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Federally Chartered Corporations and Federal Jurisdiction

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FEDERALLY CHARTERED CORPORATIONS AND FEDERAL JURISDICTION

Paul E. Lund

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FEDERALLY CHARTERED CORPORATIONS AND FEDERAL JURISDICTION

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I. INTRODUCTION	317
II. FEDERAL CHARTERING OF CORPORATIONS.....	320
III. FEDERAL JURISDICTION AND STATE-CHARTERED CORPORATIONS	326
IV. THE JURISDICTIONAL TREATMENT OF FEDERALLY CHARTERED CORPORATIONS.....	330
A. <i>Federal Question Jurisdiction and Federally Chartered Corporations</i>	330
B. <i>Diversity Jurisdiction and Federally Chartered Corporations</i>	337
1. <i>Congressional Silence and the Bankers Trust Decision</i>	337
2. <i>The Localization Exception Takes Root</i>	341
3. <i>Expansion of the Localization Exception</i>	345
4. <i>Recent Restrictions of the Localization Exception</i>	348
5. <i>Statutory Provisions for Diversity Jurisdiction</i>	353
V. SUMMARY OF THE CURRENT JURISDICTIONAL QUAGMIRE AND AN ILLUSTRATION.....	357
VI. A PROPOSED CONGRESSIONAL RESOLUTION	359
A. <i>Federally Chartered Business Corporations Should Receive Equal Jurisdictional Treatment with Their State Counterparts</i>	360
B. <i>The Federal Courts Should Not Take It upon Themselves to Expand the Localization Exception</i>	364
C. <i>Congress Should Adopt a Single Statute Defining the Citizenship of Federal Business Corporations</i>	369
VII. CONCLUSION	371

I. INTRODUCTION

Although we typically think of corporations as creatures of state law, many corporations are chartered by the federal government. The Constitution does not expressly authorize the creation of corporations under federal law, but federally chartered corporations have existed since the earliest days of our country.¹ Some are owned in whole or in substantial part by the federal government and perform what we think of as governmental or public functions.² Others are nonprofits that perform charitable or civic functions.³ Still others, though, are owned by private investors and conduct business activities similar to

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1. See *infra* notes 21-24 and accompanying text (discussing debate regarding federal chartering authority at constitutional convention and creation of the first and second Banks of the United States).

2. The Federal Deposit Insurance Corporation (FDIC) and the Tennessee Valley Authority (TVA) are two familiar examples of the many such government corporations. See *infra* notes 34-44 and accompanying text.

3. Over ninety charitable and civic organizations are chartered by federal statute, including the American Legion, the American National Red Cross, and Little League Baseball, Inc. See *infra* notes 45, 143-49 and accompanying text.

those of state-chartered business corporations.⁴ The number and types of such federally chartered business corporations continue to grow, with several recent proposals for new types of federal chartering authority.⁵

In spite of their functional similarity to state-chartered corporations, federal corporations⁶ differ from state corporations in one important respect: their ability to gain access to federal court. Contrary to what one might expect, many federal corporations actually receive *less* favorable jurisdictional treatment than do their state counterparts.

At one point, all federally chartered corporations enjoyed preferred access to federal court; they could sue or be sued there simply on the basis of their federal status.⁷ Early in the twentieth century, however, Congress eliminated this automatic basis for federal jurisdiction for most federal companies.⁸

Congress did provide for state citizenship for national banks,⁹ but Congress did not address whether other types of federal corporations could qualify for federal jurisdiction based upon diversity of citizenship, as their state counterparts could. Thus, the courts were left to determine when, if ever, a federal corporation could be considered a “citizen” of a particular state for purposes of diversity jurisdiction.

An early decision from the Supreme Court—indeed, the only Supreme Court decision to address this issue—stated unequivocally that a corporation chartered under federal law would be considered a national citizen only, not a citizen of a particular state, and therefore would be ineligible for diversity jurisdiction.¹⁰ Early decisions of the

4. Congress has chartered railroads, construction companies, banks, savings associations, and credit unions, among others. *See infra* notes 31-33, 46 and accompanying text.

5. Recently, for example, there has been extensive discussion of optional federal chartering of insurance companies and agents, and legislation has been introduced that would create such federal chartering authority. Recent proposals also have been made for federal chartering of securities firms and “universal financial service” firms. *See infra* notes 47-48 and accompanying text.

6. In this Article, I use the terms “federally chartered corporations” and “federal corporations” interchangeably to refer to corporations chartered under the authority of federal law. Similarly, I use the terms “state-chartered corporations” and “state corporations” interchangeably to refer to corporations chartered under state law.

7. *See infra* notes 80-101 and accompanying text.

8. *See infra* notes 102-05 and accompanying text. A federal corporation still can qualify for automatic federal question jurisdiction if the United States owns more than fifty percent of the corporation’s capital stock. *See* 28 U.S.C. § 1349 (2006); *see also infra* notes 105, 109 and accompanying text (discussing 28 U.S.C. § 1349). There also are scattered federal statutes that allow particular federal corporations to invoke federal court jurisdiction based simply on the corporation’s federal charter. *See infra* notes 110-14 and accompanying text.

9. *See infra* note 220 and accompanying text. More recently, Congress has provided for state citizenship for federal savings associations and for other select categories of federal corporations. *See infra* notes 221-23 and accompanying text.

10. *See infra* notes 122-34 and accompanying text (discussing *Bankers Trust Co. v. Tex. & Pac. Ry. Co.*, 241 U.S. 295 (1916)).

lower federal courts followed suit.¹¹ Eventually, however, some courts began to recognize a “localization” exception: a federally chartered corporation would be regarded as a citizen of a particular state if its activities were “localized” in that state.¹² This exception is now well established, but there continues to be wide disagreement among the courts as to how broadly it should be applied—in other words, as to when the activities of a federal corporation are sufficiently “localized” to allow it to be considered a state citizen. Some courts have applied the exception only when a corporation’s activities are limited to a single state,¹³ while others have expanded the exception to apply to corporations conducting activities that extend to several states but that are most heavily concentrated in one state.¹⁴ No matter how broadly the exception is applied, however, there are many circumstances in which a case involving a state corporation would qualify for diversity jurisdiction while a factually identical case involving a federal corporation would not.¹⁵

Moreover, even when Congress has stepped in and provided for state citizenship for certain types of federal corporations (most notably, national banks and federal savings associations), these statutes have created new disparities between federal corporations and their state counterparts.¹⁶ The statutes have also led to a wide disparity between the jurisdictional treatment of federal corporations that are covered by the statutes and those that are not.¹⁷

This Article explores how the current jurisdictional disparities arose and the extent of those disparities as they exist today. It begins in Part II with a brief overview of federal chartering of corporations. Part III then summarizes the jurisdictional treatment that state-chartered corporations receive in federal court. Part IV examines the historical development of federal jurisdiction in cases involving federally chartered corporations and the current state of the law in that area. Part V summarizes and illustrates how the jurisdictional treatment of state and federal corporations differs under current law as well as the widely differing treatment that federal law itself grants to varying types of federal corporations.

11. See *infra* notes 137-50 and accompanying text.

12. See *infra* notes 151-73 and accompanying text.

13. See *infra* Part IV.B.4.

14. See *infra* Part IV.B.3.

15. For example, no court has applied the localization exception to a federal corporation that operates nationwide; such a federal corporation has no state citizenship under the most expansive view of the localization exception. In contrast, a state corporation that operates nationwide would qualify for diversity jurisdiction as a citizen of the state in which it is incorporated and of the state of its principal place of business. For further discussion of this and other examples, see *infra* Part V.

16. See *infra* notes 233-41 and accompanying text.

17. See *infra* notes 232, 242-47 and accompanying text.

Part VI offers a critical perspective on the current state of the law and a proposal for congressional action to address the current disparities and inequities in the law. First, I argue that federal corporations—and particularly federal business corporations¹⁸—should be on equal jurisdictional footing with their state counterparts. There is no reason that federal business corporations should receive preferred access to diversity jurisdiction. But there is also no reason a federal business corporation should be denied the ability to invoke diversity jurisdiction when a state corporation would have that ability. Under the current law, this situation results when a federal corporation is unable to invoke the localization exception because of the geographical scope of its activities. I also argue, however, that courts should not take it upon themselves to bring about jurisdictional parity. It is questionable whether the courts should have recognized a localization rule in the first place; arguably, the fact that Congress provided for state citizenship for some federal corporations, but not for others, should have counseled against the judicial creation of a rule that would recognize such citizenship. But even if it was proper for the courts to create the localization rule, a variety of prudential considerations should lead the courts to apply the rule restrictively.

Therefore, I conclude that the best way to achieve the desirable parity is for Congress to adopt a single statute defining the citizenship of all federal business corporations.¹⁹ Although such a statute would not eliminate all interpretative issues, it would go a long way toward reducing the ambiguities and disparities existing under the current legal patchwork.

II. FEDERAL CHARTERING OF CORPORATIONS

Although the majority of American corporations are chartered under state law, a significant number of corporations are chartered by

18. This Article deals primarily with the jurisdictional treatment of federal business corporations, although it also addresses government corporations. It is not necessary, and probably not possible, to draw a bright dividing line between these two types of federal corporations. By “government corporations,” however, I refer generally to corporations that serve functions similar to a governmental agency and over which the government exercises some degree of direct control, either through full or partial ownership of the corporation’s stock, through appointment of some or all of its directors, or through appropriations. “Federal business corporations,” in contrast, refer to those federally chartered corporations that are owned and operated entirely in the private sector and that compete directly in the marketplace against similar state-chartered corporations.

19. My proposal is to add a new sentence to 28 U.S.C. § 1349 (2006), which would provide as follows: “For purposes of federal diversity jurisdiction, a corporation incorporated by or under an Act of Congress shall be deemed a citizen of the State in which its main office is located and of the State in which it has its principal place of business.” See *infra* note 300 and accompanying text.

the federal government.²⁰ The first federally chartered corporations were banking corporations. The very first, the Bank of North America, was created in 1781, while the Articles of Confederation still were in effect.²¹ Soon after the Constitution was ratified, Congress chartered the first Bank of the United States,²² which later was succeeded by the second Bank of the United States.²³

Although the U.S. Constitution does not expressly grant Congress the power to create corporations,²⁴ that power was validated by the

20. See generally 36 AM. JUR. 2D *Foreign Corporations* §§ 93-109 (2001) (discussing federal corporations); 1 JAMES D. COX & THOMAS LEE HAZEN, COX & HAZEN ON CORPORATIONS § 2.11 (2d ed. 2003) (same); 1A WILLIAM MEADE FLETCHER, FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS §§ 69.10, 92 (perm. ed., rev. vol. 2002) (same).

21. See A. Michael Froomkin, *Reinventing the Government Corporation*, 1995 U. ILL. L. REV. 543, 547 n.9 (noting that the Superintendent of Finance purchased about sixty percent of the bank's stock); see also Gregory A. Mark, *The Court and the Corporation: Jurisprudence, Localism, and Federalism*, 1997 SUP. CT. REV. 403, 410-11 (discussing the views of James Wilson, James Madison, and others as to the power of the confederation congress to charter the Bank).

22. The first Bank was created in 1791 at the urging of Treasury Secretary Alexander Hamilton for the purpose of establishing credit and to assist in the country's economic development. See MICHAEL P. MALLOY, PRINCIPLES OF BANK REGULATION 2-3 (2d ed. 2003) (discussing history of first Bank). The legislation authorized the federal government to subscribe twenty percent of the Bank's stock. See *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 386 (1995) (citing Act of Feb. 25, 1791, ch. 10, § 11, 1 Stat. 191, 196). The legislation was enacted over the opposition of agrarian interests and the constitutional objections of then-Secretary of State Thomas Jefferson. See MALLOY, *supra*, at 3-4. The first Bank existed until 1811, when its charter was not renewed; by then, "Jefferson's party was in power, and there was no hope for renewal of the charter." *Id.* at 4.

23. The second Bank was chartered in 1816. MALLOY, *supra* note 22, at 5. The number of state-chartered banks had grown substantially during the existence of the first Bank of the United States. *Id.* at 4. At first, the state banks were relatively stable, with few failures. *Id.* But, "[f]rom 1809 through the War of 1812, state banks—overextended, inexperienced and undercapitalized—frequently failed. The war left U.S. commercial and financial sectors in disarray. Even within Jefferson's party, support emerged for a central bank to stabilize the economy." *Id.* at 4-5. The legislation required the United States to subscribe to twenty percent of the second Bank's stock and the President was to appoint five of the Bank's twenty-five directors. See *Lebron*, 513 U.S. at 386-87 (citing Act of Apr. 10, 1816, ch. 44, §§ 1, 8, 3 Stat. 266, 266, 269). The second Bank, however, encountered immediate opposition from state banks, agrarian interests, and others, and it was also not renewed when its charter expired in 1836. See MALLOY, *supra* note 22, at 5, 7-8 (describing opposition to the second Bank and President Andrew Jackson's veto of rechartering bill).

24. Federal chartering received at least brief consideration during the constitutional convention, however. See Adolf A. Berle, Jr., *Constitutional Limitations on Corporate Activity—Protection of Personal Rights from Invasion Through Economic Power*, 100 U. PA. L. REV. 933, 944 n.19 (1952); Mark, *supra* note 21, at 412. There was an Incorporation Committee, but apparently it did little. See *id.* When Benjamin Franklin proposed that the federal government be granted the power to cut canals, James Madison moved that an amendment be made to provide the power "to grant charters of incorporation where the interest of the U.S. might require & the legislative provisions of the individual States may be incompetent." *Id.* (quoting DOCUMENTS ILLUSTRATIVE OF THE FORMATION OF THE UNION OF THE AMERICAN STATES 724 (Charles C. Tansill ed., 1927)). Rufus King, chair of the Incorporation Committee, argued that the proposed power was "unnecessary" and that the states "will be prejudiced and divided into parties." *Id.* (quoting DOCUMENTS ILLUSTRATIVE OF THE FORMATION OF THE UNION OF THE AMERICAN STATES, *supra*, at 724).

Supreme Court's ruling in *McCulloch v. Maryland*,²⁵ where the Court upheld the constitutionality of the second Bank.²⁶ Federal chartering was proper, in the Court's view, when it could be deemed "necessary and proper"²⁷ to the exercise of one of the powers expressly granted to Congress under Article I of the Constitution.²⁸

Despite these initial forays and *McCulloch*'s "invitation to Congress to act,"²⁹ Congress used its chartering powers sparingly during the years leading up to the Civil War. The number of corporations chartered by state governments, though, grew at an explosive rate during this period.³⁰

Congress reasserted its chartering authority in the latter half of the nineteenth century, however. The federal corporations authorized during this period—which included national banks³¹ and a num-

The proposed amendment failed, by a vote of three states in favor and eight against. *Id.* Professor Mark concludes, though, that the "refusal to include the power in the Constitution was grounded not in a deeply considered and informed debate, but rather in quite the opposite—inaction by those charged to consider the matter and an (apparently) abbreviated exchange of views." *Id.* at 416. He also points out that few early *state* constitutions explicitly mentioned a power to create corporations. *Id.* at 411.

25. 17 U.S. (4 Wheat.) 316 (1819).

26. *Id.* at 356-60 (holding that it was constitutional for Congress to create the second Bank and unconstitutional for a state to tax the Bank).

27. The Necessary and Proper Clause provides Congress with the power "[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. CONST. art. I, § 8, cl. 18.

28. *McCulloch*, 17 U.S. (4 Wheat.) at 422-23; see also Froomkin, *supra* note 21, at 551-52 (discussing the holding of *McCulloch*). The Court has since upheld the chartering of federal corporations in many contexts. See, e.g., *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288 (1936) (upholding creation of TVA); *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 210 (1921) (upholding creation of Federal Land Banks system); *Luxton v. N. River Bridge Co.*, 153 U.S. 525, 534 (1894) (upholding federal corporation created to build bridge across Hudson River); *California v. Cent. Pac. R.R.*, 127 U.S. 1, 39-40 (1888) (upholding federal chartering of railroad corporation); *Farmers' & Mechs.' Nat'l Bank v. Dearing*, 91 U.S. 29, 32 (1875) (upholding constitutionality of National Bank Act).

29. Mark, *supra* note 21, at 422 n.63.

30. Professor Mark argues that our current system of corporate federalism—in which state governments dominate the chartering of corporations and compete for those charters—was not an inevitable outgrowth of the nation's constitutional structure, but rather "seems almost to be a product of sheer accident." *Id.* at 405-06; see also *id.* at 407 ("Congress never assumed its potential role in corporate law . . .").

31. Congress first authorized the creation of national banks in 1863, at the height of the Civil War. Act of Feb. 25, 1863, ch. 58, 12 Stat. 665, amended by Act of June 3, 1864, ch. 106, 13 Stat. 99. The National Bank Act was the first general corporation act enacted by Congress. See 1 COX & HAZEN, *supra* note 20, § 2.11, at 107. "The federal government first tried to finance the war through U.S. notes that were issued without the benefit of a national banking mechanism." Paul E. Lund, *National Banks and Diversity Jurisdiction*, 46 U. LOUISVILLE L. REV. 73, 77 (2007) (discussing history of national banks). Treasury Secretary Samuel P. Chase, however, recommended that Congress authorize a system of federally chartered banks, which would have the power to issue bank notes secured by government bonds. *Id.* Congress adopted Secretary Chase's recommendation in the 1863 Act and authorized a newly-created officer, the Comptroller of the Currency, to issue national bank charters. *Id.*

ber of railroad companies³²—largely consisted of private business corporations that were created to assist in the nation’s expansion and economic development.³³

The twentieth century witnessed expansive growth both in the number of federally chartered corporations and in the government’s ownership and control of such corporations.³⁴ Government-controlled corporations were used extensively during the First World War.³⁵ Another “more enduring” group of government corporations were created during the Great Depression and the New Deal.³⁶ Congress even authorized a federal corporation, the Reconstruction Finance Corporation, to create other government corporations without further congressional authorization.³⁷ With nearly sixty in existence by 1945, government corporations “had gotten out of hand, in both their number and their lack of accountability.”³⁸ Congress responded by enacting the Government Corporation Control Act of 1945,³⁹ which placed

32. See *Lebron v. Nat’l R.R. Passenger Corp.*, 513 U.S. 374, 387 (1995) (discussing federal chartering of railroad corporations). These railroads were, for the most part, established as private corporations; the President, though, appointed two directors of the Union Pacific Railroad. See *id.*

33. See 1A FLETCHER, *supra* note 20, § 92, at 89 (discussing federal chartering of “corporations for the purposes of constructing and maintaining railroads, or otherwise facilitating interstate commerce; operating telegraph lines; constructing and maintaining bridges over rivers forming the boundaries between states; and constructing highways from state to state” (citations omitted)).

34. The government’s first experience with control of a corporation occurred in 1902, when Congress authorized the President to purchase the assets of a company involved in the construction of the Panama Canal. *Lebron*, 513 U.S. at 387-88 (discussing how the federal government became the sole shareholder of Panama Railroad Company, a New York corporation).

35. See *id.* at 388 (discussing the War Finance Corporation, the United States Emergency Fleet Corporation, and the United States Grain Corporation, among others). These corporations were dissolved after the war. *Id.*

36. *Id.* “These were primarily directed to stabilizing the economy and to making distress loans to farms, homeowners, banks, and other enterprises.” *Id.* (discussing, as examples, the Reconstruction Finance Corporation and the Federal Deposit Insurance Corporation). Also created during this period was the Tennessee Valley Authority, which “brought the Government into the commercial sale of goods and services.” *Id.* “These public corporations conducted quasi-governmental functions, but they had somewhat greater autonomy than ordinary government bureaus or agencies.” 1 COX & HAZEN, *supra* note 20, § 2.11, at 107.

37. *Lebron*, 513 U.S. at 388-89. Among the federal corporations created by the Reconstruction Finance Corporation were the Defense Supplies Corporation, the Petroleum Reserves Corporation, the War Damage Corporation, the Rubber Development Corporation, and the Defense Plant Corporation. *Id.* at 389. Some federal corporations and agencies also proceeded to organize other corporations under state law, without specific authorization to do so. *Id.* (discussing Defense Homes Corporation, a Maryland corporation formed by the Secretary of Treasury, and Tennessee Valley Associated Cooperatives, a Tennessee corporation formed by TVA).

38. *Id.*

39. Government Corporation Control Act, Pub L. No. 79-248, 59 Stat. 597 (1945) (codified as amended at 31 U.S.C. §§ 9101-9110 (2006)).

new controls on corporations both wholly owned and partially owned by the government.⁴⁰

Few government corporations were created in the immediate postwar years, but during the 1960s “the allure of the corporate form was felt again, and new entities proliferated.”⁴¹ Although many of these “followed the traditional model, often explicitly designated as [federal] agencies and located within the existing Governmental structure,” others took new forms.⁴² A number of these new corporations purported to be “private” corporations, and their congressional charters explicitly stated that they were *not* agencies or instrumentalities of the United States.⁴³ Among the new government corporations created during this period were the highly controversial Government Sponsored Enterprises (GSEs), including Fannie Mae and Freddie Mac.⁴⁴ Though purportedly private entities, these corporations were formed to perform governmental or quasi-governmental functions.

In addition to these numerous and varied government corporations, Congress has chartered quite a few nonprofit, charitable corporations. Title 36 of the U.S. Code contains the corporate charters of over ninety patriotic and national societies.⁴⁵

Congress has also continued to expand the authorization of federal chartering of private business corporations. In addition to the

40. The Act also prohibited the creation of new government corporations without specific congressional authorization. *Lebron*, 513 U.S. at 390. The Act resulted in the dissolution of a number of government corporations, and few government corporations were formed between 1945 and the 1960s. *See id.*

41. *Id.*

42. *Id.*; *see also* 31 U.S.C. § 9101 (listing “wholly owned Government corporation[s]” and “mixed-ownership Government corporation[s]”); 91 C.J.S. *United States* §§ 83-95 (2000) (discussing government owned or controlled corporations).

43. *See* 1A FLETCHER, *supra* note 20, § 69.10, at 4 (“To avoid the controls of the [Government Corporation Control Act of 1945], the government began creating corporations that were capitalized entirely by private funds and controlled by private shareholders, in an attempt to have these corporations not classified as agencies or establishments of the United States.”); *see also Lebron*, 513 U.S. at 390-91 (discussing Communications Satellite Corporation (Comsat), Corporation for Public Broadcasting, and Legal Services Corporation).

44. For discussion and critique of GSEs, *see* Froomkin, *supra* note 21. The number of GSEs is somewhat unclear. The statutes governing GSEs, 12 U.S.C. §§ 4501-4651 (2006), apply only to the Federal National Mortgage Corporation (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks. Professor Froomkin, writing in 1995, identified eleven federal corporations he believed qualified as GSEs. *See* Froomkin, *supra* note 21, at 555-57. At least one corporation he listed, the Student Loan Marketing Association (Sallie Mae), has been privatized and now is a state-chartered corporation. *See* 20 U.S.C. § 1087-3 (2006) (codifying the privatization legislation); Debra Bruno, *Working to Support Education Financing*, NAT’L L.J., Apr. 11, 2005, at 8 (describing the privatization process).

45. *See* 36 U.S.C. §§ 10101-240112 (2006). They include well-known entities such as the Boy Scouts of America, the Girl Scouts of America, and the U.S. Olympic Committee. *See also infra* notes 143-49 and accompanying text (discussing jurisdiction over cases involving federally chartered charitable corporations).

national banks, railroads, and other corporations authorized in early years, Congress has given statutory authorization for the federal chartering of savings associations, credit unions, and various other entities.⁴⁶ Currently, there is a great deal of discussion regarding the federal chartering of insurance companies and agencies, and legislation to provide for such chartering has been introduced in both houses.⁴⁷ Proposals have also been made to authorize federal chartering of securities firms and of “universal financial service” firms.⁴⁸ All of these chartering statutes have been enacted or proposed with some sort of “national” goal in mind, but the resulting business corporations are functionally identical to the comparable state corporations with which they compete for business and investment.⁴⁹

Because federal business corporations are creatures of federal law, certain issues regarding their corporate powers and duties are governed by federal law.⁵⁰ For the most part, however, federal business corporations are subject to the general laws—tort, contract, and otherwise—in the states in which they conduct business.⁵¹

46. “Congress, if it so desires, arguably can extend federal chartering power to all corporations engaging in interstate commerce.” 1 COX & HAZEN, *supra* note 20, § 2.11, at 107. A number of commentators have advocated federal chartering of *all* large corporations, with many arguing that federal chartering would lead to better and more uniform regulation of corporations. *See id.* at 107 & n.3 (citing articles by several commentators). *But see id.* at 107-08 (arguing federal chartering of large corporations is unnecessary to achieve regulatory goals).

47. National Insurance Consumer Protection Act, H.R. 1880, 111th Cong. (2009); National Insurance Act of 2007, H.R. 3200, 110th Cong. (2007); S. 40, 110th Cong. (2007).

48. A commission of the Financial Services Roundtable has recommended three new types of federal chartering authority: the optional federal insurance charter, a similar option for securities firms, and a new type of charter for “universal financial service” firms (also known as universal banks). *See* RICHARD M. KOVACEVICH ET AL., FINANCIAL SERVICES ROUNDTABLE, THE BLUEPRINT FOR U.S. FINANCIAL COMPETITIVENESS 113-28 (2007), *available at* <http://www.fsround.org/cec/pdfs/FINALCompetitivenessReport.pdf>. A universal financial service firm “would be permitted to engage in any financial activity, including banking, securities, and insurance activities.” *Id.* at 127.

49. National banks, for example, serve both public and private purposes, but they are “organized by private persons pursuant to federal law and operated for private gain.” 9 C.J.S. *Banks and Banking* § 514, at 460 (1996).

50. *See Osborn v. Bank of U.S.*, 22 U.S. (9 Wheat.) 738 (1824); *see also infra* notes 80-93 and accompanying text.

51. *See, e.g., Atherton v. FDIC*, 519 U.S. 213, 222-23 (1997) (discussing past decisions by Supreme Court that found “numerous” state laws apply to national banks); 36 AM. JUR. 2D *Foreign Corporations* § 106 (2001) (discussing general amenability of federal corporations to state law). In *Atherton*, the Court quoted from its opinion in *First National Bank v. Kentucky*, 76 U.S. (9 Wall.) 353, 362 (1870), where the Court had stated that national banks

are subject to the laws of the State, and are governed in their daily course of business far more by the laws of the State than of the nation. All their contracts are governed and construed by State laws. Their acquisition and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on State law. It is only when the State law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional.

This Article will, to an extent, discuss the jurisdictional rules applicable to *all* federally chartered corporations, including both government corporations and private business corporations. The primary focus, though, will be on federally chartered business corporations and their jurisdictional status relative to state-chartered business corporations.

III. FEDERAL JURISDICTION AND STATE-CHARTERED CORPORATIONS

A state-chartered corporation that wishes to bring a lawsuit in federal court (or a corporation defending a state court suit that would like to remove the suit to federal court) is usually limited to one of two options. The first is to attempt to invoke so-called “federal question jurisdiction”⁵² by demonstrating that the particular suit is one that arises under federal law. Typically this involves showing that the plaintiff has asserted a claim that is created by federal law or that turns upon the resolution of a substantial federal issue.⁵³ Failing this, the second option is to attempt to invoke federal jurisdiction on the basis that the suit involves parties who are citizens of different states—so-called “diversity jurisdiction.”⁵⁴

In America’s earliest years, corporations were completely foreclosed from invoking diversity jurisdiction.⁵⁵ Congress, when it first

Atherton, 519 U.S. at 223. See generally Paul Lund, *The Decline of Federal Common Law*, 76 B.U. L. REV. 895 (1996) (discussing the Supreme Court’s reluctance to create rules of federal common law to displace state law).

52. See U.S. CONST. art. III, § 2 (providing that federal judicial power “shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority”); 28 U.S.C. § 1331 (2006) (granting federal courts jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States”).

53. For a general discussion of the requirements that must be met before federal question jurisdiction may be invoked, see ERWIN CHERMERINSKY, *FEDERAL JURISDICTION* 282-96 (5th ed. 2007).

54. See U.S. CONST. art. III, § 2 (providing that federal “judicial Power shall extend . . . to Controversies . . . between Citizens of different States”); 28 U.S.C. § 1332 (2006) (providing for district court jurisdiction over “all civil actions where the matter in controversy exceeds the sum or value of \$75,000 . . . and is between . . . citizens of different States”). For a general discussion of the requirements that must be met before diversity jurisdiction may be invoked, see CHERMERINSKY, *supra* note 53, at 130-32. For a discussion of the purposes behind diversity jurisdiction, see *infra* notes 254-61 and accompanying text.

55. For general discussions of diversity jurisdiction as applied to state-chartered corporations, see 15 JAMES WM. MOORE, *MOORE’S FEDERAL PRACTICE* § 102.56[4] (Daniel R. Coquillette et al. eds., 3d ed. 2006); 13B CHARLES ALAN WRIGHT ET AL., *FEDERAL PRACTICE & PROCEDURE* § 3623 (2d ed. 1984); CHARLES ALAN WRIGHT & MARY KAY KANE, *LAW OF FEDERAL COURTS* 165-73 (6th ed. 2002); Charles Warren, *Corporations and Diversity of Citizenship*, 19 VA. L. REV. 661 (1933). For an interesting dialogue on whether diversity jurisdiction should be available to corporations, compare James W. Moore & Donald T. Weckstein, *Corporations and Diversity of Citizenship Jurisdiction: A Supreme Court Fiction Revisited*, 77 HARV. L. REV. 1426 (1964), which argues in favor, with Dudley O. McGovney, *A Supreme Court Fiction: Corporations in the Diverse Citizenship Jurisdiction*

authorized diversity jurisdiction in the Judiciary Act of 1789,⁵⁶ made no provision regarding the citizenship of corporations. This congressional silence is not very surprising as the type of business corporation that proliferates today was largely unknown at the time of our country's founding. Very few private corporations existed at that time—by some estimates, fewer than ten corporations existed in 1789⁵⁷—and those that did exist were mostly local in nature.⁵⁸ Corporations were created by individual acts of legislation; the type of state corporate codes with which we are familiar today did not appear until later.⁵⁹

The Supreme Court first addressed the citizenship of a corporation in its 1809 decision in *Bank of the United States v. Deveaux*.⁶⁰ Chief Justice Marshall, writing for the Court, stated that a corporation is a “mere legal entity” that could not itself be considered to have citizenship.⁶¹ Therefore, in his view, the citizenship of each of the corporation's shareholders would have to be taken into account,⁶² and diversity jurisdiction would exist only when none of the corporation's shareholders was a citizen of the same state as any opposing party.⁶³

of the Federal Courts (pts. 1-3), 56 HARV. L. REV. 853, 1090, 1225 (1943), which argues against.

56. Judiciary Act of 1789, ch. 20, 1 Stat. 73.

57. See WRIGHT & KANE, *supra* note 55, at 165 (“When the Constitution was adopted, the private corporation was virtually unknown.”). The exact number of corporations that existed at the time of the Constitution's ratification is unclear, although the number is small by any account. Some have claimed the number was as small as six. See Berle, *supra* note 24, at 945 n.22. Another author, though, reports that thirty-three charters were issued to business corporations during the period from 1781 to 1790. Mark, *supra* note 21, at 410.

58. See Mark, *supra* note 21, at 413 (corporations formed during country's early years “were essentially local”).

59. See FRANKLIN A. GEVURTZ, CORPORATION LAW 21 (2000) (noting that although “New York enacted the first general incorporation statute in 1811, . . . it took decades before these statutes supplanted special chartering”).

60. 9 U.S. (5 Cranch) 61 (1809). This case involved the first Bank of the United States. Georgia had enacted a statute that purported to tax the Bank. *Id.* at 63. The Bank filed a federal court action against two Georgia officials, claiming that the officers had trespassed on the Bank's property in an attempt to collect the tax monies allegedly owed to the state. *Id.* The federal chartering statute provided the Bank had the power “to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in courts of record, or any other place whatsoever.” *Id.* at 85 (quoting incorporating act). Chief Justice Marshall first addressed whether this statute conferred a right on the Bank to sue in federal court. *Id.* at 85-86. He concluded the statute did not confer jurisdiction, but simply spoke of the Bank's general capacity to sue and be sued. See *id.* at 86. His conclusion on this issue led to his discussion of the second issue: whether the Bank could bring suit in federal court on the basis of diversity of citizenship. See *id.* at 86-92.

61. *Id.* at 86.

62. *Id.* at 91-92.

63. Although the Constitution does not require complete diversity of citizenship, the Supreme Court long ago interpreted 28 U.S.C. § 1332 (2006) and its predecessors to require complete diversity. See *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806). For the complete diversity requirement to be satisfied, no plaintiff may be a citizen of the same state as any defendant. See CHEMERINSKY, *supra* note 53, at 302-03.

Today, the *Deveaux* rule would mean that very few suits involving corporations could qualify for diversity jurisdiction, but at the time, it did not cause as great a problem because most corporations were locally owned.⁶⁴ As the number and scope of private corporations increased in the years after *Deveaux*, however, pressure mounted to allow suits involving corporations to be heard in federal court.⁶⁵ The *Deveaux* rule remained the prevailing rule until 1844, when the Court reversed course in *Louisville, Cincinnati & Charleston Railroad v. Letson*.⁶⁶ There, the Court held that a state-chartered corporation was entitled to be treated as a citizen of the state in which it was incorporated.⁶⁷

A few years later, the Court again reversed course—at least somewhat—in its 1853 decision in *Marshall v. Baltimore & Ohio Railroad Co.*⁶⁸ The Court in *Marshall* readopted Justice Marshall's view that a corporation cannot have citizenship and that the citizenship of its shareholders therefore must be controlling.⁶⁹ But the *Marshall* Court also adopted a *conclusive presumption* that all of the corporation's shareholders were citizens of the state in which it was incorporated.⁷⁰ The *Marshall* rule thus reached the same result as *Letson* but through a different rationale.

64. See Mark, *supra* note 21, at 433-34.

65. See 13B WRIGHT ET AL., *supra* note 55, § 3623, at 590; see also *Louisville, Cincinnati & Charleston R.R. v. Letson*, 43 U.S. (2 How.) 497, 555 (1844) (“[T]he cases of Strawbridge and Curtis [sic] and the Bank and Deveaux have never been satisfactory to the bar, and . . . they were not, especially the last, entirely satisfactory to the court that made them.”). One author has argued that it was not corporations who were seeking access to federal court in these early cases, but rather individual citizens who “apprehended prejudice *in favor of the State corporation*.” Warren, *supra* note 55, at 670. It was not until the 1870s, when anticorporate sentiment began to take hold, that some corporations sought refuge in federal court. See *id.* at 672-73.

66. 43 U.S. (2 How.) 497 (1844).

67. *Id.* at 555 (“A corporation created by a state to perform its functions under the authority of that state and only suable there, though it may have members out of the state, seems to us to be a person, though an artificial one, inhabiting and belonging to that state, and therefore entitled, for the purpose of suing and being sued, to be deemed a citizen of that state.”).

68. 57 U.S. (16 How.) 314 (1853). Marshall, a citizen of Virginia, sued the railroad to recover a sum of money allegedly owed to him for services performed. The suit alleged that the railroad had been incorporated by the State of Maryland. *Id.* at 314.

69. See *id.* at 327-28.

70. *Id.* at 329; see also 13B WRIGHT ET AL., *supra* note 55, § 3623, at 591 (discussing *Marshall*'s conclusive presumption). Later cases reaffirmed that the *Marshall* presumption could not be rebutted by contrary evidence. See *id.* at 591-92.

The *Marshall* presumption also applies to non-U.S. corporations; the stockholders of such a corporation are conclusively presumed to be citizens of the country in which the corporation is chartered. *Id.* at 592. The presumption does not extend, however, to unincorporated business associations, whether U.S. or foreign. *Id.* at 597. Thus, for partnerships, unions, and other unincorporated associations, the citizenship of each member of the association must be taken into account in determining whether jurisdiction exists based on diversity of citizenship. *Id.*; see also *id.* § 3630 (discussing citizenship of unincorporated associations).

The *Marshall* presumption “was of doubtful accuracy in 1854 and . . . is totally unwarranted today,”⁷¹ but the *Marshall* “fiction” was “a compromise destined to endure for over a century.”⁷² The *Marshall* rule soon came under attack, and numerous unsuccessful bills were introduced in Congress over the years to either limit or eliminate corporations’ ability to gain access to federal court through diversity jurisdiction.⁷³

Eventually, Congress amended the *Marshall* rule in 1958 when it enacted 28 U.S.C. § 1332(c)(1). Section 1332(c)(1) codified the *Marshall* result by providing that “a corporation shall be deemed to be a citizen of any State by which it has been incorporated.”⁷⁴ The new law provided, however, that a corporation would also be deemed a citizen “of the State where it has its principal place of business.”⁷⁵ The statute was intended partly to reduce the caseload of the federal courts but also “to remedy the abuse caused when an entirely local corporation was able to invoke diversity jurisdiction merely because it had been incorporated in another state.”⁷⁶

Thus, under current law, a state-chartered corporation is at most a citizen of two states: the state in which it is incorporated and, if different, the state in which it maintains its principal place of business.⁷⁷ Often a federal court is called upon to resolve uncertainty as to where the corporation’s “principal place of business” is located,⁷⁸ but every state corporation ultimately has only *one* principal place of

71. 13B WRIGHT ET AL., *supra* note 55, § 3623, at 602.

72. *United Steelworkers of Am. v. R.H. Bouligny, Inc.*, 382 U.S. 145, 148 (1965).

73. 13B WRIGHT ET AL., *supra* note 55, § 3623, at 602-03 & n.46 (summarizing legislative proposals); Warren, *supra* note 55, at 673-84 (discussing extensively legislative proposals in late eighteenth and early nineteenth centuries). One such proposal would have “provided that a corporation be deemed a citizen of any state in which it carried on business for the purpose of suits with residents arising out of that business.” 13B WRIGHT ET AL., *supra* note 55, § 3623, at 602 n.46 (discussing proposal by American Law Institute).

74. 28 U.S.C. § 1332(c)(1) (2006). The provision regarding corporate citizenship originally was numbered § 1332(c), but it was renumbered as § 1332(c)(1) when a new subsection, relating to legal representatives, was added to the statute in 1988. *Judicial Improvements and Access to Justice Act*, Pub. L. No. 100-702, § 202(a), 102 Stat 4642, 4646 (1988).

75. 28 U.S.C. § 1332(c)(1). An earlier version of the proposal would have provided that a corporation be deemed “a citizen of any state from which it derived more than half its gross income.” 13B WRIGHT ET AL., *supra* note 55, § 3624, at 605.

76. 13B WRIGHT ET AL., *supra* note 55, § 3624, at 607-08; *see also id.* at 608 (“Since the underlying purpose of diversity of citizenship jurisdiction is to protect out-of-state residents from the prejudice of local state courts, it was an anomaly to allow corporations that in effect were local businesses to invoke federal jurisdiction.” (citation omitted)).

77. Some ambiguity arises if the corporation is incorporated in more than one state. Some courts have treated such a corporation as a citizen of each state in which it is incorporated, while other courts, following the so-called “forum doctrine,” have treated such a corporation as being incorporated only in the forum state. *See id.* § 3626.

78. *See id.* § 3625, at 618-44 (discussing various approaches used to determine corporation’s “principal place of business,” including the “nerve center” and “total activity” tests).

business.⁷⁹ This is true not only of small, locally operated corporations but also of large corporations that conduct activities nationwide or worldwide.

IV. THE JURISDICTIONAL TREATMENT OF FEDERALLY CHARTERED CORPORATIONS

A. *Federal Question Jurisdiction and Federally Chartered Corporations*

At one point, federally chartered corporations enjoyed far greater access to federal court than their state-chartered counterparts. As a result of the Supreme Court's decision in *Osborn v. Bank of the United States*,⁸⁰ a federally chartered corporation could invoke federal jurisdiction in any lawsuit, simply on the basis of its federal charter.

Osborn involved the second Bank of the United States.⁸¹ In defiance of the Supreme Court's ruling in *McCulloch v. Maryland*,⁸² the State of Ohio had continued to tax the Bank.⁸³ State officials raided the Bank's office in Chillicothe, Ohio, and seized over \$120,000.⁸⁴ The Bank brought suit against the state officials in federal court, seeking to recover the seized funds.⁸⁵ Because the Bank alleged the seizure violated the federal Constitution,⁸⁶ the Bank's suit undoubtedly turned on an issue of federal law. But at the time this case arose, Congress had not yet provided general authorization for federal courts to hear cases arising under federal law; "general federal question jurisdiction" would not be authorized until 1875.⁸⁷ The Bank, though, claimed that a provision in its chartering statute authorized the federal courts to hear suits to which the Bank was a party; the provision granted the Bank power "to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all State Courts having competent jurisdiction, and in any Circuit Court of the United States."⁸⁸

79. *Id.* § 3624, at 611.

80. 22 U.S. (9 Wheat.) 738 (1824) (holding all suits involving the Bank of the United States as a party arose under federal law by virtue of the Bank's federal charter).

81. *Id.*; see also *supra* note 23 and accompanying text (discussing the second Bank).

82. 17 U.S. (4 Wheat.) 316 (1819) (holding that it was constitutional for Congress to create the second Bank of the United States and that it was unconstitutional for a state to tax the Bank); see also *supra* notes 25-28 and accompanying text (discussing *McCulloch v. Maryland*).

83. See CHEMERINSKY, *supra* note 53, at 276 (summarizing background of *Osborn*).

84. *Id.*

85. *Id.* Some of the funds had already been seized in a raid by federal officials on the state treasury. *Id.*

86. *Osborn*, 22 U.S. at 859-60.

87. See Act of Mar. 3, 1875, ch. 137, 18 Stat. 470 (codified as amended at 28 U.S.C. § 1331 (2006)).

88. *Osborn*, 22 U.S. at 817 (quoting chartering statute).

In his opinion for the Court, Chief Justice Marshall addressed two issues: whether the charter provision authorized federal courts to exercise jurisdiction in suits to which the Bank was a party and, if so, whether that authorization was constitutional.⁸⁹ He had little trouble with the first issue, concluding that the statute was a clear authorization for federal court jurisdiction.⁹⁰ Although Justice Marshall could have resolved the constitutional issue on a narrow ground—the Bank’s suit in *Osborn* asserted a claim under the federal Constitution and therefore undoubtedly arose under federal law⁹¹—he chose to speak more broadly. He said that a case arises under federal law whenever federal law “forms an ingredient of the original cause.”⁹² Justice Marshall believed that this was true of *any* case to which the Bank was a party because in every such case there was a potential issue—the Bank’s capacity to sue or be sued, its capacity to enter into contracts, or a similar issue—that would require interpretation and application of the Bank’s federal chartering statute.⁹³ Thus, federal jurisdiction was proper simply on the basis of the Bank’s federally chartered status.

The full import of *Osborn* was made clear by the Court’s ruling in a companion case, *Bank of the United States v. Planters’ Bank of Georgia*,⁹⁴ in which the Court upheld jurisdiction even though the Bank was asserting only a state law contract claim.⁹⁵ The rationale of *Osborn* and the scope of its holding have been subject to criticism by the Court itself,⁹⁶ but the Court has repeatedly reaffirmed *Osborn*.⁹⁷

89. *Id.* at 816-19.

90. *See id.* at 817-18 (“These words seem to the Court to admit of but one interpretation. They cannot be made plainer by explanation.”). Commentators, though, long have questioned whether the statutory language indeed is so clear. *See, e.g.*, CHEMERINSKY, *supra* note 53, at 276 n.21 (“There is an alternative interpretation of this statutory provision: that the statute creates the capacity of the bank to sue or be sued, but it does not create jurisdiction.”); WRIGHT & KANE, *supra* note 55, at 103 n.6 (“A more natural interpretation might have been that the charter gave the bank capacity to be a party to a suit but did not in itself create jurisdiction.”).

91. WRIGHT & KANE, *supra* note 55, at 103.

92. *Osborn*, 22 U.S. (4 Wheat.) at 823.

93. *See id.* at 823-28.

94. 22 U.S. (9 Wheat.) 904 (1824) (involving a claim to collect on state-issued notes).

95. *Id.* at 914.

96. *See, e.g.*, Ass’n of Westinghouse Salaried Employees v. Westinghouse Elec. Co., 348 U.S. 437, 451 (1955) (“Federal jurisdiction based solely on the fact of federal incorporation has, however, been severely restricted by Congress, and this Court has cast doubt on its continued vitality.” (citation omitted)). Other courts have also questioned *Osborn*. *See, e.g.*, Hancock Fin. Corp. v. Fed. Sav. & Loan Ins. Corp., 492 F.2d 1325, 1328 n.3 (9th Cir. 1974) (stating that if the issue were before the court, “we would not feel compelled to hold, without further analysis, that a federal question is necessarily created by the mere presence of the FSLIC as a party to this suit”).

97. *See, e.g.*, Am. Nat’l Red Cross v. S.G., 505 U.S. 247, 264-65 (1992) (“We have consistently reaffirmed the breadth of [the *Osborn*] holding. We would be loath to repudiate such a longstanding and settled rule, on which Congress has surely been entitled to rely” (citations omitted)); Gully v. First Nat’l Bank in Meridian, 299 U.S. 109, 114 (1936)

The *Osborn* case did not immediately open the federal courthouse door to all federal corporations, however. *Osborn* held only that it was *constitutional* to confer jurisdiction on the basis of the corporation's federal charter. It was still up to Congress to actually confer that jurisdiction, as it had done for the Bank of the United States but had not generally done for other federally chartered corporations.

However, when Congress finally decided in 1875 to authorize general federal question jurisdiction,⁹⁸ the federal courthouse doors swung open. Any federally chartered corporation, whether as plaintiff or defendant, could opt for federal court purely on the basis of its federal status. This was confirmed by the *Pacific Railroad Removal Cases*,⁹⁹ where the Court held that state law tort claims against federally chartered railroads could be removed by the railroads to federal court.¹⁰⁰

The ensuing years witnessed a "flood" of cases involving federally chartered corporations in the federal courts.¹⁰¹ Congress eventually acted to stem this flood. The first step, taken in 1882, was to eliminate automatic federal question jurisdiction in cases involving national banks.¹⁰² This measure was intended to place national banks

("Only recently we said after full consideration that the doctrine of the charter cases was to be treated as exceptional, though within their special field there was no thought to disturb them."); Fed. Intermediate Credit Bank of Columbia, S.C. v. Mitchell, 277 U.S. 213, 214 (1928) (citing *Osborn* for proposition that "[a] suit by or against a corporation created under an Act of Congress is one arising under the laws of the United States").

98. Act of Mar. 3, 1875, ch. 137, 18 Stat. 470 (codified as amended at 28 U.S.C. § 1331 (2006)).

99. 115 U.S. 1 (1885).

100. See *id.* at 15-16; see also Am. Bank & Trust Co. v. Fed. Reserve Bank of Atlanta, Ga., 256 U.S. 350, 356-57 (1921) (holding, based upon *Osborn* and *Pacific Railroad Removal Cases*, that any suit against a federally chartered corporation arises under federal law and therefore is subject to removal by the corporation); *In re Dunn*, 212 U.S. 374, 383-84 (1909) (holding that action against a federally chartered railroad corporation arises under federal law and therefore is subject to removal).

101. *Murphy v. Colonial Fed. Sav. & Loan Ass'n*, 388 F.2d 609, 612 (2d Cir. 1967) (quoting HENRY M. HART, JR. & HERBERT WECHSLER, *THE FEDERAL COURTS AND THE FEDERAL SYSTEM* 730, 752 (1953)); *Crum v. Veterans of Foreign Wars*, 502 F. Supp. 1377, 1383 (D. Del. 1980) (stating that enactment of general federal question jurisdiction, as interpreted in *Pacific Railroad Removal Cases*, "led to a deluge of litigation which was stemmed by passage of section 1349").

102. Act of July 12, 1882, ch. 290, § 4, 22 Stat. 162, 163. That Act provided in relevant part:

[T]he jurisdiction for suits hereafter brought by or against any association established under any law providing for national-banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national-banking associations may be doing business when such suits may be begun

Id. The 1882 Act was amended five years later. See Act of Mar. 3, 1887, ch. 373, § 4, 24 Stat. 552, 554-55. The 1887 Act provided in relevant part:

“on the same footing” as state-chartered banks.¹⁰³ Later, in 1915, Congress acted to eliminate automatic federal question jurisdiction over suits involving federally chartered railroad companies.¹⁰⁴ Finally, in 1925, Congress enacted a statute, now codified at 28 U.S.C. § 1349, which eliminated automatic federal question jurisdiction for all other federally chartered corporations, with the exception of corporations in which the federal government owns more than fifty percent of the corporation’s capital stock.¹⁰⁵

Although § 1349 generally bars federal corporations from invoking federal jurisdiction based solely on their federal charter, there are a number of circumstances in which a federally chartered corporation may invoke federal question jurisdiction. First, of course, like any other litigant, a federally chartered corporation may attempt to demonstrate that the *particular case* to which it is a party is one arising under federal law.¹⁰⁶ Also, a “little-known”¹⁰⁷ section of the Edge Act

[A]ll national banking associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located; and in such cases the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State.

Id. The current version of the statute is codified at 28 U.S.C. § 1348 (2006). For the text of § 1348, see *infra* note 220.

103. *Leather Mfrs.’ Nat’l Bank v. Cooper*, 120 U.S. 778, 780 (1887). The 1882 Act and its successors did not affect the ability of a national bank to invoke federal question jurisdiction, as any party may invoke federal question jurisdiction when the particular lawsuit involves a claim or claims that arise under federal law. *See Cont’l Nat’l Bank of Memphis v. Buford*, 191 U.S. 119, 124 (1903). National banks could also attempt to invoke diversity jurisdiction. Congress provided that a national bank would be considered a citizen of the state “in which [it was] located.” *See supra* note 102. Diversity jurisdiction over suits involving national banks will be discussed *infra* at notes 220, 224-28 and accompanying text.

104. Act of Jan. 28, 1915, ch. 22, § 5, 38 Stat. 803, 804 (“No court of the United States shall have jurisdiction of any action or suit by or against any railroad company upon the ground that said railroad company was incorporated under an Act of Congress.”).

105. Act of Feb. 13, 1925, ch. 229, 43 Stat. 936, 941 (“[N]o district court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress: *Provided*, That this section shall not apply to any suit, action, or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock.”). The statute now is codified, as amended, at 28 U.S.C. § 1349 (2006), which provides the following: “The district courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half of its capital stock.”

106. *See Murphy*, 388 F.2d at 611-12 (holding that the particular suit arose under federal law and therefore qualified for federal jurisdiction under § 1331). Section 1349 merely

generaliz[ed] the earlier legislation, which had prohibited railway corporations from resorting to the federal courts because of a federal charter. As Mr. Justice Van Devanter explained to the Senate Judiciary Committee, the bill extended “the railroad section so as to cover any kind of Federal corporation. If there

of 1913 provides for federal jurisdiction in all cases “arising out of transactions involving international or foreign banking . . . or out of international or foreign financial operations” to which a federally-chartered corporation is a party.¹⁰⁸

For a select group of federally chartered corporations, Congress has retained automatic federal question jurisdiction for all cases to which these corporations are parties. As noted above, § 1349 retains automatic federal question jurisdiction whenever the United States owns more than fifty percent of the corporation’s capital stock.¹⁰⁹ A

happens to be some other ground for taking the case into a federal court, it can go there. But federal incorporation alone is not enough.”

Id. at 612 (citation omitted) (quoting FELIX FRANKFURTER & JAMES M. LANDIS, *THE BUSINESS OF THE SUPREME COURT* 272 n.55 (1927)).

107. Thomas J. McCormack et al., *Edge Act Enables National Banks to Invoke Federal Jurisdiction over Suits Involving International Banking or Financial Operations*, 124 *BANKING L.J.* 907, 907 (2007).

108. 12 U.S.C. § 632 (2006). The relevant portion of the statute provides:

Notwithstanding any other provision of law, all suits of a civil nature at common law or in equity to which any corporation organized under the laws of the United States shall be a party, arising out of transactions involving international or foreign banking, or banking in a dependency or insular possession of the United States, or out of other international or foreign financial operations, either directly or through the agency, ownership, or control of branches or local institutions in dependencies or insular possessions of the United States or in foreign countries, shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such suits; and any defendant in any such suit may, at any time before the trial thereof, remove such suits from a State court into the district court of the United States for the proper district by following the procedure for the removal of causes otherwise provided by law.

Id. The legislative history of § 632, which originated in 1933 as part of the Glass-Steagall Act, is “scant.” McCormack et al., *supra* note 107, at 908. However, the provision’s “legislative purpose was clearly to create federal jurisdiction over international transactions as a means to promote the establishment of a uniform body of law for national banks in conjunction with the implementation of a federal system of banking regulation.” *Id.* For a discussion of how federal courts have interpreted § 632, see *id.* at 909-15.

109. An interesting issue arises when the corporation is one in which there is no capital stock, either because it is prohibited from issuing stock, never issued stock, or once had stock that since has been retired. See 32A *AM. JUR. 2D Federal Courts* § 916, at 317 (2007) (surveying split in case law). A number of courts, relying on the literal language of § 1349, have held that the statute precludes such corporations from invoking federal jurisdiction solely on the basis of their federal charter. See, e.g., *Hancock Fin. Corp. v. Fed. Sav. & Loan Ins. Corp.*, 492 F.2d 1325, 1329 (9th Cir. 1974) (“[W]e hold that jurisdiction is not conferred over the FSLIC merely because it is a federally chartered corporation whose entire stock once was owned by the United States.”); *Burton v. U.S. Olympic Comm.*, 574 F. Supp. 517, 522-24 (C.D. Cal. 1983) (involving U.S. Olympic Committee, which is prohibited from issuing stock); *Crockett Mortgage Co. v. Gov’t Nat’l Mortgage Ass’n*, 418 F. Supp. 1081, 1083 (E.D. Pa. 1976) (involving Ginnie Mae, which has no capital stock). Another group of courts, though, have reasoned that “such blind reliance on the literal wording of section 1349 exalts form over substance.” *Gov’t Nat’l Mortgage Ass’n v. Terry*, 608 F.2d 614, 620 n.10 (5th Cir. 1979) (“[T]he proviso to section 1349 was added to preserve federal question jurisdiction over federally-chartered corporations in which the Government has the controlling interest. Since control of a corporation normally follows from the ownership

handful of other federal corporations receive the benefit of individual statutes. Perhaps the most well-known example is the American National Red Cross. In *American National Red Cross v. S.G.*,¹¹⁰ the Supreme Court held that the organization's chartering statute, which provides the organization with power to "sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States,"¹¹¹ creates original federal jurisdiction over suits involving the Red Cross.¹¹² Similar language appears in the chartering statutes of several other federal corporations.¹¹³ Another group of similar sta-

of a majority of the corporation's capital stock, the congressional use of the words 'unless the United States is the owner of more than one-half of its capital stock' simply represents a short-hand expression for control. The fact that Congress in creating an entity like Ginnie Mae did not engage in the mechanical and formal process of issuing stock and then purchasing it does not detract from the conclusion that the Government controls Ginnie Mae." (citation omitted)); *see also* C.H. v. Am. Red Cross, 684 F. Supp. 1018, 1020-22 (E.D. Mo. 1987) (concluding, after exhaustive review of legislative history of § 1349, that its proviso applies to all corporations controlled by the United States); Jackson v. Tenn. Valley Auth., 462 F. Supp. 45, 51-55 (M.D. Tenn. 1978) (reviewing legislative history and concluding that TVA is owned and controlled by United States even though it has no stock), *aff'd*, 595 F.2d 1120 (6th Cir. 1979) (per curiam) (adopting district court's opinion).

110. 505 U.S. 247 (1992). *Red Cross* was a 5-4 ruling; the dissenting justices believed that the statutory language was insufficient to confer federal jurisdiction. *Id.* at 265 (Scalia, J., dissenting).

111. *See* 36 U.S.C. § 300105(a)(5) (2006) (current version of statute). At the time of the *Red Cross* decision, identical statutory language was codified at 36 U.S.C. § 2 (1988).

112. The majority opinion reasoned that "a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction *if, but only if*, it specifically mentions the federal courts." *Red Cross*, 505 U.S. at 255 (emphasis added). The majority contrasted the language found in the Red Cross's statute with the more general "sue and be sued" language that had been held insufficient to confer federal jurisdiction in *Deveaux*. *See id.* at 255-56; *see also supra* note 60 (discussing the statutory language at issue in *Deveaux*).

For a discussion of the *Red Cross* case and its potential implications for other federally chartered corporations, see Christina M. Maistrellis, Comment, American National Red Cross v. S.G. & A.E.: *An Open Door to the Federal Courts for Federally Chartered Corporations*, 45 EMORY L.J. 771 (1996).

113. *See, e.g.*, 15 U.S.C. § 78ccc(b)(1) (2000) (providing that the Securities Investor Protection Corporation has power to "sue and be sued, complain and defend . . . in any State, Federal, or other court"); *id.* § 657c(d)(4) (providing that the National Veterans Business Development Corporation has power to "sue and be sued, and to file and defend against lawsuits in State or Federal court"); 29 U.S.C. § 1302(b)(1) (providing that the Pension Benefit Guaranty Corporation has power to "sue and be sued, complain and defend . . . in any court, State or Federal"); 42 U.S.C. § 8105(b)(4) (providing that the Neighborhood Reinvestment Corporation has power to "sue and be sued, complain and defend, in any State, Federal, or other court"). Omitted from this list are those corporations whose statutory charters also include the type of "deemer" language discussed *infra* at note 114 and accompanying text.

A number of other statutes, although similar to the statute at issue in *Red Cross*, are phrased somewhat differently; they refer to the power to sue and be sued "*in any court of competent jurisdiction*, State or Federal." *See, e.g.*, 12 U.S.C. § 1432(a) (2000) (Federal Home Loan Banks); *id.* § 1723a(a) (Government National Mortgage Association (Ginnie Mae) and Federal National Mortgage Association (Fannie Mae)); *id.* § 3012(6) (National Consumer Cooperative Bank); 15 U.S.C. § 77dd (Corporation of Foreign Securities Holders). A few courts—reasoning that these statutes' reference to a court of "competent" jurisdiction cannot be satisfied unless there is an independent basis for jurisdiction—have held

tutes provides that actions by or against certain corporations are “deemed to arise under” federal law and thus are within original federal jurisdiction.¹¹⁴

With rare exceptions like the American National Red Cross, however, most of the statutes discussed above apply to government or public corporations—many of which already qualify for federal jurisdiction either under § 1349’s proviso¹¹⁵ or as an agency of the U.S. government.¹¹⁶ Federally chartered business corporations can no

that these statutes do not confer federal jurisdiction. *See, e.g.*, *Knuckles v. RBMG, Inc.*, 481 F. Supp. 2d 559, 562-65 (S.D. W. Va. 2007) (holding that § 1723a(a) does not confer federal jurisdiction over actions to which Fannie Mae is a party); *Fed. Nat’l Mortgage Ass’n v. Sealed*, 457 F. Supp. 2d 41, 43 n.1 (D.D.C. 2006) (discussing cases holding that § 1723a(a) does confer original jurisdiction and stating that “those courts have uniformly given the issue extremely short shrift, applying *American National Red Cross* in mechanical and perfunctory fashion or merely stating, conclusorily and without any analysis, that Section 1723a(a) operates as a grant of jurisdiction”). *But see* *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. Raines*, 534 F.3d 779, 784-88 (D.C. Cir. 2008) (adopting “majority” view that § 1723a(a) confers original jurisdiction; disagreeing with *Knuckles* and *Sealed*).

The newest corporation to receive the benefit of statutory language that *should* prove sufficient under *Red Cross* is the Public Company Accounting Oversight Board (PCAOB), which was created in 2002 as part of the Sarbanes-Oxley Act. *See* 15 U.S.C. § 7211(f)(1) (2006) (providing PCAOB may “complain and defend, in its corporate name and through its own counsel, . . . in any Federal, State, or other court”). The statute provides that PCAOB shall “operate as a nonprofit corporation,” *id.* § 7211(a), and that it “shall not be an agency or establishment of the United States Government, and, except as otherwise provided in this Act, shall be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act,” *id.* § 7211(b). For a discussion of PCAOB and a critique of its purported “private” status, see Donna M. Nagy, *Playing Peekaboo with Constitutional Law: The PCAOB and Its Public/Private Status*, 80 NOTRE DAME L. REV. 975 (2005). *But see* *Free Enter. Fund v. PCAOB*, 537 F.3d 667 (D.C. Cir. 2008) (rejecting Appointments Clause and separation of powers challenges to PCAOB), *cert. granted* 77 U.S.L.W. 3632 (U.S. May 18, 2009) (No. 08-861).

114. *See, e.g.*, 12 U.S.C. § 632 (2006) (any suit to which a Federal Reserve Bank is a party); *id.* § 1441a(a)(11) (any suit to which Thrift Depositor Protection Oversight Board is a party); *id.* § 1441a(l)(1) (any suit to which Resolution Trust Corporation is a party); *id.* § 1441b(h)(4)(A) (any suit to which Resolution Funding Corporation is a party); *id.* § 1452(f) (any suit to which Federal Home Loan Mortgage Corporation (Freddie Mac) is a party); *id.* § 1819(b)(2) (suits to which FDIC is a party, with certain exceptions); *id.* § 2277a-7(4)(b) (any suit to which Farm Credit System Insurance Corporation is a party); *id.* § 2278a-3(b) (any suit to which Farm Credit System Assistance Board is a party); *id.* § 2278b-4(b) (any suit to which Farm Credit System Financial Assistance Corporation is a party); *id.* § 2279aa-14(2) (any suit to which Federal Agricultural Mortgage Corporation is a party); *see also* 7 U.S.C. § 1506(d) (2006) (providing that federal district courts have exclusive jurisdiction over all suits brought by or against the Federal Crop Insurance Corporation); 15 U.S.C. § 146a (same as to all suits brought by or against any China Trade Act corporation); *id.* § 714b(c) (same as to all suits brought by or against the Commodity Credit Corporation); 36 U.S.C. § 220505(b)(9) (providing that federal district courts have original jurisdiction over suits removed to federal court by the U.S. Olympic Committee).

115. *See supra* note 105 and accompanying text.

116. *See* 28 U.S.C. § 1345 (2000) (“Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.”); *see also id.* § 1346 (actions against United States); *id.* § 1442 (removal of actions against agencies of United States and employees of such agencies). A number of federal corporate chartering statutes expressly provide that the corporation will

longer invoke federal jurisdiction simply on the basis of their federal charter alone.

B. Diversity Jurisdiction and Federally Chartered Corporations

1. Congressional Silence and the Bankers Trust Decision

Federally chartered corporations that do not enjoy the blessing of automatic federal question jurisdiction have two possible paths to federal court. Such a corporation may attempt to demonstrate that the *particular suit* to which it is a party arises under federal law. Or, it may attempt to argue that jurisdiction exists on the basis of diversity of citizenship.¹¹⁷

If the federally chartered corporation seeking diversity jurisdiction is one of a select group, it may be in luck. In various federal statutes, Congress has provided that certain types of federal corporations (most notably, national banks¹¹⁸ and federal savings associations¹¹⁹) are deemed to be citizens of designated states for purposes of diversity jurisdiction. These statutes will be discussed in Part. IV.B.5.

But if the federally chartered corporation is not covered by one of these special statutes, its situation is much less clear. When Congress eliminated automatic federal question jurisdiction for federally chartered corporations in the 1925 Act,¹²⁰ it did not specify whether diversity jurisdiction should be available to such corporations. Moreover, § 1332(c)(1), which defines corporate citizenship, applies only to state-chartered corporations, not to federal corporations.¹²¹

be considered an agency of the United States for some or all purposes. *See, e.g.*, 12 U.S.C. § 1441a(b)(1)(B) (2006) (Resolution Trust Corporation); *id.* § 1452(f) (Freddie Mac); *id.* § 1819(b)(1) (FDIC); *id.* § 2279aa-14(1) (Federal Agricultural Mortgage Corporation).

117. For general discussion of federally chartered corporations and diversity jurisdiction, see 32A AM. JUR. 2D *Federal Courts* §§ 743, at 916-17 (2007); 36 C.J.S. *Federal Courts* § 151 (2003); 15 MOORE, *supra* note 55, § 102.56[4]; and 13B WRIGHT ET AL., *supra* note 55, § 3626, at 644-58.

118. *See* 28 U.S.C. § 1348 (2000) (“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.”); *see also infra* notes 220, 224-28 and accompanying text (discussing 28 U.S.C. § 1348). Section 1348 is the current version of the language adopted in the 1887 Act, quoted *supra* at note 102.

119. *See* 12 U.S.C. § 1464(x) (2006); *see also infra* notes 223, 230-31 and accompanying text (discussing 12 U.S.C. § 1464(x)).

120. *See supra* note 105.

121. *See* *Hancock Fin. Corp. v. Fed. Sav. & Loan Ins. Corp.*, 492 F.2d 1325, 1329 (9th Cir. 1974); *Excelsior Funds, Inc. v. JP Morgan Chase Bank, N.A.*, 470 F. Supp. 2d 312, 322-23 (S.D.N.Y. 2006); *Burton v. U.S. Olympic Comm.*, 574 F. Supp. 517, 519-20 (C.D. Cal. 1983) (“[T]here is no evidence that Congress ever considered the applicability of the 1958 amendment to federal corporations.”); 15 MOORE, *supra* note 55, § 102.56[4], at 102-31 (“[T]he 1958 amendment enacting subdivision (c) of Section 1332 . . . affected the jurisdictional status of state-incorporated companies only, leaving the status of federal corporations to future judicial elaboration.”).

This congressional silence created a state of uncertainty regarding the jurisdictional status of federally chartered corporations that persists to the current day. The Supreme Court has not helped the situation much, having addressed the issue on only one occasion. That single opinion, though, did not hold out much hope for federally chartered corporations seeking a federal forum on the basis of diversity of citizenship.

*Bankers Trust Co. v. Texas & Pacific Railway Co.*¹²² reached the Court in 1916, just a year after Congress enacted the 1915 Act that eliminated automatic federal question jurisdiction in cases involving federally chartered railway companies.¹²³ The case involved a suit to foreclose a mortgage on railroad property.¹²⁴ The plaintiff trustee was alleged to be a citizen of the State of New York.¹²⁵ The defendant, the Texas & Pacific Railway Company, had been incorporated under an act of Congress.¹²⁶ The plaintiff alleged that this federally chartered railroad “ha[d] its principal place of business and its principal operating and general offices in the Northern District of Texas, and [‘was] a resident and inhabitant’ of that district.”¹²⁷

The Supreme Court, in an opinion by Justice Van Devanter, affirmed the dismissal of the suit for lack of subject matter jurisdiction.¹²⁸ The bulk of the opinion addressed the 1915 Act and essentially concluded that the Act states exactly what it appears to state: that a suit by or against a federally chartered railway company does not arise under federal law simply by virtue of that corporation’s federal charter.¹²⁹ But the Court also rejected the plaintiff’s attempt to invoke diversity jurisdiction.¹³⁰ In a single-paragraph discussion of this issue, the Court stated it was “of [the] opinion that the company is not a citizen of any state.”¹³¹ The Court continued: “It was incorporated under acts of Congress, not under state laws; and its activities

122. 241 U.S. 295 (1916).

123. See *supra* note 104 for a discussion of the 1915 Act.

124. *Bankers Trust*, 241 U.S. at 301.

125. *Id.*

126. *Id.* at 302 (citing Act of Mar. 3, 1871, ch. 122, § 1, 16 Stat. 573, 573, and later amendatory acts). A second defendant, the New Orleans Pacific Railway Company, was a Louisiana corporation. *Id.* at 301-02.

127. *Id.* at 301.

128. *Id.* at 310.

129. *Id.* at 305-09. Justice Van Devanter later testified to Congress in favor of expanding the effect of the railway statute to apply to federally chartered corporations generally. See *supra* note 106.

The Court also concluded that the language of the federal acts that created the railroad—which provided that the railroad “shall be able to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States”—did not confer federal jurisdiction over suits involving the company. See *Bankers Trust*, 241 U.S. at 303-05 (quoting Act of Mar. 3, 1871, ch. 122, § 1).

130. *Id.* at 309-10.

131. *Id.* at 309.

and operations were not to be confined to a single state, but to be carried on, as in fact they are, in different states.”¹³² Moreover, “Congress [has not] said that it shall be regarded as possessing state citizenship for jurisdictional purposes, as is done in respect of national banks.”¹³³

Somewhat surprisingly, the Court in *Bankers Trust* did not cite or attempt to distinguish its line of cases involving the citizenship of state-chartered corporations. In this regard, the Court stated only:

Of course [a federally chartered railroad] is a citizen of the United States in the sense that a corporation organized under the laws of one of the states is a citizen of that state, but it is not within the clause of the Fourteenth Amendment which declares that native born and naturalized citizens of the United States shall be citizens of the state wherein they reside.¹³⁴

Bankers Trust appeared to leave federally chartered corporations in a perilous jurisdictional status. While the case dealt specifically with railroad corporations and the 1915 Act, the 1925 Act used very similar language,¹³⁵ and thus there is no reason to believe that the Court would have viewed other federally chartered corporations differently.¹³⁶ The Court’s emphatic statements that the railway company possessed national but not state citizenship appear to apply equally to all federally chartered corporations. Further, the Court made specific mention that Congress had not statutorily provided for state citizenship of railroad companies as it had done for national banks, a fact that generally holds true for other federally chartered corporations as well.

However, the Court’s observation that the activities of the railroad in *Bankers Trust* were not limited to a single state, either by its charter or in practice, left some wiggle room. Federal corporations began to argue that they could be considered citizens of a particular state if their activities were limited to that state—in other words, that courts should recognize a localization exception to the *Bankers Trust* rule, even though the Supreme Court has never recognized the exception.

For approximately forty years after *Bankers Trust*, however, most cases that addressed whether a federally chartered corporation could qualify for diversity jurisdiction rejected those efforts. A leading case

132. *Id.* The opinion did not detail the geographical extent of the railroad company’s activities, apart from a mention of “certain railroad properties and interests in Texas and Louisiana.” *Id.* at 302.

133. *Id.* at 310 (citation omitted).

134. *Id.* at 309-10.

135. Compare *supra* note 104 (text of 1915 Act), with *supra* note 105 (text of 1925 Act).

136. See also *Fed. Intermediate Credit Bank of Columbia, S.C. v. Mitchell*, 277 U.S. 213, 214 (1928) (stating in dicta that “[s]tate citizenship does not result from the mere creation of a corporation under federal law” (citing *Bankers Trust*, 241 U.S. at 309)).

from this period is *First Carolinas Joint Stock Land Bank of Columbia v. New York Title & Mortgage Co.*¹³⁷ That case involved a suit brought by the First Carolinas Joint Stock Land Bank, a federally chartered corporation that had its principal place of business in Columbia, South Carolina, but was authorized to operate in both North Carolina and South Carolina.¹³⁸ The court emphatically rejected arguments that jurisdiction based on diversity of citizenship existed in the case.¹³⁹ “The general rule,” the court declared, “undoubtedly is that the citizenship of a federal corporation created to operate in one or more states is national only. Such a corporation has no state citizenship for jurisdictional purposes unless Congress so enacts.”¹⁴⁰

A couple of things should be noted concerning the court’s opinion in *First Carolinas*. First, the court’s ruling did not turn on the fact that the Bank conducted activities in more than one state; the court specifically stated that the “general rule” applies whether the corporation operates “in *one or more* states.”¹⁴¹ Second, the court was quite clear in stating that only Congress can overrule the general rule: “Congress has not seen fit to vest Joint Stock Land Banks with state citizenship as it has done in the case of national banks and Intermediate Credit Banks.”¹⁴²

Consistent with the analysis in *Bankers Trust* and *First Carolinas*, many federal corporations have been found by courts to be national citizens only, lacking state citizenship for purposes of diversity jurisdiction. These corporations have included Little League Base-

137. 59 F.2d 350 (E.D.S.C. 1932).

138. *Id.* at 350. The suit originally was filed in state court, but the defendant, a New York corporation, sought to remove it to federal court on the basis of diversity of citizenship. *Id.*

139. *Id.* at 350-51. The court also noted that the 1925 Act had taken “away jurisdiction on the ground of federal incorporation alone.” *Id.*

140. *Id.* at 350; *see id.* at 351 (“[T]he true situation seems now to be that a corporation organized under an act of Congress has no state citizenship for jurisdictional purposes unless Congress specifically declares such corporation to have a state citizenship.”); *see also* *Dallas Joint Stock Land Bank v. Am. Employers’ Ins. Co.*, 35 F. Supp. 927 (N.D. Tex. 1940). In *Dallas Joint Stock*, the court concluded that a Joint Stock Land Bank that transacted business in Texas and Oklahoma was not a citizen of any state, as Congress had provided for state citizenship for Federal Intermediate Credit Banks, *see infra* note 221, but had not similarly provided for state citizenship for Joint Stock Land Banks. *See Dallas Joint Stock*, 35 F. Supp. at 927-28; *see also id.* at 928 (“We are driven to wonder why Congress did not fix the citizenship of the Joint Stock Land Bank as it did the Intermediate Credit Bank, in the same chapter, if it really meant that the Joint Stock Land Bank should have a local citizenship status. We must conclude that no such local status was intended.”).

An earlier decision assumed that the Central Illinois Joint Stock Land Bank would have been a citizen of Illinois for jurisdictional purposes. *See St. Louis Joint Stock Land Bank v. Fithian*, 43 F.2d 866, 866-67 (E.D. Ill. 1930). However, that assumption was dicta in the case, and the court did not provide a basis for the assumption.

141. *First Carolinas*, 59 F.2d at 350 (emphasis added). The court believed the “plain terms” of the 1925 Act supported this “general rule.” *See id.* at 351 (discussing effect of 1925 Act).

142. *Id.*

ball, Inc.,¹⁴³ the American Legion,¹⁴⁴ the Civil Air Patrol,¹⁴⁵ the Tennessee Valley Authority,¹⁴⁶ the Disabled American Veterans,¹⁴⁷ the Veterans of Foreign Wars,¹⁴⁸ and the U.S. Olympic Committee,¹⁴⁹ among others.¹⁵⁰

2. *The Localization Exception Takes Root*

Despite the restrictive construction of federal jurisdiction found in the early case law, eventually a number of courts began to hold that a federally chartered corporation could be considered a citizen of a particular state if the activities of the corporation were “localized” in that state. A 1956 case from the District of Oregon, *Elwert v. Pacific First Federal Savings & Loan Ass’n*,¹⁵¹ was the first case to adopt what came to be known as the localization exception.

The plaintiff in *Elwert*, a citizen of Oregon, sued a federal savings and loan association, Pacific First Federal.¹⁵² The defendant’s principal office was in Tacoma, Washington, but it also operated branches in two other cities in Washington and in two cities in Oregon.¹⁵³

143. *Little League Baseball, Inc. v. Welsh Publ’g Group, Inc.*, 874 F. Supp. 648, 655 (M.D. Pa. 1995). For further discussion of this case, see *infra* notes 188-97 and accompanying text.

144. *Harris v. Am. Legion*, 162 F. Supp. 700, 710 (S.D. Ind. 1958) (holding that the American Legion has national citizenship only), *aff’d*, 261 F.2d 594 (7th Cir. 1958) (adopting district court’s opinion); see also *Meteraud v. Am. Legion*, No. C/A 2:07-447-DCN, 2007 WL 1794937, at *2 (D.S.C. June 18, 2007) (citing *Harris*, 162 F. Supp. at 705-06) (same holding).

145. *Petrousky v. Civil Air Patrol, Inc.*, No. 97-CV-1708, 1998 WL 213726, at *2 (N.D.N.Y. Apr. 10, 1998) (holding that the Civil Air Patrol is a national citizen only).

146. *Monsanto Co. v. Tenn. Valley Auth.*, 448 F. Supp. 648, 651 (N.D. Ala. 1978) (holding that TVA, which conducts activities in four states, is not a citizen of any state).

147. *Rice v. Disabled Am. Veterans*, 295 F. Supp. 131, 134 (D.D.C. 1968) (holding that the DAV is a national citizen only).

148. See *Crum v. Veterans of Foreign Wars*, 502 F. Supp. 1377, 1381 (D. Del. 1980) (holding that the VFW is not a state citizen for diversity purposes); see also *Wandless v. Hughes*, No. 5:07CV00111, 2008 WL 857065, at *4 n.4 (W.D. Va. Mar. 31, 2008) (citing *Crum*) (holding that the VFW is national citizen only).

149. *Burton v. U.S. Olympic Comm.*, 574 F. Supp. 517, 522 (C.D. Cal. 1983) (holding that the USOC has national citizenship only).

150. See, e.g., *Hancock Fin. Corp. v. Fed. Sav. & Loan Ins. Corp.*, 492 F.2d 1325, 1329 (9th Cir. 1974) (holding that the FSLIC is a national citizen only); *Redington v. Touche Ross & Co.*, 428 F. Supp. 483, 493 (S.D.N.Y. 1977) (holding that the Securities Investor Protection Corporation is a national citizen only), *rev’d on other grounds*, 592 F.2d 617 (2d Cir. 1978), *rev’d on other grounds*, 442 U.S. 560 (1979); *FDIC v. Nat’l Sur. Corp.*, 345 F. Supp. 885, 887 (S.D. Iowa 1972) (holding that the FDIC is a national citizen only).

151. 138 F. Supp. 395 (D. Or. 1956).

152. *Id.* at 396-97. By virtue of the national bank statute to be discussed *infra* at note 220 and accompanying text, codefendant Bank of California was deemed to be a citizen of California, the state in which its home office was located. See *id.*

153. *Id.* at 397, 399. The Association’s charter provided that its “home office” was to be in Tacoma, Washington, but the Federal Home Loan Bank Board had also authorized the Association to operate branch offices in Seattle and Bellingham, Washington, and in Portland and Eugene, Oregon. *Id.* at 399.

The court noted that, due to the 1925 Act, jurisdiction could not be sustained simply on the basis of the Association's federal incorporation.¹⁵⁴ The court nevertheless claimed that the Association could be regarded as a citizen of Washington because the "Association is, under the basic law as well as its charter, localized within the single state of the State of Washington."¹⁵⁵ The court attempted to distinguish prior decisions such as *Bankers Trust* and *First Carolinas* on the basis that each of those cases involved "a federal corporation authorized to transact its business in *several* states as distinguished from a federal corporation localized to a single state."¹⁵⁶

The court in *Elwert* addressed whether the existence of a special statute for national banks should lead to the conclusion that other federally chartered corporations should not be regarded as having state citizenship. The court acknowledged that it could be inferred from the fact that the statute addresses only national banks "that Congress intended by exclusion to deny to Federal corporations other than national banking associations the attribute of state citizenship for the purposes of the jurisdiction of the Federal courts."¹⁵⁷ But the court also thought that the national bank statute could be read as one expressing a general federal "policy that a corporation localized in any particular state shall be regarded as a citizen of that state."¹⁵⁸ The court believed that the rule stated in the national bank statute was "merely a codification of the Federal common law," which, the court claimed, recognized a localization rule for national banks.¹⁵⁹

The court's rationale in *Elwert* proves less than compelling in several respects.¹⁶⁰ Whether or not the court was correct that there was, at one time, a federal common law localization rule,¹⁶¹ it is extremely

The Association's charter was issued in 1937. Federal chartering of savings and loan associations was first authorized by the Home Owners Loan Act of 1933. *See id.*

154. *Id.* at 400.

155. *Id.*

156. *Id.* at 401; *see also id.* at 400 (asserting these cases stand for proposition "that a federal corporation which is organized to do business in several states is not a citizen of the state in which its principal office is located or of any other state within which it engages in its business").

157. *Id.* at 401 (quoting Annotation, *Status, Citizenship, Domicil, Residence, or Location of National Corporations*, 88 A.L.R. 873, 874 (1934)). The Annotation quoted in *Elwert* further noted that "[s]uch an inference may possibly be, and is, justified with respect to Federal banks other than national banking associations, on the theory of a logical implied exclusion of some members of a class, arising from the express inclusion in the statute of other members of the same general class." *Id.*

158. *Id.* at 401-02 (quoting Annotation, *supra* note 157, at 874).

159. *Id.* at 402.

160. These points are also discussed in *infra* Part VI.B.

161. The court cited only two cases in support of this supposedly "established" federal common law, both of which were trial court opinions involving national banks. *See Elwert*, 138 F. Supp. at 401 (citing *Orange Nat'l Bank v. Traver*, 7 F. 146 (C.C.D. Or. 1881), and *Mfrs. Nat'l Bank v. Baack*, 16 F. Cas. 671 (C.C.S.D.N.Y. 1871) (No. 9,052)). *Baack*, which provided support for *Orange National Bank*, rested upon an extensive examination of the

doubtful that such a rule survived the *Bankers Trust* decision and the adoption of the 1925 Act. The ruling in *Bankers Trust* was clear and unequivocal and seemed to brook no exception to the rule that a federally chartered corporation lacks state citizenship, absent express congressional direction to the contrary. Moreover, Congress clearly knew how to specify that a federally chartered corporation should be entitled to qualify for diversity jurisdiction, as it had done in the National Bank Act and in other statutes; therefore, the fact that Congress did not do so as part of the 1925 Act arguably indicates that Congress did not intend to allow for diversity jurisdiction except as it otherwise had provided for in specific statutes. Similarly, *Elwert* also was a factually poor case in which to establish a localization rule, as the activities of the savings and loan association in that case seem to have been no more “localized” than those of the joint stock land bank in *First Carolinas*.¹⁶²

However shaky the foundations for the localization rule may have been, it soon was adopted by other federal courts. The first court of appeals to endorse the localization rule was the Third Circuit in *Feuchtwanger Corp. v. Lake Hiawatha Federal Credit Union*.¹⁶³ In that case, a New York corporation sued a federally incorporated credit union, claiming that the credit union should be regarded as a citizen of New Jersey for purposes of diversity jurisdiction.¹⁶⁴ The credit union’s charter provided it was to “maintain its office” and “operate” at Lake Hiawatha, New Jersey, and the charter further limited

statutes then governing national banks and a conclusion that those statutes “located” national banks at *one* location in *one* state. *Baack*, 16 F. Cas. at 673 (“It is quite apparent, from all these statutory provisions, that congress regards a national banking association as being ‘located’ at the place specified in its organization certificate. . . . It is, indeed, located at but one place in the state . . .”). Thus, to the extent that these cases “established” any rule, it arguably would not have extended to federal corporations that were *not* limited by law to a single location in a single state.

162. Recall that the joint stock land bank in *First Carolinas* had its principal place of business in Columbia, South Carolina, but operated in both North and South Carolina. *First Carolinas Joint Stock Land Bank of Columbia v. N.Y. Title & Mortgage Co.*, 59 F.2d 350, 350 (E.D.S.C. 1932). Similarly, the savings and loan (S&L) in *Elwert* had its principal office in Tacoma, Washington, but also operated branches in two Oregon cities. *Elwert*, 138 F. Supp. at 399. Nothing in the facts discussed in the *Elwert* opinion indicates how the S&L’s business was distributed or what percentage of that business was concentrated in Washington state. Moreover, although the S&L’s charter mentioned only the Tacoma home office, the operation of the other branch offices in both Washington and Oregon had been authorized by the Federal Home Loan Bank Board. *Id.* Therefore, any claim that the S&L was “localized” in Washington on the basis of its charter would seem rather spurious.

Interestingly, another judge of the same court later concluded that Pacific First Federal lacked state citizenship because it operated in more than one state. *Gitschlag v. Pac. First Fed. Sav. & Loan Ass’n*, No. 81-516 (D. Or. Jan. 18, 1982), reprinted in Lawrence N. Scult, Note, *Diversity Jurisdiction and Federal Savings and Loan Associations: Towards a New Theory of State Citizenship*, 3 ANN. REV. BANKING L. 243, 261-62 (1984).

163. 272 F.2d 453 (3d Cir. 1959).

164. *Id.* at 454.

membership in the credit union to persons living or working in Lake Hiawatha.¹⁶⁵

The court noted that “the statute and the charter combined to make this a peculiarly local institution of a single community in the state of New Jersey,”¹⁶⁶ but the court acknowledged that the federal statute said nothing about citizenship of federal credit unions for purposes of diversity jurisdiction.¹⁶⁷ The court further acknowledged that “[t]he judge-made rule which for diversity purposes attributes to a corporation citizenship in the state of its incorporation simply does not apply to a corporation not chartered by any state.”¹⁶⁸ The court nevertheless believed that the extension of such a rule to an organization such as the defendant credit union, whose membership and activities were limited to a single location, was “logical.”¹⁶⁹ The court also asserted that if diversity jurisdiction exists for the purpose of guarding against local bias, such bias “is more likely to be present in the case of a corporation thus localized in fact than one which is connected with the state only in the formal sense of having been incorporated there.”¹⁷⁰

The *Lake Hiawatha* court also claimed, as had the court in *Elwert*, that “early cases” had recognized a localization rule for federally chartered banks and that *Bankers Trust* “recognized and respected” these early cases.¹⁷¹ The court acknowledged that *First Carolinas* and other cases involving joint stock land banks “seem to look the other

165. *Id.* The full language in the charter regarding membership provided the following: “[T]he field of membership will be limited to those having the following common bond of association, occupation or residence: permanent residents of and those working in Lake Hiawatha, New Jersey; employees of this credit union; members of their immediate families; and organizations of such persons.” *Id.* (quoting § 5 of charter). At the time of the *Lake Hiawatha* decision, the federal statute that authorized the creation of credit unions provided that membership was to be “limited to groups having a common bond of occupation, or association, or to groups within a well-defined neighborhood, community, or rural district.” *Id.* (quoting 12 U.S.C. § 1759).

166. *Id.* at 454-55.

167. *Id.*

168. *Id.* at 455.

169. *Id.*

170. *Id.*

171. *Id.* The court again cited the same two nineteenth century lower court cases that *Elwert* had relied upon. *See id.*; *see also supra* note 161 (discussing the two cited cases). The court also claimed that the Supreme Court in *Bankers Trust* “held that an interstate railroad chartered by the United States was not a citizen of any state for diversity purposes, but at the same time was careful to distinguish this situation from that of a federal corporation, the activities and operations of which were confined to a single state.” *Lake Hiawatha*, 272 F.2d at 455. But the court cited no language from *Bankers Trust* in which the Supreme Court supposedly made such a “careful” distinction or “recognized and respected” the earlier case law. *See id.* *Bankers Trust*, in fact, did not even cite the earlier cases. *See supra* note 134 and accompanying text.

way,”¹⁷² but the court believed the result reached by *Elwert* was more “sound.”¹⁷³

Despite the claim by the *Lake Hiawatha* court that it was “logical” to extend a localization rule to federally chartered corporations like the credit union in that case, the court provided no persuasive support for the authority of federal courts to craft such a rule in the absence of statutory authority. But *Lake Hiawatha* at least provided a better factual platform on which to found such a rule than *Elwert* had provided because the activities of that credit union were more truly confined to a single state both by its charter and in actual operation.

3. Expansion of the Localization Exception

A number of other federal decisions soon followed the lead of *Elwert* and *Lake Hiawatha* in recognizing a localization rule for federally chartered corporations. Some of the cases expressly adopted such a rule,¹⁷⁴ while others implicitly assumed, with little or no discussion,

172. *Lake Hiawatha*, 272 F.2d at 455 (citing *Dallas Joint Stock Land Bank v. Am. Employers' Ins. Co.*, 35 F. Supp. 927 (N.D. Tex. 1940), and *First Carolinas Joint Stock Land Bank of Columbia, S.C. v. Page*, 2 F. Supp. 529 (M.D.N.C. 1932)).

173. *Id.* at 456. The court also noted that 28 U.S.C. § 1332 recently had been amended to add subsection (c), providing that a corporation was to be not only a citizen of its state of incorporation but also the state in which it maintained its principal place of business. *See id.* The court thus stated that “for the future, localization less extreme than we have in this case will suffice to establish corporate citizenship in the administration of diversity jurisdiction.” *Id.* But regardless of the general accuracy of this statement, the court did not attempt to explain how this had any bearing on the citizenship of *federally chartered* corporations, which are not governed by that statute.

174. In *Provident National Bank v. California Federal Savings & Loan Ass'n*, 624 F. Supp. 858 (E.D. Pa. 1985), the court held the defendant federal savings and loan association to be a citizen of California on the basis that “defendant had 138, or 71%, of its branch offices in California and had a substantial amount of its deposits and outstanding loans in California.” *Id.* at 861. The court reached this conclusion even though the defendant also operated thirty-seven branches in Florida, thirteen branches in Georgia, and six branches in Nevada, as well as a substantial number of depositors from other states, including Pennsylvania, the state of the plaintiff's citizenship. *Id.* at 859. The court, though, did not identify any general factors to be considered or how any of those factors should be weighed. *See id.* at 861; *see also Westcap Gov't Sec., Inc. v. Homestead Air Force Base Fed. Credit Union*, 697 F.2d 911, 911 n.1 (11th Cir. 1983) (finding activities of federal credit union were sufficiently localized when it was alleged to be “located in Dade County, Florida” (citing *Lake Hiawatha*, 272 F.2d at 455-56)); *Trent Realty Assocs. v. First Fed. Sav. & Loan Ass'n of Phila.*, 657 F.2d 29, 31 (3d Cir. 1981) (concluding, without discussion of scope of corporation's activities, that “First Federal, a Pennsylvania based federal savings and loan association, is deemed a citizen of Pennsylvania,” and citing *Lake Hiawatha*, 272 F.2d at 455-56, for the proposition that a “federally chartered corporation has citizenship of [the] state where [it is] based”); *Conjugal Soc'y v. Chicago Title Ins. Co.*, 497 F. Supp. 41, 46-47 (D.P.R. 1979) (concluding, based on *Elwert v. Pac. First Fed. Sav. & Loan Assoc.*, 138 F. Supp. 395 (D. Or. 1956), that federal savings and loan association was a citizen of Puerto Rico, where its home office was located, and including no discussion of whether association conducted activities or had offices outside of Puerto Rico), *vacated on other grounds*, 646 F.2d 688 (1st Cir. 1981); *Parker Drilling Co. v. Metlakatla Indian Cmty.*, 451 F. Supp.

that the federal corporation was a citizen of the state in which the corporation maintained its principal place of business.¹⁷⁵

A number of commentators and cases have taken the view that the localization exception should apply only when a corporation's activities are confined to a single state.¹⁷⁶ But although many of the cases have featured corporations whose activities were either limited to or predominantly concentrated within one state, a number of courts have expressly held that a federal corporation may be considered to be "localized" for purposes of diversity jurisdiction even though its activities are spread over several states.¹⁷⁷

1127, 1138 (D. Alaska 1978) (holding that a Native American corporation whose only major activities were conducted in Alaska is an Alaskan citizen).

175. See, e.g., *Equilease Corp. v. State Fed. Sav. & Loan Ass'n*, 647 F.2d 1069, 1070 (10th Cir. 1981) (stating, without discussion, that "jurisdiction vests by virtue of diversity of citizenship"); *First S. Fed. Sav. & Loan Ass'n of Mobile, Ala. v. First S. Sav. & Loan Ass'n of Jackson County, Miss.*, 614 F.2d 71, 72-73 (5th Cir. 1980) (finding, without discussion, that district court "correctly found" diversity jurisdiction to exist; offices of federal savings and loan association appear to have been located only in Alabama); *Cnty. Fed. Sav. & Loan Ass'n of Overland v. Gen. Cas. Co. of Am.*, 274 F.2d 620, 621 (8th Cir. 1960) (stating conclusively that "[j]urisdiction based upon diversity of citizenship and the requisite amount is established" and stating that the plaintiff is "engaged in the business of a savings and loan association in St. Louis County, Missouri"); *Lincoln Sav. Bank, FSB v. Unicorp Energy Corp.*, No. 91 CIV. 7370 (WK), 1992 WL 26771, at *1 (S.D.N.Y. Jan. 31, 1992) (determining implicitly, without discussion, that savings bank was New York citizen); *Lee Constr. Co. v. Fed. Reserve Bank of Richmond*, 558 F. Supp. 165, 169-70 (D. Md. 1982) (determining that federally chartered savings bank was citizen of Maryland, the state in which its principal place of business was located); *First Fed. Sav. & Loan Ass'n of Harrison, Ark. v. Myrick*, 533 F. Supp. 1041, 1043 (W.D. Ark. 1982) (accepting, without discussion, that federal savings and loan association was citizen of Arkansas for purposes of diversity with no discussion of scope of corporation's activities); *Sec. Pac. Nat'l Bank v. First Fed. Sav. & Loan Ass'n of Wilmette*, 487 F. Supp. 909, 909-10 (N.D. Ill. 1980) (stating that jurisdiction is proper based on diversity of citizenship, based upon finding of fact regarding principal place of business, but no other findings regarding its locations or activities).

176. See 15 MOORE, *supra* note 55, § 102.56[4], at 102-131 ("To be localized, the corporation's activities must be confined to one particular state."); see also *Petrousky v. Civil Air Patrol, Inc.*, No. 97-CV-1708, 1998 WL 213726, at *1 (N.D.N.Y. Apr. 10, 1998) (noting that a "federally chartered corporation is considered 'local' [if] its business is limited to a single state, either by charter, by statute, or in fact"); *Engelmeyer v. Prod. Credit Ass'n of the Midlands*, 652 F. Supp. 1235, 1236 (D.S.D. 1987) ("To be 'localized,' the corporation's activities must be confined to one particular state."); *Parker Drilling*, 451 F. Supp. at 1138 ("The distinguishing factor in several cases has been whether the federally chartered corporation generally had a situs within one state or was authorized to do business and doing business in several states.")

177. For instance, in *Waldron Midway Enterprises, Inc. v. Coast Federal Bank*, No. CV-91-1750 (RJD), 1992 WL 81724 (E.D.N.Y. Apr. 10, 1992), the court stated that "the availability of the localization exception should not be determined by any simplistic numerical formula, but instead should involve a more thorough and realistic inquiry into the nature of the corporation's business." *Id.* at *1. The court suggested that

[c]ourts should look to a variety of factors, including the corporation's principal place of business, the existence, if any, of branch offices outside the state, the volume of business transacted in different states, and any other evidence that tends to show the local or national nature of the corporation's plans and operations.

A leading opinion for this view is the Eleventh Circuit's opinion in *Loyola Federal Savings Bank v. Fickling*.¹⁷⁸ The federal savings bank in *Loyola* had its principal place of business in Maryland, and "[a]ll but one of its thirty-one branch offices" were in that state.¹⁷⁹ A substantial majority of bank's residential mortgage loans were for property located in Maryland.¹⁸⁰ But the savings bank also loaned money secured by property in other states, including the loan relating to South Carolina property involved in this case.¹⁸¹ Based on these facts, the district court found that the interstate activities of the savings bank were not sufficiently "localized" in a particular state.¹⁸²

The court of appeals, though, thought this reflected "too restrictive an application of the localization test"¹⁸³ and that the issue of whether a federal corporation is sufficiently localized "should not be simply a question as to whether that corporation's activities are exclusive to one state."¹⁸⁴ The court explained:

Such an evaluation should involve a more expansive investigation into the corporation's business. A variety of factors are relevant to this inquiry, such as the corporation's principal place of business, the existence of branch offices outside the state, the amount of business transacted in different states, and any other data providing evidence that the corporation is local or national in nature.¹⁸⁵

Id. The court found the federal savings bank to be a citizen of California because it maintained its principal office in Los Angeles County, because it did not operate any offices outside of California, because it "consistently targeted its business activity to California," and because "[o]ut of state loans account for less than five per cent of [the bank's] business." *Id.* at *2; see also *id.* ("Moreover, regardless of the scope of the defendant's authority to do business statewide, or nationwide, . . . the fact remains that the *actual* business of Coast is overwhelmingly local in nature." (citation omitted)).

178. 58 F.3d 603 (11th Cir. 1995).

179. *Id.* at 606.

180. *Id.* For loans relating to property outside of Maryland, "payments were made in Maryland." *Id.*

181. See *id.* at 605.

182. See *id.* at 606 (summarizing the district court's ruling). The district court apparently relied upon the Third Circuit's holding in *Lake Hiawatha*. *Id.* (stating that "the district court felt constrained in extending its analysis past those facts found in [*Lake Hiawatha*]," where "the credit union in question restricted its operations to one particular community within the state of New Jersey"). The Eleventh Circuit had relied upon *Lake Hiawatha* in a previous case, *Westcap Government Securities, Inc.*, which is summarized *supra* at note 174.

183. *Loyola Federal*, 58 F.3d at 606. The court also stated that *Lake Hiawatha* had "demonstrated a similar thought when it said, '[t]hus, for the future, localization less extreme than we have in this case will suffice to establish corporate citizenship in the administration of diversity jurisdiction.'" *Id.* (alteration in original) (quoting *Feuchtwanger Corp. v. Lake Hiawatha Fed. Credit Union*, 272 F.2d 453, 456 (3d Cir. 1959)); see also *supra* note 173.

184. *Loyola Federal*, 58 F.3d at 606.

185. *Id.*

Applying these factors to *Loyola Federal*, the court of appeals found it to be a Maryland citizen “through its localized activities.”¹⁸⁶

4. *Recent Restrictions of the Localization Exception*

Although the localization exception is now firmly entrenched, a number of courts have been critical of expanding the exception to federal corporations that operate in more than a single state.¹⁸⁷ One of the strongest statements along these lines can be found in *Little League Baseball, Inc. v. Welsh Publishing Group, Inc.*¹⁸⁸ The court there indicated that a federally chartered corporation may be deemed a citizen of a particular state when its activities “are limited to a single state, either factually or by charter,”¹⁸⁹ but “if the corporation is organized to do business in several states, and in fact does so, it has national citizenship only.”¹⁹⁰

The court emphasized that determining whether a federally chartered corporation is sufficiently localized is significantly different from determining the principal place of business of a state-chartered corporation.¹⁹¹ Stating that “[t]he main difference between the two analyses is the end result sought,”¹⁹² the court further explained:

186. *Id.* Other courts, relying upon *Loyola Federal*, have found particular federal corporations to be sufficiently localized even though they conducted activities in several states. *See, e.g.*, *Sovereign Bank v. Chicago Title Ins. Co.*, No. CIV. A. 00-596, 2000 WL 1100800 (E.D. Pa. Aug. 7, 2000). In *Sovereign Bank*, the savings bank was headquartered in Pennsylvania but had 137 branches in New Jersey and six in Delaware, plus nonbranch offices in five other states. *Id.* at *1. The court found that the localization exception applied because more than half of bank’s employees, branches, and ATMs were in Pennsylvania, because more than seventy percent of its loans originated in Pennsylvania, and because its holding company and several wholly-owned subsidiaries were Pennsylvania corporations. *Id.*

187. *See, e.g.*, *First Nationwide Bank v. Gelt Funding, Inc.*, No. 92 Civ 0790 (MBM), 1992 WL 358759, at *9-10 (S.D.N.Y. Nov. 30, 1992) (refusing to extend localization exception to California-based savings institution that made over 1000 loans in New York totaling over \$1 billion and holding that the localization “exception entails a ‘higher level of involvement with a state than is required to establish a principal place of business under § 1332(c)(1)’” (quoting 1 JAMES WM. MOORE ET AL., *MOORE’S FEDERAL PRACTICE* ¶ 0.77 (2.-4) (2d ed. 1991))); *see also* cases cited *supra* note 176.

188. 874 F. Supp. 648 (M.D. Pa. 1995). In that case, Little League Baseball, a federally chartered corporation, commenced a breach of contract action in state court. *Id.* at 649. The defendant removed the case to federal district court, alleging that it was a citizen of New York and that Little League Baseball was a citizen of Pennsylvania. *Id.* at 649-50.

189. *Id.* at 651. The court noted that Little League Baseball was “authorized by statute to conduct its activities throughout the United States and abroad.” *Id.* (citing 36 U.S.C. § 1075(a)). The court therefore devoted the remainder of its discussion to “whether *in fact* the activities of the corporation are confined within the territory of the Commonwealth of Pennsylvania such that the activities may be said to be localized.” *Id.* (emphasis added).

190. *Id.* (“A federally chartered corporation with widespread activities, authorized and actual, may not be the subject of diversity jurisdiction absent specific statutory language providing for citizenship in a particular state or incorporating the entity as a ‘body corporate’ of a particular state.”).

191. *Id.* at 652 (“Defendant’s contention, however, confuses the concepts of proving the citizenship of a corporation incorporated under state law with evidence of its principal place of business and proving the citizenship of a federally chartered corporation with evi-

The test for state corporations is a comparison of states to see in which state the operations of the corporation are most concentrated; that state is the principal place of business of the corporation. The test for federal corporations is not a comparison but an examination of whether or not the corporation conducts its activities over a widespread area. If so, then its activities are not localized.¹⁹³

The court was willing to assume that Little League Baseball had its principal place of business in South Williamsport, Pennsylvania.¹⁹⁴ After reviewing the corporation's extensive activities in other states and around the world,¹⁹⁵ the court found that those activities were

dence that its activities are localized."); *Burton v. U.S. Olympic Comm.*, 574 F. Supp. 517, 522 n.7 (C.D. Cal. 1983) ("[L]ocalization requires confinement of activities, either by charter or in fact, to a single state, whereas a principal place of business can be maintained despite the transaction of interstate business. . . . [T]he tests for localization and principal place of business have not been assimilated. While, in order to be localized in a particular state, a federal corporation must have its principal place of business in that state, maintenance of a principal place of business does not in and of itself amount to localization.").

For a good example of the mischief that can ensue when a court loses sight of this distinction, see *Ponce de Leon Federal Savings Bank v. Ensign Bank, F.S.B.*, No. 86 CIV. 7583 (SWK), 1987 WL 14912 (S.D.N.Y. July 23, 1987). There, the court was considering a suit between two federal savings banks. *Id.* at *2. The court first found, without any discussion, that the plaintiff bank was a citizen of New York because its "principal offices" were located there; the court gave no discussion to what activities the plaintiff may have conducted elsewhere. The court then devoted fuller discussion to the citizenship of the defendant bank, Ensign, but applied the wrong standard to it. The court incorrectly stated that a federally chartered corporation such as Ensign is a citizen of "the state in which the activities of the bank are localized, or in the state which is the bank's 'principal place of business.'" *Id.* (emphasis added) (citations omitted). The court then compared Ensign's level of activities in Florida with those in New York, as it would do in determining the principal place of business of a state-chartered corporation. *See id.* at *1-2. The court found that "despite its current designation of Florida as its 'home office', [sic] New York is the location in which Ensign's activities are localized, and is its 'principal place of business'; New York is both its 'nerve center' and the situs of its 'corporate operations.'" *Id.* at *2. As a result, the court dismissed the case for lack of diversity of citizenship. *Id.* The court did not discuss whether Ensign conducted activities in other states or the level of those activities. *See id.* at *1-2. Thus, although the end result in *Ponce de Leon* may have been supportable—it may be that one or both of the corporations' activities were insufficiently "localized" for the exception to apply—the court's misplaced focus calls that result into question.

192. *Little League Baseball*, 874 F. Supp. at 653.

193. *Id.* The court also emphasized that "activities" of a corporation are different from, and broader than, the "operations" of a corporation that are examined for purposes of determining the corporation's principal place of business:

"[A]ctivities" are exercises of corporate powers for the purposes set forth in the statutes creating the [federally chartered] corporation, such powers being authorized by the statutes or charter as well as the corporate constitution and by-laws; "activities" is not synonymous with, and actually is broader than, the factors considered in the operational test for locating the principal place of business.

Id. at 653-54; *see also id.* at 653 (indicating that "operations" includes such exercises as "conducting business, owning property, [and] hiring employees").

194. *See id.*; *see also id.* at 651-52 (detailing the corporation's activities in Pennsylvania).

195. *See id.* at 654-55.

“conducted regularly over a wide area, well beyond the territorial limits of the Commonwealth of Pennsylvania,”¹⁹⁶ with the result that Little League Baseball had no state citizenship for purposes of federal diversity jurisdiction.¹⁹⁷

A subsequent decision from the Eastern District of Virginia, *Iceland Seafood Corp. v. National Consumer Cooperative Bank*,¹⁹⁸ relied heavily upon *Little League Baseball* in the course of determining that the National Consumer Cooperative Bank was a national citizen only, not a citizen of the District of Columbia.¹⁹⁹ The Bank argued that it should be considered to be “localized” in the District on the basis that “its principal place of business is in the District, that all of its corporate, financial and loan records are kept there, as are all of its executive officers, department heads and 97 percent of its employees, and that its loan agreements specify that District of Columbia law governs.”²⁰⁰

The court, though, pointed out that the Bank’s chartering statute stated that the Bank was created to provide assistance “on a nationwide basis”²⁰¹ and the Bank was authorized to “‘make loans and offer its services throughout the United States, its territories and possessions, and in the Commonwealth of Puerto Rico.’”²⁰² The court also examined the scope of the bank’s actual activities, stressing that “[a]ctivities . . . are not the same as operations in making the citizenship determination.”²⁰³ The court noted that the Bank made loans in

196. *Id.* at 655. The court noted each of the corporation’s activities was “consistent with the purposes for which [it] is chartered, and [was] a valid exercise of its corporate powers.” *Id.*; see also *id.* at 654 (discussing statutory sources of the corporation’s powers to conduct these activities).

197. *Id.* at 655. The court therefore remanded the lawsuit to state court. See *id.* at 656.

198. 285 F. Supp. 2d 719 (E.D. Va. 2003).

199. See *id.* at 724-26. Congress created the National Consumer Cooperative Bank in 1978 “for the purpose of making available ‘necessary financial and technical assistance to cooperative self-help endeavors as a means of strengthening the Nation’s economy.’” *Id.* at 722-23 (quoting 12 U.S.C. § 3001 (2000)). Although the United States once owned all of the Bank’s Class A stock, the Bank was privatized in 1981, and it therefore does not qualify for automatic federal question jurisdiction under 28 U.S.C. § 1349 (2006). See *id.* at 723; see also *id.* at 726-27 (discussing the Bank’s attempt to support jurisdiction pursuant to 12 U.S.C. § 3012(6) (2000) and rejecting that argument as untimely).

200. *Iceland Seafood*, 285 F. Supp. 2d at 725. The Bank also pointed out that although it operated branch offices in three states, only one of those offices had more than one employee. *Id.* The Bank also argued that its activities in other states, which mostly consisted of providing loans and receiving security interests in property, did not amount to “transacting business” as defined in the Model Business Corporation Act. See *id.* (citing MODEL BUS. CORP. ACT § 15.01(b)(7)-(8) (2002)). The court, though, made short shrift of this attempted reliance upon the Model Act: “That these loans may not constitute business transactions for the purposes of the Model Act does not preclude their consideration as activities in the broader reaching localization analysis.” *Id.*

201. *Id.* (citing 12 U.S.C. § 3001).

202. *Id.* (quoting 12 U.S.C. § 3011 (2000)).

203. *Id.*

several states²⁰⁴ and had a nationwide system of branch offices.²⁰⁵ Thus, because the Bank was authorized to and actually did conduct activities nationwide, it lacked state citizenship.²⁰⁶ In the absence of a specific designation of state citizenship in the federal chartering statute, a finding of state citizenship will be appropriate only when a corporation's activities are of an "obviously localized nature."²⁰⁷

As seen in *Little League Baseball* and *Iceland Seafood*, the trend in the recent case law seems to be toward more restrictive application of the localization rule, particularly as federal corporations have increasingly engaged in activities that extend over more than a single state. In *Auriemma Consulting Group, Inc. v. Universal Savings Bank, F.A.*,²⁰⁸ for example, the court found the federal savings bank to be a national citizen only, not a citizen of Wisconsin, the state in which its headquarters was located.²⁰⁹ The court there emphasized the "general rule" that a federally chartered corporation has no state citizenship, subject to the "limited exception" that applies "if the corporation's activities are 'localized' within a single state."²¹⁰ A federal corporation will have national citizenship only when its activities extend to several states.²¹¹

204. *Id.* (noting the Bank's annual report indicated that it "made loans to cooperatives in New Jersey, New York, California, Michigan, and Pennsylvania in 2002 alone").

205. *Id.* at 726 ("Its loan making activities are clearly national in scope, and its secured collateral is similarly disbursed. Furthermore, in its Annual Report, NCB holds itself out to cooperatives as a financing entity with nationwide resources and coverage." (citation omitted)).

206. *Id.*

207. *Id.* The court also determined the Bank's chartering statute did not confer state citizenship on the Bank. *See id.* at 723 (quoting and discussing 12 U.S.C. § 3011 (2000), which provides that "[t]he principal office of the Bank shall be in Washington, District of Columbia, and, for the purpose of venue, shall be considered a resident thereof"). The court "reject[ed] the suggestion that venue is equivalent to citizenship for the purposes of jurisdiction" and noted that "[p]rincipal office, as used in the chartering statutes, is not the same as principal place of business as used in determining jurisdiction." *Id.*

208. 367 F. Supp. 2d 311 (E.D.N.Y. 2005). The suit involved a breach of contract action filed against Universal Savings Bank in state court, which the savings bank sought to remove on the basis of diversity of citizenship. *See id.* at 312.

209. *Id.* at 314-15.

210. *Id.* at 313.

211. *Id.* The savings bank argued its Wisconsin office was home to its parent company as well as fifty employees, the bank's administrative and central accounting functions were located there, all loans were funded by that office and all deposits ultimately ended up there, all board meetings were held there, and four of its five directors resided in Wisconsin. *See id.* at 314 (noting further that the bank had two retail branch offices, including one in Michigan, but that the bank attempted to "downplay[] the significance of this office, describing its operations as 'inactive' and state[d] that this branch 'serves merely as the operations and customer support center for [the bank's] credit card business' "). But the court, in response, noted that the bank's charter set forth a broad purpose that "in no way limits the bank's activities to a single state." *Id.* The bank's website indicated that it operated offices in other states. *See id.* (noting that the website indicated that the bank operated administrative offices in Arizona and California in addition to the Wisconsin and Michigan offices). The bank had solicited business throughout the country by means of its web-

The trend toward restrictive interpretation of the localization rule continues in the recent case of *Lehman Brothers Bank, FSB v. Frank T. Yoder Mortgage*,²¹² where the court emphasized the different jurisdictional treatment between national banks and other federally chartered corporations: “Put simply, federally chartered corporations are national citizens ineligible to invoke federal diversity jurisdiction, while national banks are deemed citizens of the state in which they are incorporated as well as the state where their principal place of business is located.”²¹³ The court rejected Lehman Brothers’ argument that the Supreme Court’s 2006 decision in *Wachovia Bank, N.A. v. Schmidt*²¹⁴—which concluded that a national bank will be treated as a citizen of the state in which it maintains its principal place of business²¹⁵—created any change in the law regarding other types of federally chartered corporations.²¹⁶ The court noted that national banks and other federally chartered corporations are “governed by different statutes”²¹⁷ and the Supreme Court in *Wachovia Bank* had “carefully cabined” its discussion and holding to § 1348, the statute governing national banks.²¹⁸ Moreover, the court believed it to be “exceedingly unlikely that the Supreme Court would effect such a dramatic change” of “overruling its prior opinion in *Bankers’*

site. *Id.* (noting that “[m]ortgages and credit cards [sic] applications can be processed on line”). Moreover, the majority of the bank’s credit card customers were from out of state. *Id.* The court thus had “little difficulty” concluding that the bank was a national citizen only. *Id.* The court concluded that, “[u]nlike those cases where localization has been held, there is no indication that USB has limited its business (or the majority of thereof [sic]) to the State of Wisconsin.” *Id.* at 314-15.

212. 415 F. Supp. 2d 636 (E.D. Va. 2006). Lehman Brothers Bank (LBB), a federally chartered savings bank, was the sole subsidiary of Aurora, LLC, a Delaware limited liability corporation. *Id.* at 638. LBB and Aurora sued four defendants in federal district court, asserting fraud and contract claims arising under state law. *Id.* at 637. It was undisputed that LBB had its principal place of business in New York, where its executive offices were located, but LBB also operated branch offices in eleven states and processed loan applications from forty states in 2003 alone. *Id.* at 638 & n.2.

213. *Id.* at 641. The court found LBB’s activities were “national in scope,” making it “ineligible for the localization exception.” *Id.* at 640. The court also found Aurora, as a limited liability corporation, had the same citizenship as LBB. *Id.* at 641 (citing Gen. Tech. Applications, Inc. v. Exro Ltda., 388 F.3d 114, 120 (4th Cir. 2004)). The court therefore dismissed the case for lack of subject matter jurisdiction. *See id.* at 642.

Auremma Consulting and *Lehman Bros.* were both decided prior to the effective date of 12 U.S.C. § 1464(x) (2006), which now provides a federal savings association will be considered a citizen “only of the State in which such savings association has its home office.” *See infra* notes 223, 230-31 and accompanying text. Had the statute been in effect at the time these cases were filed, the particular jurisdictional issue in these cases would have been decided differently. *See Franklin Bank v. Tindall*, No. 07-13748, 2008 WL 408413, at *1 (E.D. Mich. Feb. 12, 2008) (discussing effect of enactment of § 1464(x)).

214. 546 U.S. 303 (2006); *see also infra* notes 226-30 and accompanying text (discussing *Wachovia Bank*).

215. *Wachovia Bank*, 546 U.S. at 318.

216. *See Lehman Bros.*, 415 F. Supp. 2d at 641-42.

217. *Id.* at 641 & n.12 (citing 28 U.S.C. §§ 1348-1349 (2000)).

218. *Id.* at 642.

[sic] *Trust*, as well as ninety years of lower court jurisprudence,” without explicitly discussing its intent to do so.²¹⁹

5. *Statutory Provisions for Diversity Jurisdiction*

Several scattered statutes, each somewhat different, provide for diversity jurisdiction as to select categories of federally chartered corporations. Shortly after Congress eliminated automatic federal question jurisdiction for national banks, it clarified that national banks could qualify for diversity jurisdiction. Congress did so by specifying, in what is now 28 U.S.C. § 1348, that national banks would be “deemed citizens of the States in which they are respectively located.”²²⁰ A similar statute, enacted in 1971, provides that institutions of the Federal Farm Credit System are deemed to be citizens of the states in which their “principal office is located.”²²¹ A handful of other federal corporations are deemed to be citizens of the District of Columbia by virtue of particular provisions in their chartering statutes.²²² Recently, in 2006, Congress enacted 12 U.S.C. § 1464(x),

219. *Id.*

220. *See supra* note 102 (quoting text of 1887 Act). The current version of the statute, codified at 28 U.S.C. § 1348 (2006), provides:

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.

The statute applies only to national banking associations. *See Am. Bank & Trust Co. v. Fed. Reserve Bank*, 256 U.S. 350, 357 (1921) (holding that the statute does not apply to Federal Reserve Banks).

221. *See* Pub. L. No. 92-181, § 5.24, 85 Stat. 583, 624 (1971) (codified at 12 U.S.C. § 2258 (2006)) (“Each institution of the System shall for the purposes of jurisdiction be deemed to be a citizen of the State, commonwealth, or District of Columbia in which its principal office is located.”). Institutions covered by this statute include the Farm Credit Banks, federal land bank associations, production credit associations, and others. *See* 12 U.S.C. § 2002(a) (composition of Farm Credit System). The statute “was enacted to ‘give production credit associations the same access to the Federal district courts as is enjoyed by private citizens, corporations and other legal entities.’” *Engelmeyer v. Prod. Credit Ass’n of the Midlands*, 652 F. Supp. 1235, 1237 (D.S.D. 1987) (quoting H.R. REP. NO. 94-609, reprinted in 1975 U.S.C.C.A.N. 2148, 2150).

A predecessor statute provided that a Federal Intermediate Credit Bank “for purposes of jurisdiction shall be deemed a citizen of the State where it is located.” *Fed. Intermediate Credit Bank of Columbia, S.C. v. Mitchell*, 277 U.S. 213, 214-15 (1928) (quoting statute then codified at 12 U.S.C. § 1023). The Federal Intermediate Credit Banks have since merged with the former Federal Land Banks to form what are now known as Farm Credit Banks. *See* 12 U.S.C. § 2011(a) (2000) (establishment of Farm Credit Banks).

222. *See, e.g.*, 7 U.S.C. § 941(c) (2006) (holding that the Rural Telephone Bank is deemed to be citizen of District of Columbia for jurisdictional purposes); 47 U.S.C. § 614(b)

providing that federal savings associations are to be deemed citizens of “the State in which such savings association has its home office.”²²³

Although these statutes provide more certainty regarding the jurisdictional status of federal corporations that fall within their scope, they have led to a number of interpretative issues and inconsistencies. The first arose from use of the word “located” in § 1348. At first, when branch banking by national banks was largely prohibited,²²⁴ the statute presented little interpretive difficulty; a national bank could only be “located” in one state. After Congress authorized interstate branch banking in 1994, however, questions began to emerge. Should a national bank be considered to be “located” in every state in which it maintained a branch office, thereby making it harder for the bank to invoke diversity jurisdiction, or should it be regarded as “located” only in the state in which it maintained its home office? The district and circuit courts were evenly split on this issue.²²⁵

The Supreme Court eventually resolved this circuit split with its 2006 decision in *Wachovia Bank, N.A. v. Schmidt*,²²⁶ in which the Court concluded that a national bank would be considered a citizen only of the state designated in the bank’s articles of incorporation as the location of its main office.²²⁷ The Court claimed that its interpretation of § 1348 was necessary to prevent national banks from becoming “singularly disfavored corporate bodies with regard to their access to federal courts.”²²⁸

For a while, the *Wachovia* decision created a disparity in the jurisdictional treatment of national banks and other federally chartered savings associations. While national banks received the benefit of § 1348 and the Court’s favorable interpretation of that statute,

(2000) (same for Telecommunications Development Fund); 49 U.S.C. § 24301(b) (2000) (holding that the National Railroad Passenger Association (Amtrak) “is a citizen only of the District of Columbia when deciding original jurisdiction of the district courts of the United States in a civil action”).

223. 12 U.S.C. § 1464(x) (2006).

224. See Lund, *supra* note 31, at 79-80 (summarizing history of branch banking by national banks).

225. See *id.* at 85-96 (discussing split among district and circuit courts in interpretation of term “located” as used in § 1348). Even among the courts that rejected the view that a national bank was “located” in every state in which it operated an office, a *further* split developed as to how the word “located” should be interpreted. *Id.* at 88 n.81 (“Some of the courts construed ‘located’ as referring to the bank’s principal place of business, others interpreted it as referring to the place listed in the organization certificate, others read it to mean the place designated in the most recent articles of incorporation, and still others used some combination of these.”).

226. 546 U.S. 303 (2006). For a discussion and critique of the *Wachovia Bank* case and of the inconsistencies it creates, see generally Lund, *supra* note 31.

227. *Wachovia Bank*, 546 U.S. at 307; see also Lund, *supra* note 31, at 97-99 (summarizing holding and rationale of *Wachovia Bank*).

228. *Wachovia Bank*, 546 U.S. at 319. But see Lund, *supra* note 31, at 103-06 (rebutting Court’s claim that contrary interpretation of § 1348 would have created jurisdictional “anomaly”).

federally chartered saving associations remained subject to the vagaries of the less favorable “localization exception” case law.²²⁹ Congress eliminated this disparity when it enacted § 1464(x), which took effect on October 13, 2006.²³⁰ That statute provides that a “federal savings association shall be considered to be a citizen only of the State in which such savings association has its home office.”²³¹

Together, § 1348 (as interpreted in *Wachovia Bank*) and § 1464(x) considerably clarify the jurisdictional status of national banks and federal savings associations.²³² But these statutes have done nothing to clarify the status of other federally chartered corporations, which still must contend with the less certain and less favorable localization exception case law.

Moreover, although the Court in *Wachovia Bank* apparently believed that its interpretation of § 1348 would lead to parity between

229. See *Lehman Bros. Bank, FSB v. Frank T. Yoder Mortgage*, 415 F. Supp. 2d 636, 641-42 (E.D. Va. 2006) (concluding that *Wachovia Bank* did not affect jurisdictional treatment of federal savings associations, which remained subject to prior case law); see also *Lund*, *supra* note 31, at 105-06 (discussing disparity between national banks and federal savings associations created by *Wachovia Bank*'s interpretation of § 1348).

Several early attempts to enact a jurisdictional statute to govern federal savings associations proved unsuccessful. See, e.g., H.R. 1375, 108th Cong. § 213 (2003) (citizenship in state of “home office”); S. 1812, 108th Cong. § 1 (2003) (citizenship in state of “main office”); H.R. 3951, 107th Cong. § 213 (2002) (same).

230. See Financial Services Regulatory Relief Act of 2006, Pub. L. No. 109-351, § 403, 120 Stat. 1966, 1974 (codified at 12 U.S.C. § 1464(x) (2006)) (“In determining whether a Federal court has diversity jurisdiction over a case in which a Federal savings association is a party, the Federal savings association shall be considered to be a citizen only of the State in which such savings association has its home office.”). The statute was adopted approximately nine months after the *Wachovia Bank* decision, which was handed down in January 2006. It is unclear, however, whether the Court’s decision had any direct causal effect on Congress’s approval of the statute. The statute was only one part of a much broader Financial Services Regulatory Relief Act. See *id.* The House version of the legislation, which the Senate version ultimately replaced, had been introduced several months prior to the *Wachovia Bank* ruling. See *infra* note 231. The legislative history makes very little mention of the jurisdictional provision, stating only that “[t]his section expressly provides that a Federal savings association is only a citizen of the State in which its home office is located for purposes of determining diversity jurisdiction.” S. REP. NO. 109-256, at 4 (2006), reprinted in 2006 U.S.C.C.A.N. 1219, 1223.

231. 12 U.S.C. § 1464(x). The House version of the proposed legislation—which the House initially approved, before later substituting the Senate version—would have provided that a federal savings association would be “considered to be a citizen only of the States in which such savings association has its home office and its principal place of business (if the principal place of business is in a different State than the home office).” H.R. 3505, 109th Cong. § 213 (2005) (emphasis added).

232. Currently, however, there is a split in the case law as to whether § 1464(x) applies retroactively to cases that were pending on the date when the statute became effective. Compare *World Sav. Bank, FSB v. Wu*, No. CV 08-00887 HRL, 2008 WL 1994881, at *2 (N.D. Cal. May 5, 2008) (statute does not apply retroactively), with *First Midwest Bank-Deerfield Branches v. Metabank*, No. CIV 06-4114, 2007 WL 913893, at *4 (D.S.D. Mar. 23, 2007) (statute applies retroactively), and *First Premier Bank v. Metabank*, No. CIV 06-4115, 2007 WL 963492, at *3-4 (D.S.D. Mar. 23, 2007) (same).

national banks and similar state-chartered corporations,²³³ the decision actually resulted in *disparity*, at least in certain circumstances. Recall that a state-chartered corporation is a citizen of two states: the state in which it is incorporated and the state in which it maintains its principal place of business.²³⁴ A national bank, though, is considered to be only a citizen of the state in which it maintains its home office, as stated in the bank's articles of incorporation.²³⁵ The Court believed that this difference would be of "scant practical significance," however, because "in almost every case, . . . the location of a national bank's main office and of its principal place of business coincide."²³⁶

The Court's optimism was misplaced, however. Two large national banks, JP Morgan Chase and Wells Fargo, have their principal places of business in states other than those designated as the location of their home offices.²³⁷ In *Excelsior Funds, Inc. v. JP Morgan Chase Bank, N.A.*,²³⁸ the court noted that, although the Supreme Court in *Wachovia Bank* did not "conclusively reject[] the possibility that a national bank is also a citizen of the state in which it has its principal place of business," the "fairest reading" of the Court's opinion was that the Court had "expressed skepticism over whether the term 'located' in § 1348 included a national bank's 'principal place of business,' in view of the absence of such term in the statute."²³⁹ Addressing the issue on its own, the court in *Excelsior Funds* concluded that

233. See, e.g., *Wachovia Bank*, 546 U.S. at 307 ("[T]he access of a federally chartered bank to a federal forum would be drastically curtailed in comparison to the access afforded state banks and other state-incorporated entities [if the statute were to be construed otherwise]. Congress, we are satisfied, created no such anomaly."); see also *id.* at 319 (stating the Court's interpretation of § 1348 avoided an "incongruous outcome" that would have "rendered national banks singularly disfavored corporate bodies with regard to their access to federal courts").

234. See *supra* notes 74-77 and accompanying text.

235. See *supra* note 230 and accompanying text.

236. *Wachovia Bank*, 546 U.S. at 317 n.9. Because Wachovia had both its home office and principal place of business in North Carolina, the Court did not have to determine whether a national bank is "located" in the state in which it maintains its principal place of business.

237. See *Excelsior Funds, Inc. v. JP Morgan Chase Bank, N.A.*, 470 F. Supp. 2d 312, 317 n.6 (S.D.N.Y. 2006) (noting that both JP Morgan Chase and Wells Fargo have their main offices and principal places of business in different states).

238. 470 F. Supp. 2d 312 (S.D.N.Y. 2006). The action had been filed in New York state court and had been removed to federal court by Chase, the defending party. *Id.* at 312-13. Chase has its main office in Ohio, but the parties stipulated that its principal place of business was in New York. *Id.* at 313. The issue of Chase's citizenship had twofold significance: first, as to whether diversity of citizenship existed, and, if so, as to whether Chase properly could remove the action to federal court. The removal statute, 28 U.S.C. § 1441(b) (2006), provides that removal based upon diversity of citizenship is proper only when none of the defendants "is a citizen of the State in which such action is brought."

239. *Excelsior Funds*, 470 F. Supp. 2d. at 317 (discussing *Wachovia Bank*, 546 U.S. at 317 n.9).

a national bank would not be considered a citizen of the state in which it maintained its principal place of business.²⁴⁰

A similar result would seem to follow from § 1464(x), which uses the less ambiguous term “home office.” “Home office” has a clear meaning within the statutes governing federal savings associations,²⁴¹ and it is hard to see how it could be construed to include the state of an association’s principal place of business.

V. SUMMARY OF THE CURRENT JURISDICTIONAL QUAGMIRE AND AN ILLUSTRATION

As the foregoing discussion has demonstrated, currently there is a great deal of disparity in the jurisdictional treatment of state-chartered and federally chartered corporations. State corporations benefit from the relative clarity of § 1332(c)(1). Under that statute, a state-chartered corporation, no matter how large or small, will be considered a citizen of two states at most: the state in which it was incorporated and the state in which it maintains its principal place of business. The situation involving federally chartered corporations varies quite a bit from one type of corporation to another, however, and in some cases is much less clear. Some federally chartered corporations—those in which the federal government owns more than fifty percent of the capital stock and a handful of others that benefit from special statutes—may still invoke federal jurisdiction simply on the basis of their federal charter.

If the federal corporation is not among this select group but is a national bank or a federal savings association, Congress has provided by statute that the corporation will be considered a citizen of a single state—the state in which the corporation maintains its home office.

240. See *id.* at 317-23; see also *Cole v. Wells Fargo Bank, N.A.*, 437 F. Supp. 2d 974, 976 n.2 (S.D. Iowa 2006) (concluding that Wells Fargo Bank is a citizen only of South Dakota, the state in which its home office is located).

The court in *Excelsior Funds* noted that when § 1348 was enacted, a state-chartered corporation was considered to be only a citizen of the state in which it was incorporated; the “principal place of business” aspect was not introduced until several years later, in 1958. *Excelsior Funds*, 470 F. Supp. 2d. at 319; see also *supra* Part III (discussing historical evolution of jurisdictional treatment of state-chartered corporations). Therefore, in the court’s view, if Congress intended to create “parity” between national banks and state-chartered entities, the relevant point of comparison was the time when the statute was adopted. See *Excelsior Funds*, 470 F. Supp. 2d. at 319. “[N]either the statutory text nor the legislative history support reading the term ‘located’ in § 1348 to incorporate by reference a concept that did not exist until ten years later. . . .” *Id.* at 322.

One commentator has argued the *Excelsior* court’s interpretation of § 1348 may have been “too literal” and that the court “did not sufficiently weigh the fundamental purpose behind” the statute and its predecessors. Jay Teitelbaum, *Diversity Jurisdiction: Where Do National Banks Live?*, 124 BANKING L.J. 227, 233 (2007).

241. For other uses of the term “home office” within the Home Owners’ Loan Act, see, for example, 12 U.S.C. §§ 1464(c)(4)(A)-(B), (d)(1)(A), (n)(1), (r)(1), (r)(2)(C), 1467a(o)(5)(D) (2006).

Unlike state corporations, a national bank's or a federal savings association's principal place of business has no bearing on its citizenship. In this sense, these federal corporations enjoy a preferred jurisdictional status when compared with similar state-chartered corporations.

All other federal corporations, however, have a much less certain and less privileged status. No federal statute specifies whether they may qualify for diversity jurisdiction, and the case law is unclear and confusing. Despite the Supreme Court's decision in the *Bankers Trust* case, which seemed to signal that a federal corporation would never be considered to possess state citizenship, the localization exception now seems to be regarded as an established rule of law. But there continues to be substantial uncertainty as to whether and when that rule will apply to a federal corporation that conducts activities in more than one state.

To illustrate that uncertainty, consider the case of a federal credit union that operates in more than one state. Assume that the credit union serves employees and retirees of telecommunications providers in North Carolina and South Carolina.²⁴² The credit union was at one time chartered by North Carolina, but it converted to a federal charter a number of years ago. Its "administrative branch" is in Charlotte, North Carolina, but it has five other branch offices in North Carolina and four in South Carolina. The bulk of the organization's business undoubtedly is with customers who live in the two states, but we can assume that the organization does business with customers who live in a number of other states as well (including current employees of telecommunications companies who commute to work from other states, family members who live in other states, and retirees who have moved to other states).

If the credit union still retained its state charter, its jurisdictional status would be clear. It would, without a doubt, be regarded as a citizen of North Carolina, the state in which it was incorporated. It might also be regarded as a citizen of South Carolina, depending on how its business was distributed and whether the court regarded South Carolina as the organization's "principal place of business," but this seems unlikely on these facts.

If the credit union were, instead, a national bank or a federal savings association, its jurisdictional status would be even clearer. In

242. The facts of this illustration are drawn from information found on the website of an actual federal credit union, Carolinas Telco Federal Credit Union. Carolinas Telco (Home/Welcome), <http://www.ctelco.org> (last visited June 1, 2009). I use this example because I have some personal familiarity with the organization, which has an office in the same building in which my law school office is located. However, the example should hold true for many other federal credit unions and other federal corporations.

that case, it would be considered a citizen of only North Carolina, the state in which the credit union maintains its home office.

As things actually stand, however, this credit union might be considered a North Carolina citizen, or it might have no state citizenship at all. This situation very closely parallels that of the First Carolinas Joint Stock Land Bank, which, although it operated only in North Carolina and South Carolina, was held to have no state citizenship.²⁴³

It is true that the localization rule has taken firmer root since the *First Carolinas* case was decided. It is also true that one circuit, applying that rule in *Feuchtwanger Corp. v. Lake Hiawatha Federal Credit Union*,²⁴⁴ found that the activities of a federal credit union were sufficiently localized to allow the credit union to establish state citizenship. But the court there stressed that the activities of that organization were limited to a *single* town in a *single* state.²⁴⁵ While some courts have applied the localization rule to corporations that conduct activities in more than one state, others have limited it to the single state setting.²⁴⁶

Federal corporations, like our hypothetical credit union, face a very uncertain status under the current law. These corporations would benefit from a statute or other legal rule that clarifies their jurisdictional status.

Federal corporations that conduct activities nationwide would also benefit from such a statute. As we have seen, a state corporation that conducts activities nationwide qualifies for diversity jurisdiction as a citizen of its state of incorporation and of the state in which its principal place of business is located.²⁴⁷ But *no* case has applied the localization exception to a federal corporation that carries on nationwide activities. These federal corporations are at a distinct jurisdictional disadvantage when compared with their state counterparts.

VI. A PROPOSED CONGRESSIONAL RESOLUTION

The current state of the law regarding the jurisdictional treatment of federal corporations can charitably be described as being in shambles. Some federal corporations—for the most part, government corporations—can still invoke federal jurisdiction based solely on their federal charters.²⁴⁸ This select group enjoys what can accurately

243. *First Carolinas Joint Stock Land Bank v. N.Y. Title & Mortgage Co.*, 59 F.2d 350 (E.D.S.C. 1932); *see also supra* notes 137-42 and accompanying text (discussing the case).

244. 272 F.2d 453 (3d Cir. 1959); *see also supra* notes 163-73 and accompanying text (discussing *Feuchtwanger Corp. v. Lake Hiawatha Federal Credit Union*).

245. *See supra* notes 165-66 and accompanying text.

246. *See supra* Part IV.B.3-4.

247. *See supra* notes 74-77 and accompanying text.

248. This result is achieved, however, through a mixed bag of statutes that employ widely varying language. *See supra* notes 110-14 and accompanying text.

be thought of as “super” jurisdictional status. Some other federal corporations are defined by various statutes as citizens of a single state.²⁴⁹ These corporations also enjoy preferred jurisdictional status over comparable state corporations, which are considered citizens of two states and are thus able to invoke diversity jurisdiction in fewer situations. The remainder of federal corporations faces greater ambiguity; these corporations may not qualify for diversity jurisdiction at all, depending upon whether the court considers their activities to be sufficiently “localized.”

In this Part, I argue that federal business corporations should be on equal jurisdictional footing with their state counterparts; there is no reason for federal business corporations to be treated differently, either better or worse, than state corporations when it comes to access to federal court. Additionally, there is no reason that some federal business corporations should be treated more favorably than others—the situation that exists under the current patchwork of federal statutes and case law. However, it would be wrong for the courts to attempt a judicial solution to the current disparities. It was wrong for courts to create a localization exception in the first place when Congress had not provided for state citizenship for federal corporations. Attempting to expand upon that exception would not eliminate the disparities that currently exist.²⁵⁰ Therefore, Congress should address the current disparities through the enactment of a single, universal statute that would place all federal business corporations on equal jurisdictional footing with state corporations.

A. Federally Chartered Business Corporations Should Receive Equal Jurisdictional Treatment with Their State Counterparts

In considering whether jurisdictional parity between state and federal corporations is a desirable goal, it is helpful to start by reviewing why federal jurisdiction exists in the first place. Most cases reach federal court on one of two jurisdictional bases: either federal question jurisdiction or diversity jurisdiction. The rationales for these two types of jurisdiction differ, but both focus on the supposedly “better” treatment that certain issues or parties may receive in federal court.

249. These statutes also use varying formulations. Some statutes refer to the state in which the corporation is “located,” while others refer to the state in which the corporation has its “home office” or “principal office.” And, still others specifically declare that the corporation shall be deemed a citizen of a particular state or of the District of Columbia. See *supra* notes 220-23 and accompanying text.

250. The localization rule, no matter how broadly applied, will never lead to true parity. The localization rule does not embrace a federal corporation that conducts activities nationwide. See *supra* Part IV.B.3-4. To recognize citizenship for such a corporation, the courts would have to employ an entirely different rule, such as the “principal place of business” rule that defines state corporate citizenship.

The justifications for federal question jurisdiction are relatively straightforward: “At a minimum, no one questions a government’s ability to create courts to enforce its laws.”²⁵¹ Other justifications focus on what Professor Chemerinsky characterizes as “distrust of the state courts”²⁵²—a fear that state courts, for a variety of reasons, are not equal to the task of interpreting and applying federal law. Additionally, federal question jurisdiction is often justified by the argued need for “uniformity in the interpretation of federal law.”²⁵³

In contrast, the justifications for diversity jurisdiction have never been entirely clear.²⁵⁴ Traditionally, diversity jurisdiction has been justified by the argument that out-of-state residents may face bias in state courts or at least rationally fear that such bias might exist.²⁵⁵ Although other theories have been offered—some, for example, have argued that diversity jurisdiction was created to protect business interests from “populist” state legislatures and courts²⁵⁶—the “bias or fear of bias” justification remains the most frequently stated.²⁵⁷ For many years a debate has raged between those who believe that the

251. CHEMERINSKY, *supra* note 53, at 271.

252. *Id.* As an example, Professor Chemerinsky quotes a report of the American Law Institute, which argued that federal question jurisdiction should exist “to protect litigants relying on federal law from the danger that the state courts will not properly apply that law, either through misunderstanding or lack of sympathy.” *Id.* (quoting AM. LAW INST., STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS 168 (1969)). However, as Professor Chemerinsky points out, this justification tends to conflict with the widely held belief, often asserted in other contexts, that state courts are just as able and willing to protect federal rights. *See id.* at 271-72.

253. *Id.* at 272. Some have questioned, though, whether federal question jurisdiction necessarily leads to greater uniformity. *Id.* (“On a controversial issue, there are likely to be two or three different positions adopted among the thirteen federal courts of appeals. Even if all fifty state judiciaries consider the issue, there still are likely to be just two or three different positions taken on a given legal question.”).

254. *See* WRIGHT & KANE, *supra* note 55, at 144 (“[N]either the debates of the Constitutional Convention nor the records of the First Congress shed any substantial light on why diversity jurisdiction was granted by the Constitution or why the First Congress exercised its option to vest such jurisdiction.”).

255. *See* CHEMERINSKY, *supra* note 53, at 296 (summarizing theories regarding initial justifications for diversity jurisdiction); *see also* 13B WRIGHT ET AL., *supra* note 55, § 3601, at 337-43 (same). In a famous quote, Chief Justice Marshall stated:

However true the fact may be, that the tribunals of the states will administer justice as impartially as those of the nation, to parties of every description, it is not less true that the constitution itself either entertains apprehensions on this subject, or views with such indulgence the possible fears and apprehensions of suitors, that it has established national tribunals for the decision of controversies . . . between citizens of different states.

Bank of the U.S. v. Deveaux, 9 U.S. (5 Cranch) 61, 87 (1809).

256. *See* CHEMERINSKY, *supra* note 53, at 297-98 (summarizing theories of Judge Henry Friendly and others).

257. *See id.* at 299-300 (discussing arguments made in favor of retaining diversity jurisdiction).

justifications for diversity jurisdiction no longer exist²⁵⁸ and those who argue that diversity jurisdiction should be retained.²⁵⁹ The supporters of diversity argue that state court bias against out-of-staters may still exist and that the mere perception of possible bias justifies retaining this form of federal jurisdiction.²⁶⁰ Related arguments focus on whether abolishing diversity would negatively impact business investment.²⁶¹

As we have seen, at one time all federally chartered corporations could invoke federal question jurisdiction based solely on their federal charters.²⁶² That is no longer the case; only corporations in which the federal government owns a controlling interest, or other select corporations that serve what might be described as “governmental” functions, now enjoy this special status.²⁶³

There may be rational reasons to say that all cases to which *government* corporations are a party may be heard in federal court. The Constitution and statutes provide that cases in which the United States is a party typically may be heard in federal court²⁶⁴ and, to the extent that a government corporation effectively acts as an arm or instrumentality of the government, performing functions similar to those of a federal agency, similar considerations may exist.²⁶⁵ But there is no reason that federal *business* corporations should qualify for federal jurisdiction based solely on their federal charter. There is nothing about federal business corporations that makes them more deserving of the protection of the federal courts than their state counterparts. To the extent that particular cases to which the federal

258. *See id.* at 298-99 (summarizing arguments for abolishing diversity jurisdiction); 13B WRIGHT ET AL., *supra* note 55, § 3601, at 352-54 (same).

259. *See* CHEMERINSKY, *supra* note 53, at 299-302 (summarizing arguments why diversity jurisdiction should be retained); 13B WRIGHT ET AL., *supra* note 55, § 3601, at 354-63 (same).

260. CHEMERINSKY, *supra* note 53, at 299.

261. Professors Wright and Kane summarize these arguments:

The key question is not whether out-of-state investors will in fact receive fair treatment from state courts, but whether they think they will. If abolition, or significant curtailment, of diversity jurisdiction would give rise to irrational fears by investors and inhibit their willingness to invest in different parts of the country, then diversity serves a useful purpose and should be retained.

WRIGHT & KANE, *supra* note 55, at 153 (citation omitted).

262. *See supra* notes 80-101 and accompanying text.

263. *See supra* notes 109-14 and accompanying text.

264. *See* U.S. CONST. art. III, § 2 (“The judicial Power shall extend . . . to Controversies to which the United States shall be a Party”); 28 U.S.C. § 1345 (2006) (United States as plaintiff); *id.* § 1346 (United States as defendant).

265. *Cf.* Maistrellis, *supra* note 112, at 784-90 (discussing reasons why federal corporations may prefer to litigate in federal court). Because this Article primarily focuses on the jurisdictional treatment of federal business corporations that serve roles similar to those of state-chartered businesses, I will not explore at any length whether the special jurisdictional treatment of governmental corporations is justifiable.

business corporation is a party require the application and interpretation of federal law, the corporation, like any other party, can invoke federal question jurisdiction on that basis.²⁶⁶ The unique issues of federal law that theoretically could arise in any case to which a federal corporation is a party—whether the corporation has capacity to sue and be sued, has the capacity to enter into contracts, and the like—are unlikely to come up as a practical matter.²⁶⁷ And, if these issues did come up, they would call for straightforward determinations that are well within the competence of state court judges.

While federal business corporations need not and should not receive preferred access to federal court, they should not be denied that access when it would be available to comparable state-chartered corporations. No court or commentator has identified any reason why federal corporations should be subject to less favorable jurisdictional treatment than their state counterparts. It might be questioned whether a large federal business corporation, which conducts activities nationwide or in a number of states, really has reason to fear that it will suffer prejudice or other disfavored treatment if it is forced to litigate in the courts of a state in which it conducts business activities.²⁶⁸ But if that observation is true, it is equally true for a comparable state corporation.²⁶⁹ The current jurisdictional treatment of state-chartered corporations is expressly founded on the notion that state courts may be biased against corporations that are neither chartered in the state nor have their principal places of business in the state—or, perhaps more accurately, on the notion that such a corporation and its investors may *rationaly fear* that such a bias may exist.²⁷⁰ Until Congress rejects the “fear of bias” rationale, either

266. See *supra* note 106 and accompanying text. Although I am not aware of any empirical data on point, it may well be that federal corporations are able to invoke federal jurisdiction more frequently than state corporations because more of the law regulating their operations is federal in nature.

267. See WRIGHT & KANE, *supra* note 55, at 104 (“Once [a] question [of this nature] is settled, it is of course unlikely that it would be raised in subsequent cases . . .”).

268. As Professor Chemerinsky notes, it is difficult to measure empirically whether actual bias does exist. See CHEMERINSKY, *supra* note 53, at 300. Most studies have focused on whether *fear* of bias actually influences forum choice; those studies have reached mixed conclusions. See *id.* at 300-01.

269. See WRIGHT & KANE, *supra* note 55, at 146-47 (citing scholars who argue that corporations’ access to diversity jurisdiction should be restricted or eliminated entirely). *But see* Moore & Weckstein, *supra* note 55, at 1445-51 (offering a spirited defense of preserving corporate access to diversity and arguing against further restrictions). This Article need not, and does not, take a position in this continuing debate. My argument is only that if there are continuing reasons for state-chartered corporations to be able to invoke diversity jurisdiction, those reasons apply no less fully to federally chartered business corporations.

270. The legislative history of § 1332(c)(1) speaks of diversity jurisdiction as “having been established . . . to provide a separate forum for out-of-State citizens against the prejudices of local courts and local juries by making available to them the benefits and safeguards of the Federal courts.” S. REP. NO. 85-1830, at 4 (1958), *reprinted in* 1958 U.S.C.C.A.N. 3099, 3102. The legislation sought only to address “the evil whereby a local

by eliminating diversity jurisdiction altogether or by limiting state corporations' access to diversity,²⁷¹ federal business corporations should be able to invoke diversity jurisdiction on equal terms.²⁷²

B. The Federal Courts Should Not Take It upon Themselves to Expand the Localization Exception

Although this Article advocates leveling the jurisdictional playing field for federal business corporations, this change should not be accomplished through the courts. The courts never should have recognized the exception in the first place when Congress had not acted to adopt a comprehensive definition of citizenship for federal corporations. Even if a limited exception were proper, the policy of strict construction of diversity jurisdiction should counsel against expanding the exception absent clear congressional intent.

Again, it may be helpful to begin this part of the discussion with a review of basic principles regarding federal jurisdiction. Federal courts are, by their very nature, courts of limited jurisdiction.²⁷³ The Constitution defines the outer limits of federal jurisdiction, and Congress cannot authorize federal jurisdiction that exceeds those limits.²⁷⁴ Moreover, it is generally accepted that, because the Constitution leaves it to Congress whether to create lower federal courts or not, lower federal court jurisdiction does not exist unless Congress acts to *confer* that jurisdiction. The courts may not confer their own jurisdiction or expand their jurisdiction beyond the limits that Congress has imposed.²⁷⁵

Because federal jurisdiction is limited, there is a presumption against federal court jurisdiction²⁷⁶ and a party who wishes to invoke jurisdiction has the burden of showing that it exists under the cir-

institution, engaged in a local business and in many cases locally owned, is enabled to bring its litigation into the Federal courts simply because it has obtained a corporate charter from another State." *Id.* at 3-4, *reprinted in* 1958 U.S.C.C.A.N. at 3101-02.

271. It appears unlikely that in the near future Congress will further restrict corporations' access to diversity jurisdiction. Few specific proposals have been made in recent years, and past proposals (discussed *supra* at note 73) "were heavily attacked and no longer figure significantly in the diversity debate." WRIGHT & KANE, *supra* note 55, at 148.

272. It is worth noting that Chief Justice Marshall's famous statement about the justification for diversity jurisdiction was made in the context of a case involving the citizenship of the Bank of the United States, a federally chartered corporation. *See supra* note 255. He specifically noted that "citizens of different states, are not less susceptible of these apprehensions, nor can they be supposed to be less the objects of constitutional provision, because they are allowed to sue by a corporate name." *Bank of the U.S. v. Deveaux*, 9 U.S. (5 Cranch) 61, 87 (1809).

273. *See generally* Lund, *supra* note 31, at 108-11 (discussing limited nature of federal jurisdiction and the constraints that guide federal courts as they interpret statutes that govern diversity jurisdiction).

274. CHEMERINSKY, *supra* note 53, at 212-15.

275. *See id.* at 197-98, 266-67; 13B WRIGHT ET AL., *supra* note 55, § 3601, at 343.

276. CHEMERINSKY, *supra* note 53, at 267.

cumstances of the particular case.²⁷⁷ These general observations have special bearing when jurisdiction is based upon diversity of citizenship, where the federal courts are called upon to interpret and apply state law. State courts have the primary responsibility and competence to interpret the state's statutes and to develop the state's common law, and granting federal courts jurisdiction over a state law dispute arguably interferes with the role of state courts.²⁷⁸ Because decisions about whether and when diversity jurisdiction should exist necessarily call for a balancing of competing constitutional interests—the rights of the states versus concerns about fairness to litigants or similar matters—these decisions are entrusted to Congress, the politically accountable branch. Thus, the Supreme Court has long recognized that the constitutional policy of limited jurisdiction requires the federal courts to strictly construe diversity jurisdiction statutes.²⁷⁹ As Chief Justice Stone stated, “Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined.”²⁸⁰ This rule of strict construction has often been invoked by federal courts when they have been called upon to construe congressional grants of diversity jurisdiction.²⁸¹

277. *Id.* at 309; *see also* WRIGHT & KANE, *supra* note 55, at 27 (stating that because federal courts have only limited jurisdiction “and because it would be not simply wrong but indeed an unconstitutional invasion of the powers reserved to the states if those courts were to entertain cases not within their jurisdiction, the rule is well settled that the party seeking to invoke the jurisdiction of a federal court must demonstrate that the case is within the competence of the federal court”).

278. *See* CHEMERINSKY, *supra* note 53, at 267-68 (“[R]estrictions on federal court jurisdiction advance the important values of federalism and separation of powers. For example, limiting federal court authority preserves the role of the state courts. Also, constraining federal judicial power helps to limit the role of the judiciary in the federal system.”); *see also* WRIGHT & KANE, *supra* note 55, at 2 (“[E]xpansion of the jurisdiction of the federal courts diminishes the power of the states.”).

279. 13B WRIGHT ET AL., *supra* note 55, § 3602, at 376.

280. *Healy v. Ratta*, 292 U.S. 263, 270 (1934) (involving interpretation of diversity jurisdiction's amount in controversy requirement); *accord, e.g.*, *Thomson v. Gaskill*, 315 U.S. 442, 446 (1942) (“The policy of the statute conferring diversity jurisdiction upon the district courts calls for its strict construction.”); *Indianapolis v. Chase Nat'l Bank*, 314 U.S. 63, 76-77 (1941) (“These requirements, however technical seeming, must be viewed in the perspective of the constitutional limitations upon the judicial power of the federal courts The dominant note in the successive enactments of Congress relating to diversity jurisdiction, is one of jealous restriction, [and] of avoiding offense to state sensitiveness” (citations omitted)).

The policy of strict construction also applies to removal statutes. *See, e.g.*, *Iceland Seafood Corp. v. Nat'l Consumer Coop. Bank*, 285 F. Supp. 2d 719, 722 (E.D. Va. 2003) (“[T]here exists a policy of strictly construing the removal statute, particularly when based upon diversity grounds. This policy is intended to secure state sovereignty by not removing cases that properly belong in state court.” (citation omitted)).

281. 13B WRIGHT ET AL., *supra* note 55, § 3602, at 376 n.29 (2d ed. 1984 & Supp. 2008) (citing cases).

Courts, of course, have a proper role in interpreting the general jurisdictional rules that Congress has provided.²⁸² But even assuming that it was proper for the Court to undertake the task of defining state citizenship for *state*-chartered corporations at a time when Congress had provided for jurisdiction in cases between citizens of different states but had not actually defined who may qualify as a state “citizen,”²⁸³ the federal courts should not have asserted a similar role with regard to *federal* corporations. State corporations, after all, are creatures of state law and thus more naturally qualify for state citizenship for jurisdictional purposes. As creatures of federal law, it is not at all obvious that federal corporations should qualify to be treated as state citizens,²⁸⁴ even for the limited purpose of defining the scope of federal jurisdiction.²⁸⁵ It should have been left to Congress to decide whether federal corporations should qualify for this status and, if so, on what terms.

The Supreme Court made similar points when it refused to extend state citizenship treatment to a labor union in *United Steelworkers of America v. R.H. Bouligny, Inc.*²⁸⁶ The Court recognized the “considerable merit” of the argument that it was unfair to treat unincorporated labor unions differently than state corporations and that the force of these arguments was particularly strong because labor unions faced the potential of experiencing prejudice in state courts.²⁸⁷

282. See generally Debra Lyn Bassett, *Statutory Interpretation in the Context of Federal Jurisdiction*, 76 GEO. WASH. L. REV. 52 (2007) (discussing judiciary’s role in interpreting federal jurisdictional statutes).

283. The Court has referred to the cases in which it attempted to determine when state-chartered corporations could qualify for state citizenship as its single foray into defining citizenship for artificial entities. See *Carden v. Arkoma Assocs.*, 494 U.S. 185, 196 (1990) (“[H]aving entered the field of diversity policy with regard to artificial entities once (and forcefully) in *Letson*, we have left further adjustments to be made by Congress.”).

284. Recall that in *Deveaux*, the very first case to consider the citizenship of a federally chartered corporation, the Court declared that a corporation “is certainly not a citizen.” *Bank of the U.S. v. Deveaux*, 9 U.S. (5 Cranch.) 61, 86 (1809). Later, in *Bankers Trust*, the Court reiterated that a federal corporation “is not a citizen of any state.” *Bankers Trust Co. v. Tex. & Pac. Ry. Co.*, 241 U.S. 295, 309 (1916).

285. It might even be questioned whether it is *constitutional* to treat a federal corporation as a state citizen. Cf. *Nat’l Mut. Ins. Co. v. Tidewater Transfer Co.*, 337 U.S. 582 (1949) (holding that it was constitutional for Congress to treat citizens of District of Columbia as state citizens, though the Court cannot agree on rationale). The point is likely of no practical consequence as long as *Osborn* remains good law, however, because under *Osborn*, Congress can constitutionally provide for federal question jurisdiction over any case to which a federal corporation is a party. See *supra* notes 90-97 and accompanying text.

286. 382 U.S. 145 (1965).

287. *Id.* at 149-50; see also *id.* at 150 (“Extending diversity jurisdiction to unions, says petitioner, would make available the advantages of federal procedure, Article III judges less exposed to local pressures than their state court counterparts, juries selected from wider geographical areas, review in appellate courts reflecting a multistate perspective, and more effective review by this Court.”).

Nevertheless, “these arguments, however appealing, are addressed to an inappropriate forum”:²⁸⁸

Whether unincorporated labor unions ought to be assimilated to the status of corporations for diversity purposes, how such citizenship is to be determined, and what if any related rules ought to apply, are decisions which we believe suited to the legislative and not the judicial branch, regardless of our views as to the intrinsic merits of petitioner’s argument—merits stoutly attested by widespread support for the recognition of labor unions as juridical personalities.²⁸⁹

These points have similar bearing when we consider the jurisdictional status of federally chartered corporations. It is not at all obvious that federal corporations should be regarded as state citizens, and that policy decision should have been left to Congress. Moreover, the difficulties that the federal courts have experienced in attempting to formulate a clear test for federal corporate citizenship illustrate that Congress might have been better suited to undertaking that task, if Congress thought it appropriate to do so.

Moreover, the argument for judicial restraint applies particularly strongly here because Congress arguably *has* made an election *not* to treat certain federally chartered corporations as state citizens. Recall that Congress repealed automatic federal question jurisdiction in stages. Congress first repealed automatic federal question jurisdiction for national banks, replacing it with a statute that defined national banks’ citizenship for purposes of diversity.²⁹⁰ Later, Congress repealed automatic federal question jurisdiction for railroads,²⁹¹ and eventually for all other federally chartered corporations,²⁹² without making any provision regarding diversity jurisdiction. Although Congress later enacted statutes that defined state citizenship for certain other federal corporations,²⁹³ Congress has never provided a general definition of citizenship for all federal corporations as it did for state corporations through the enactment of § 1332(c)(1).

288. *Id.*; *see also id.* at 147 (“[W]e believe this properly a matter for legislative consideration which cannot adequately or appropriately be dealt with by this Court.”).

289. *Id.* at 153. The Court emphasized the difficulties that would be involved in fashioning a test for a labor union’s citizenship, compared with state corporations, for which the state of incorporation was “a natural candidate.” *See id.* at 152. The Court expressed similar concerns in a later decision, concluding that the issue of whether limited partnerships should be recognized as state citizens in the same manner as corporations was best left to Congress to decide, not to the courts. *Carden v. Arkoma Assocs.*, 494 U.S. 185, 197 (1990).

290. *See supra* note 102 and accompanying text.

291. *See supra* note 104 and accompanying text.

292. *See supra* note 105 and accompanying text.

293. *See supra* notes 221-23 and accompanying text.

There are two possible conclusions we can draw from this legislative history. The first is that by enacting § 1348 and similar statutes, in which Congress has defined state citizenship with regard to national banks and certain other categories of federal corporations, Congress has expressed a general policy in favor of placing federal corporations on similar jurisdictional footing with state corporations. Therefore, it has been proper for courts to attempt to effectuate that congressional policy, as they have done by creating and expanding the localization rule. The second possible conclusion is exactly the opposite: that Congress, by defining state citizenship for some federal corporations but not for others, has expressed a legislative policy that only certain federal corporations should qualify for diversity jurisdiction, therefore making it inappropriate for courts to act contrary to that policy.²⁹⁴ Because it is impossible to say for sure which of these is the case, the federal courts, mindful both of the limited nature of federal jurisdiction and of their own limited role in expanding that jurisdiction, should have recognized that it was inappropriate to create a rule that had the effect of expanding federal jurisdiction.

Moreover, even if courts had been justified in recognizing a limited localization rule, the prudential considerations discussed above counsel in favor of strictly confining this judicially created exception to federal corporations whose activities truly are “localized” in a single state.²⁹⁵ The great disparity in the results achieved in the localization cases illustrate the policy-based considerations that must be resolved in determining when and how the rule should apply to federal corporations that engage in multistate or nationwide activities—policy determinations more appropriately left to Congress.²⁹⁶

294. Of course, a third, equally plausible conclusion is that the particular statutes Congress has enacted have been in response to lobbying efforts by particular industry groups and Congress has not expressed a single, consistent policy in this area. If this is the case, I would argue for the same outcome as I do under the second possibility—that the courts should exercise judicial restraint and decline to expand the scope of federal jurisdiction through judicial fiat.

295. See *Harris v. Am. Legion*, 162 F. Supp. 700, 711 (S.D. Ind. 1958) (citing policy of strict construction of diversity jurisdiction and refusing to extend localization exception to federal corporation that conducted activities in more than one state); see also *Commercial Fed. Bank v. Dorado Network Sys. Corp.*, No. 8:05CV391, 2005 WL 2218421, at *5 (D. Neb. Sept. 13, 2005) (“This court is not . . . vested with the authority to rewrite federal statutes and thereby correct perceived inconsistencies or redefine its jurisdiction based on public policy arguments. This court’s jurisdiction is defined by Congress. In the context of state law claims, such as the breach of contract action at issue in this case, the Constitution reserves to the states the power to provide for the determination of controversies in their courts.”).

296. See *Carden v. Arkoma Assocs.*, 494 U.S. 185, 196-97 (1990) (stating that determination of what types of business entities qualify as “citizens” and the test to be used to determine citizenship involve policy judgments best left “to the people’s elected representatives”).

C. *Congress Should Adopt a Single Statute Defining the Citizenship of Federal Business Corporations*

In the preceding sections, I have argued that federal business corporations should enjoy jurisdictional parity with state corporations. But I have also argued that it was inappropriate for the courts to judicially create the localization rule or to expand that rule beyond its origins. I have similarly pointed out that the localization rule has been applied inconsistently by the courts and that even the most expansive application of the rule leaves some federal corporations at a jurisdictional disadvantage, with no access to diversity jurisdiction.²⁹⁷ Moreover, the scattered statutory provisions that Congress has adopted, defining state citizenship for some classes of federal corporations, are inconsistent and have led some federal corporations to be treated more favorably than comparable state corporations.²⁹⁸

The best way to resolve the current jurisdictional morass is for Congress to adopt a single jurisdictional statute to govern all federally chartered business corporations. The jurisdictional status of federal corporations is already partially addressed in § 1349, which provides that federal jurisdiction does not exist simply on the basis of the corporation's federal charter.²⁹⁹ Congress could simply add a second sentence to that statute, providing that “[f]or purposes of federal diversity jurisdiction, a corporation incorporated by or under an Act of Congress shall be deemed a citizen of the State in which its main office is located and of the State in which it has its principal place of business.”³⁰⁰

A single statute would have numerous advantages over the scattered jurisdictional provisions that currently exist at various locations in the U.S. Code.³⁰¹ As we have seen, those statutes use varying

297. See *supra* notes 242-47 and accompanying text.

298. See *supra* Part IV.B.5.

299. The statute presently provides the following: “The district courts shall not have jurisdiction of any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress, unless the United States is the owner of more than one-half of its capital stock.” 28 U.S.C. § 1349 (2006).

300. This language is similar to that found in legislation currently pending before Congress, which would authorize federal chartering of insurance companies and agencies. See National Insurance Consumer Protection Act, H.R. 1880, § 302(a), 111th Cong. (2009) (“[F]or purposes of jurisdiction, a national insurer or national insurance agency shall be deemed a citizen of the State in which its main office is located and of the State in which it has its principal place of business.”); see also National Insurance Act of 2007, H.R. 3200, § 1201(f)(4), 110th Cong. (2007) (similar language); S. 40, § 1201(f)(4), 110th Cong. (2007) (similar language). The word “States” is already defined in 28 U.S.C. § 1332(e) (2006) to include U.S. territories, the District of Columbia, and Puerto Rico.

301. My proposed statute is intended to replace § 1348, § 1464(x), and the other miscellaneous statutes that currently define state citizenship for certain groups of federal corporations. My statute is, in a certain sense, overinclusive; its definition of state citizenship would apply not only to federal *business* corporations, which are most in need of this statutory clarification, but also to *government* corporations that can already invoke federal ju-

language, resulting in varying and inconsistent applications.³⁰² An alternative to my proposal would be to go back, locate all of the scattered statutes, and modify them to contain consistent language, while also adding consistent language to the federal chartering statutes that currently contain no jurisdictional provisions.³⁰³ But there is much to be said for a single rule located in Title 28 of the U.S. Code, which is the place where we expect to find provisions relating to federal jurisdiction. Congress would no longer need to ensure that it added a jurisdictional provision every time it authorized the chartering of a new type of federal corporation.

A single, central rule should also result in greater consistency in the interpretation of the statutory language. The proposed language should not present any unique interpretative difficulties. Courts have a long history of interpreting and applying the phrase “principal place of business” in the context of state-chartered corporations,³⁰⁴ and the phrase should apply equally well to federal corporations. Moreover, the “main office” language already is used in relation to several types of federal corporations,³⁰⁵ to the extent the language currently is not used in reference to certain federal corporations, it should not be especially difficult for the courts to determine what should qualify as the corporation’s main office.

To ensure the greatest possible jurisdictional parity with state corporations, it is important that the statute include *both* the state in which the corporation has its main office *and* the state in which it has its principal place of business. The current statutes define federal corporations as citizens of only a single state—either the state in which the corporation has its “home office” or “principal office,” or the state in which the corporation is “located”—with the result that some federal corporations enjoy greater federal court access than an identical state corporation would enjoy.³⁰⁶ It may be impossible to create exact jurisdictional congruence between federal and state corpora-

risdiction under either § 1349’s government ownership proviso or under one of the specific statutes discussed *supra* at notes 110-14 and accompanying text. I do not see this redundancy as a problem, however. Moreover, at least *some* government corporations would likely be better off if this statute is enacted. *See supra* note 113 (discussing Fannie Mae and other government corporations that may not be able to invoke federal question jurisdiction based solely on their federal charter).

302. *See supra* Part IV.B.5.

303. For example, the statutes governing federal credit unions include no provision regarding federal jurisdiction. *See* 12 U.S.C. §§ 1751-1795k (2006).

304. *See supra* note 78 and accompanying text. The courts have not always agreed on the test to be used in determining a state corporation’s “principal place of business.” There is no reason to expect, however, that extending the test to federally chartered corporations would lead to any greater variations in the interpretation than now exist.

305. *See, e.g.*, 12 U.S.C. § 30(b)-(c) (2006) (national banks); *id.* § 1467a (savings and loan holding companies); *id.* § 1817(a)(4) (FDIC-insured depository institutions); *id.* § 1841(o)(4) (bank holding companies).

306. *See supra* Part IV.B.5.

tions, as the concept of a state of incorporation has no application to federal corporations, but the “main office” language serves as a close analogy and should lead to the same result in most cases.

VII. CONCLUSION

It has now been many decades since Congress eliminated automatic federal question jurisdiction for most federal business corporations. The decision to take that step was well justified; there is no reason that a federal business corporation, functionally identical to a state corporation in every respect, should be able to invoke federal jurisdiction simply because of its federal charter.

But Congress should have also taken the opportunity to clarify whether federal corporations may qualify for diversity jurisdiction and, if so, under what circumstances. Because Congress failed to take this step, the courts were asked to make these policy judgments for themselves. The result, the judicially-created localization rule, is an amorphous rule that not surprisingly has led to inconsistent application.

When Congress has acted, it has done so in a piecemeal manner, addressing only particular types of federal corporations. The statutes that Congress has adopted throughout the years use varying definitions for corporate citizenship, and they do not place federal corporations on jurisdictional par with their state counterparts.

The statutory solution that I propose in this Article would resolve, in a comprehensive manner, many of the current inconsistencies and inequities. It would provide a single statutory definition of federal corporate citizenship that would create jurisdictional parity between state and federal corporations in most situations. Although there would undoubtedly be interpretative issues to resolve, these issues should prove no more difficult than the issues that the courts currently address when considering the citizenship of state-chartered corporations.

