopt economic legislation that only partially ameliorates what the legislature perceives as evil).

25. City of New Orleans v. Dukes, 427 U.S. 297, 303 (1976); *see, e.g.*, Ferguson v. Skrupa, 372 U.S. 726, 732 (1963) (only invidious discrimination and arbitrary acts cannot stand consistently with the equal protection clause); Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421, 423 (1952) (the judiciary may not sit as a superlegislature to judge the wisdom of laws that neither affect fundamental rights nor proceed upon suspect lines). For general discussions of low level equal protection scrutiny in the Supreme Court, see Perry, *Modern Equal Protection: A Conceptualization and Appraisal*, 79 COLUM. L. REV. 1023 (1979); Note, *Legislative Purpose, Rationality, and Equal Protection*, 82 YALE L.J. 123 (1972).

26. *E.g.*, Barry v. Barachi, 443 U.S. 55, 67 (1979); Vance v. Bradley, 440 U.S. 93, 97 (1979); Village of Belle Terre v. Boraas, 416 U.S. 1, 6-8 (1974); Dandridge v. Williams, 397 U.S. 471, 483-86 (1970).

27. *Cf.* Metropolitan Life Ins. Co. v. Ward, 105 S. Ct. 1676, 1686 (1985) (O'Connor, J., dissenting) (Court refused to acknowledge factual background or collateral public benefits bearing on legitimacy of state's purpose); Kassel v. Consolidated Freightways Corp., 450 U.S. 662, 703 n.13 (1981) (Rehnquist, J., dissenting) (Court ignored evidence that state's actual purpose was legitimate); United States R.R. Retirement Bd. v. Fritz, 449 U.S. 166, 179 (1980) (any conceivable purpose may be treated as an actual purpose in equal protection analysis). *See generally* Note, *Taxing Out-of-State Corporations After* Western & Southern: *An Equal Protection Analysis*, 34 STAN. L. REV. 877, 884-87 (1982) (discussion of legitimate and illegitimate purposes identified by the United States Supreme Court).

28. 105 S. Ct. 1676 (1985).

29. *Id.* at 1678.

30. *Id.* at 1681.

31. *Id.* at 1684. The Court refers to the "promotion of domestic business" as meaning the favoring of in-state business over out-of-state businesses. *Id.* at 1681.

32. *Id. But see* Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522, 528 (1959) ("[I]t has repeatedly been held and appears to be entirely settled that a statute which encourages the location within the State of needed and useful industries by exempting them, though not also others, from its taxes . . . does not violate the Equal Protection Clause . . .").

33. 511 F.2d 1288 (D.C. Cir.), *cert. denied*, 423 U.S. 875 (1975).

34. *Id.* at 1294.

were prohibited from entering the Iowa market.[35] An association of Iowa banks[36] challenged the statute on equal protection grounds, alleging discrimination against out-of-state banks owning fewer than two Iowa banks.[37] The court emphasized that the statute was simply a means of allowing the sole out-of-state bank holding company owning banks in Iowa an opportunity to maintain its Iowa business.[38] The court found that the Iowa Legislature had rationally determined that the existing out-of-state company was a "good citizen"[39] in the Iowa business community and that state interests in locally controlled banking justified the exclusion of all other banks.[40]

The instant Court upheld the regional banking statutes against petitioners' equal protection challenge.[41] Petitioners argued, based on *Metropolitan Life*, that promotion of domestic business was not, in itself, a legitimate state purpose.[42] In response, the Court distinguished the instant case from *Metropolitan Life*. The statute in *Metropolitan Life* promoted domestic business by favoring domestic corporations over all other corporations.[43] In contrast, the statutes in the instant case promoted domestic business by favoring corporations from New England states over all others.[44]

The Court also emphasized that it had already decided that banking was a matter of local concern.[45] The Court recognized a long-standing preference for widely dispersed banking control.[46] The Court referred to the legislative history of the Connecticut and Massachusetts laws to show that concern for preserving community controlled banking was a factor both states considered in establishing the regional limitations.[47] Yet the Court noted a competing concern for promoting domestic banking by increasing the number of intrastate competitors.[48] Unrestrained acquisition by out-of-state bank holding companies would threaten the independence of local banks.[49] The Court, therefore, viewed

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35. *Id.*

36. Petitioner was Iowa Independent Bankers, an association of over 400 Iowa banks. *Id.* at 1291.

37. *Id.* at 1294.

38. *Id.*

39. *Id.*

40. *Id.* at 1294-95.

41. 105 S. Ct. at 2556 (O'Connor, J., concurring).

42. *Id.* Petitioners had abandoned the equal protection issue in their petition for certiorari and in their briefs on the merits. After the decision in *Metropolitan Life*, petitioners filed a supplemental brief urging the Court to consider the equal protection claim. *Id.*

43. *Id.*

44. *Id.*

45. *Id.* In a commerce clause analysis, the Court had stated that there are legitimate state interests in discouraging undue economic concentration in banking, regulating financial practices to protect local residents from fraud, and maximizing local control over locally based financial activities. Lewis v. B.T. Inv. Managers, Inc., 447 U.S. 27, 43 (1980). The *Lewis* Court also stated that "banking and related financial activities are of profound local concern." *Id.* at 38.

46. 105 S. Ct. at 2555.

47. *Id. See generally* 70 FED. RES. BULL. 374 (1984) (discussion of the administrative level of legislative history of the Connecticut and Massachusetts statutes).

48. 105 S. Ct. at 2555.

49. *See, e.g., id.* at 2555-56. The Connecticut and Massachusetts legislatures focused on the

regional limitations as a means of preserving a degree of community control in banking without entirely foregoing the benefits of expansion.[50]

The Court acknowledged the statutes were discriminatory to some extent.[51] Despite this discrimination, the Court held that the statutes passed the rational basis test and, therefore, did not violate the equal protection clause.[52] In a concurring opinion, Justice O'Connor agreed the statutes did not violate the equal protection clause.[53] However, Justice O'Connor saw no distinction between the instant statutes and the statutes in *Metropolitan Life*.[54] In both cases, she would have upheld the legislation on equal protection grounds because local businesses are legitimately different from out-of-state businesses.[55]

The instant decision is unique among equal protection decisions. The Court had previously upheld statutes promoting domestic business against equal protection challenges only after establishing some interstate benefit.[56] In the instant case, the Court made no reference to the potential of the statutes for encouraging interstate business among New England states. Rather, the Court upheld the statutes for what it characterized as purely local reasons.[57] This reasoning, at least impliedly, extended the circumstances in which states could promote domestic business by discriminatory means[58] to include those in which traditionally important local concerns are present. In contrast, the Court in *Metropolitan Life* had referred to the promotion of domestic business based solely on local concerns

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loss of independence of local banks in debates preceding enactment of the regional banking statutes. The issue was also considered by a New England Committee to Study and Promote Regional Interstate Banking. 70 FED. RES. BULL. at 380.

50. 105 S. Ct. at 2555.

51. *Id.*

52. *Id.* at 2556.

53. *Id.*

54. *Id.* Justice O'Connor stated that the business of insurance was no different from banking as a matter of uniquely local concern. She questioned the majority's rationale in finding that statutes which barred the banks of 44 states from doing business were any less discriminatory than the statute in *Metropolitan Life*, which taxed insurance companies from 49 states at a slightly higher rate. *See generally Metropolitan Life*, 105 S. Ct. at 1681-83.

55. 105 S. Ct. at 2556. Justice O'Connor stated that the special contributions of local businesses were sufficient to distinguish them from out-of-state businesses and allow them to be treated differently by the state for equal protection purposes. *Id.*

56. The promotion of interstate business has been viewed by the Court as a justification for allowing states to favor domestic businesses in some way. *See* Western & S. Life Ins. Co. v. State Bd. of Equalization, 451 U.S. 648 (1981) (state's purpose in enacting a retaliatory tax to promote business of domestic insurers was legitimate because it promoted interstate insurance business by deterring other states from enacting discriminatory taxes); Allied Stores, Inc. v. Bowers, 358 U.S. 522 (1959) (state's purpose in promoting domestic business by granting nonresident businesses a tax exemption was legitimate since it encouraged interstate business); *cf. Iowa Indep. Bankers*, 511 F.2d at 1295 ("grandfathering" clause, which allowed one out-of-state bank holding company to acquire domestic banks, promoted local concerns while preserving current level of interstate banking).

57. 105 S. Ct. at 2555. The Court specifically noted that banking was of "profound local concern." *Id.*; *see* Lewis v. B.T. Inv. Managers, Inc., 447 U.S. 27, 38 (1980).

58. The Court had previously left open the possibility that the promotion of domestic business could be a legitimate state purpose in certain unspecified circumstances. *See Metropolitan Life*, 105 S. Ct. at 1683-84.

as the very sort of parochial discrimination the equal protection clause was designed to prevent.[59]

The instant Court avoided this conclusion by emphasizing the concept of community controlled banking enunciated in *Iowa Independent Bankers*. The Court compared the American tradition of widely dispersed banking to the centralized systems of other countries.[60] This comparison highlighted the pervasiveness of the local concerns spurring Connecticut and Massachusetts to impose regional limitations on banking. These concerns were common to every state.[61] Reference to shared nationwide benefit serves to temper the parochial nature of discriminatory statutes.[62]

Justice O'Connor suggested a more straightforward approach to the instant case.[63] The equal protection clause permits economic regulation that distinguishes between corporations that are legitimately different.[64] The differences need only be rationally related to the purposes promoted.[65] New England bank holding companies were legitimately different from all others because the banks they acquired were assured of retaining some measure of community attachment.[66] Due to this inherent difference, Justice O'Connor saw no need to extend the analysis further to uphold the statutes.[67]

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59. *Id.* at 1681-82. The Court has traditionally held that the equal protection clause forbids a state from discriminating in favor of its own residents solely by burdening "the residents of other state members of our federation." Allied Stores, Inc. v. Bowers, 358 U.S. 522, 533 (1959).

60. 105 S. Ct. at 2555. For a discussion of the economic changes which would result if regional banking replaced the present system of banking, see Golembe & Kumin, *Regional Interstate Banking Compacts: Ill-Conceived and Unconstitutional Anomalies*, 18 LOY. L.A.L. REV 993, 1010-15 (1985).

61. Golembe & Kumin, *supra* note 60, at 1010-15.

62. *See, e.g.*, Metropolitan Life Ins. Co. v. Ward, 105 S. Ct. 1676 (1985); Western & S. Life Ins. Co. v. State Bd. of Equalization, 451 U.S. 648 (1981); Allied Stores, Inc. v. Bowers, 358 U.S. 522 (1959).

63. 105 S. Ct. at 2556 (O'Connor, J., concurring).

64. *See, e.g.*, Barry v. Barachi, 443 U.S. 55 (1979) (states may apply more stringent procedures for administrative review to harness racing than to thoroughbred racing because of their differences); New York Rapid Transit Corp. v. City of New York, 303 U.S. 573 (1938) (utilities have many points of distinction from other businesses and thus may be singled out for local taxation purposes); Metropolitan Casualty Ins. Co. v. Brownell, 294 U.S. 580 (1935) (differences between domestic and out-of-state insurance companies justify differing treatment for statute of limitation purposes).

65. The "rationally related" standard requires only that the legislative facts on which a classification is based could reasonably be conceived by the governmental decision-maker. *E.g.*, Barry v. Barachi, 443 U.S. 55 (1979); Vance v. Bradley, 440 U.S. 93 (1979); New York Rapid Transit Corp. v. City of New York, 303 U.S. 578 (1938).

66. Justice O'Connor referred to the differences as "special contributions." 105 S. Ct. at 2557 (O'Connor, J., concurring). The majority also accepted these differences by reference to findings of the Connecticut legislative commission which recommended adoption of the regional banking statutes. *Id.* at 2555.

67. *Id.* at 2556 (O'Connor, J., concurring). Justice O'Connor assumed that retaining community control over banking was the legitimate state purpose of the instant case. Her analysis focused on whether the fulfillment of this purpose was rationally related to the domicile of the acquiring bank holding company. *Id. See generally* Barry v. Barachi, 443 U.S. 55 (1979) (discussion of rational relation test is relevant only where the existence of a legitimate state purpose has been established).

The O'Connor approach relied on well-settled equal protection doctrine,[68] rather than the extended version of the doctrine relied upon by the majority. Yet, petitioners in the instant case did not advance the O'Connor approach.[69] Rather, they claimed the statutes impermissibly promoted domestic business.[70] Had the Court avoided this issue in the instant case, the decision would have clouded the validity of pending applications for acquisition.[71] Commercial reality cannot be ignored in equal protection analysis.[72] The majority approach was necessary to settle legal uncertainty in the financial marketplace.[73]

Legal uncertainty had arisen from conflicting state purposes. States undoubtedly had the legal right to participate in interstate banking.[74] They also had a legitimate interest in establishing some degree of community control over banking.[75] Connecticut and Massachusetts, therefore, faced the commercial reality that unrestrained interstate banking might lead to a total loss of independence for local banks.[76] Even at the risk of expanding the equal protection doctrine,[77] commercial reality required the Court to address a state's right to promote domestic banking and the state's interest in preserving a degree of community control.[78]

One predictable effect of upholding regional banking statutes would be the

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68. *See supra* notes 64-65 and accompanying text. *But cf. Metropolitan Life*, 105 S. Ct. at 1685 (O'Connor, J., dissenting) (Court implies that equal protection doctrine is not well-settled since it refused to acknowledge evidence in the record that a legitimate state purpose could reasonably have been conceived by state legislators).

69. *See* 105 S. Ct. at 2555. Petitioners in the instant case did not argue that they were so similar to New England bank holding companies that they should be allowed to compete on an equal basis. According to Justice O'Connor, this argument would have failed. *Id.* at 1556 (O'Connor, J., concurring).

70. The instant Court recognized this as the issue since petitioners expressly relied on *Metropolitan Life* in their equal protection claim. *Id.* at 2555.

71. *Id.*

72. The commercial reality at issue in the instant case was the inherent tension between the need for banking expansion in New England and the desire to preserve the concept of community banking. *See* Morey v. Doud, 354 U.S. 457, 472 (1957) (Frankfurter, J., dissenting) ("To recognize marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic."); Magoun v. Illinois Trust & Sav. Bank, 170 U.S. 283, 296 (1898) ("the rule of equality permits many practical inequalities"); *see also* Note, *supra* note 27, at 896 (equal protection analysis must take actualities into account).

73. The Supreme Court has chosen to decide the cases based on the importance of the issue presented to the nation's financial markets since legal uncertainty in this area could adversely affect all other areas of business. *See* Securities Indus. Ass'n v. Board of Governors of the Fed. Reserve Sys., 104 S. Ct. 3003 (1984).

74. *See* 12 U.S.C. § 1842(d) (1982) (allowing acquisitions where the statutes of the state in which the interstate target bank is located authorize such acquisitions).

75. *See supra* notes 38-40 and accompanying text.

76. 105 S. Ct. at 2555. At least 15 other states were considering regional banking legislation that would have established regional banking in all parts of the country. *Id.* at 2549; *see also* 70 FED. RES. BULL. at 379 (1984) (Board suggested that the regional banking issues were so complex that congressional action should be taken). Unrestrained interstate banking might affect service to local communities, the viability of small banks, and safety and stability of the banking system. *See generally* Golembe & Kumin, *supra* note 60, at 993, 1010-15.

77. *See supra* notes 56-59 and accompanying text.

78. *See supra* notes 73-74 and accompanying text.

growth of regional multi-state banks.[79] As in the case of nationally based banks, regional banks could conceivably become large enough to threaten the independence of local banks.[80] By making the preservation of community control a necessary element in the promotion of domestic banking, the instant Court set a judicial limit on the growth of regional banks.

Regional banking is necessarily a concept of compromise. States have conflicting interests with respect to banking. They seek both to promote growth by participating in interstate banking and to maintain some degree of community control.[81] Although conflicting, both goals are legitimate. The overriding concern in the instant decision was the necessity of maintaining community ties between those who need credit and those who provide it.[82] The Supreme Court had previously considered local concerns such as these to be insufficient justification for enacting discriminatory legislation. However, the Court views community ties in banking as extremely important. Any effort by states to preserve them is likely to be upheld, even if traditional equal protection doctrine must be compromised in the process.

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79. 105 S. Ct. at 2549.

80. *Id.* The Court recognized that the regional banks would eventually be able to compete with established national banks. *Id. But see* Northeast Bankcorp, Inc. v. Board of Governors of the Fed. Reserve Sys., 740 F.2d 203, 209 n.16 (2d Cir. 1984) (New England bank holding companies would have to grow significantly in order to compete since "each of the four largest New York bank holding companies has greater assets than those of all the New England bank holding companies combined"). As regional banks begin to expand within their regions, the concept of widely dispersed, community controlled banking will remain a factor in approving acquisitions. *See* 105 S. Ct. at 2555. Also, every intra-regional acquisition will continue to be subject to the federal statutory criteria of anti-competitive effects of the acquisition, available financial and managerial resources, and community needs. 12 U.S.C. § 1842(c) (1982). *See generally* 12 C.F.R. § 225.13 (1985) (explanation of factors considered by the Board when acting on application for bank holding company acquisition); *id.* § 228.2 (Board will consider whether acquired banks will meet the credit needs of their communities as provided in the Community Reinvestment Act, 12 U.S.C. §§ 2901-05 (1982)).

81. *See supra* notes 49-51 and accompanying text.

82. 105 S. Ct. at 2555.