

No. 19-1115

IN THE
SUPREME COURT OF THE UNITED STATES

AMERICAN BANKERS ASSOCIATION,

Petitioner,

v.

NATIONAL CREDIT UNION ADMINISTRATION,

Respondent.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the District of Columbia Circuit

BRIEF OF AMICI CURIAE
IOWA BANKERS ASSOCIATION, ET AL
IN SUPPORT OF PETITIONER

Steven D. Gordon
COUNSEL OF RECORD
Holland & Knight, LLP
800 - 17th St. N.W.,
Ste. 1100
Washington, DC 20006
Tel: (202) 955-3000
Fax: (202) 955-5564
steven.gordon@hklaw.com

Julie Johnson McLean
Robert A. Gamble
Davis Brown Law Firm
215 10th St., Ste. 1300
Des Moines, IA 50309
Tel: (515) 288-2500
Fax: (515) 243-0654
juliemclean@
davisbrownlaw.com

Counsel for Amici Curiae

April 10, 2020

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTEREST OF AMICI CURIAE	1
SUMMARY OF ARGUMENT	4
ARGUMENTS FOR GRANTING THE PETITION	
I. The Court should grant certiorari to review the level of deference afforded by the D.C. Circuit to the agency’s reinterpretation of the statute. ...	6
A. Rural District.....	10
B. Combined Statistical Areas.....	15
II. The significance of this case warrants the Court’s review in light of the anti-competitive nature of NCUA’s field of membership rules and their economic impact on the banking industry.	16
CONCLUSION	20
EXHIBIT A - State Bankers Associations.....	1a
EXHIBIT B - State Level Community Banking Organizations.....	3a
EXHIBIT C - County Population & Square Mileage	5a

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Am. Bankers Ass'n v. Nat'l Credit Union Admin.</i> , 306 F. Supp. 3d 44 (D.D.C. 2018)	12
<i>Am. Bankers Ass'n v. Nat'l Credit Union Admin.</i> , 934 F.3d 649 (D.C. Cir. 2019)	12
<i>Chevron U.S.A. Inc. v. Nat'l Res. Def. Council, Inc.</i> , 467 U.S. 837 (1984)	4, 6, 9, 16, 19
<i>First Nat. Bank and Trust Co. v. Nat. Credit Union Admin.</i> , 988 F.2d 1272 (D.C. Cir. 1993)	15
<i>King v. Burwell</i> , 135 S. Ct. 2480 (2015)	6, 16
<i>NCUA v. First Nat. Bank & Trust Co.</i> , 522 U.S. 479 (1998)	7

TABLE OF AUTHORITIES-continued**Page(s)****STATUTES**

12 U.S.C. §1759(b)(3)	3, 7
12 U.S.C. §1759(g)(1).....	3, 9
12 U.S.C. §2901	18
48 Stat. 1216, 1219 (1934)	4, 7
Community Reinvestment Act, 12 U.S.C. §§ 2901-2908	18
Credit Union Membership Access Act, Pub. L. No. 105-219, 112 Stat. 913 (1998).....	7
Iowa Code Chapter 504.....	1

REGULATIONS AND RULES

12 CFR pt. 701, App. B, ch. 2 § V.A.2.....	4, 11, 16
12 CFR pt. 701, App. B, ch. 2 § V.A.4.....	18
63 Fed. Reg. 71,998, 72,012 (Dec. 30, 1998)	5, 8
IRPS 82-1, 47 Fed. Reg. 16775 (1982)	7
U.S. Supreme Court Rule 29.6.....	2
U.S. Supreme Court Rule 37.6.....	1

TABLE OF AUTHORITIES-continued

Page(s)

OTHER AUTHORITIES

Dictionary.com, <i>Rural</i> , http://www.dictionary.com/browse/rural?s=t (last accessed Apr. 2, 2020) ..	12
Merriam-Webster Dictionary Online, <i>Rural</i> , https://www.merriam-webster.com/dictionary/rural (last accessed Apr. 2, 2020) ..	12
Thesaurus.com., <i>Rural</i> , http://www.thesaurus.com/browse/rural?s=t (last accessed Apr. 2, 2020) ..	12
U.S. Census Bureau, <i>QuickFacts South Dakota; Alaska; North Dakota; Wyoming; United States</i> , https://www.census.gov/quickfacts/fact/table/ND,WY,AK,SD,US/PST045219 (last visited Apr. 2, 2020) ..	11
U.S. Census Bureau, <i>2010 Census Percent Urban and Rural by State</i> , https://www2.census.gov/geo/docs/referece/ua/PctUrbanRural_State.txt (last visited Apr. 2, 2020) ..	11

TABLE OF AUTHORITIES-continued

	Page(s)
U.S. Census Bureau, <i>Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2019-United States-Metropolitan and Micropolitan Statistical Area; and for Puerto Rico</i> , https://www.census.gov/data/tables/time-series/demo/popest/2010s-total-metro-and-micro-statistical-areas.html (last visited Apr. 2, 2020).....	12

INTEREST OF AMICI CURIAE

Iowa Bankers Association, an Iowa nonprofit corporation organized under Iowa Code Chapter 504 (“IBA”), together with the bankers associations representing banks in all of the other forty-nine (49) states and in the commonwealth of Puerto Rico, as listed on Exhibit A (IBA and all of such bankers associations collectively referred to herein as the “State Bankers Associations”), and Independent Community Bankers of America and twenty-five (25) affiliated state-level community banking organizations, as listed on Exhibit B (collectively, “ICBA”) (the State Bankers Associations and ICBA collectively referred to herein as the “Amici”) file this Amicus Brief in support of the Petition for a Writ of Certiorari of the American Bankers Association (“ABA”).¹

IBA was initially formed in 1887 for the purpose of supporting banks in the State of Iowa by providing leadership, advocacy, information and education to its members, their commercial and consumer customers, and the public. IBA is an Iowa nonprofit corporation organized under Iowa Code Chapter 504. The current membership of IBA consists of approximately 300 state and national banks and savings associations

¹ Pursuant to Rule 37.6, Amici affirm that no counsel for a party authored this Brief in whole or in part, and that no person other than Amici, their members and counsel made a monetary contribution to its preparation or submission. Counsel of record for all parties received timely notice of the intention of Amici to file this Brief and consented to its filing.

representing 98% of such banks and associations operating in Iowa. Pursuant to Rule 29.6, IBA is a trade association with no parent corporation, and no publicly-held corporation owns 10% or more of its stock.

The other State Bankers Associations, as listed on Exhibit A, all serve a similar purpose, and are all similarly organized, nonprofit organizations that represent a substantial number of the community banks and savings associations in their respective states and in the commonwealth of Puerto Rico. They have no parent corporations and no stock held by the public; and no publicly held corporation owns 10% or more of their stock. IBA and the other State Bankers Associations represent a substantial number of community banks and savings associations that are not members of ABA.

ICBA is a national trade organization dedicated to promoting and protecting the interests of America's community banks by monitoring and advocating about federal issues that affect community banks and their customers. ICBA is the nation's voice for many of the approximately 5,000 community banks serving local and rural communities throughout the United States. Community banks constitute 99% of all banks and are the only physical banking presence in one of five U.S. counties. With 52,000 locations nationwide, community banks employ 760,000 Americans and hold \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.4 trillion in loans to consumers, small businesses, and the agricultural community. In

addition, twenty-five (25) state level community banking organizations affiliated with ICBA, as listed on Exhibit B, join this Brief as Amici.

ICBA, including the twenty-five (25) affiliated state-level community banking organizations, are nonprofit trade associations; they have no parent corporations and no stock held by the public; and no publicly held corporation owns 10% or more of their stock.

This Brief is being filed upon the authority of the Board of Directors and the President of IBA and the Board of Directors or the Chief Executive Officer of each of the other State Bankers Associations, and the President and Chief Executive Officer of ICBA.

Amici, on behalf of their members, have a significant interest in ensuring that the National Credit Union Act (“FCUA”) is enforced in a fair and reasonable way to ensure that federally-chartered community credit unions are limited to serving “[p]ersons or organizations within a well-defined local community, neighborhood, or rural district.” 12 U.S.C. § 1759(b)(3). FCUA directs the National Credit Union Administration (“NCUA”) to define those terms by regulation. *Id.* § 1759(g)(1). NCUA’s proposed definitions of “local community” to include any Combined Statistical Area with a population of up to 2,500,000 and “rural district” to include vast areas with overwhelmingly urban populations of up to 1,000,000 are beyond the plain meaning of the statute

and therefore impermissible and should not be upheld on the basis of *Chevron* deference. *Chevron U.S.A. Inc. v. Nat'l. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).²

SUMMARY OF ARGUMENT

Congress has long limited federal credit union membership “to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district.” 48 Stat. 1216, 1219 (1934). In 1998, this Court struck down NCUA’s expansive interpretation of this provision to permit credit unions to be composed of multiple unrelated employer groups, each having its own common bond of occupation. Congress then amended FCUA, adding the word “local” before “community” and directing NCUA to prescribe, by regulation, definitions for credit union fields of membership, including: “well-defined local community, neighborhood or rural district.” 12 U.S.C. § 1759(g)(1). The agency did so. It acknowledged that the addition of the word local “was intended as a limiting factor” and adopted a “more circumspect and

² The third definition involves Core-Based Statistical Areas. The parties agree that all or part of a Core-Based Statistical Area may qualify as a local community so long as it does not exceed the population limit. Since 2010, NCUA required such a membership area to include the urban core. The new rule no longer requires that the core be included in the local community that a credit union proposes to serve. 12 CFR pt. 701. App. B, ch.2 § V.A.2.

restricted approach to chartering community credit unions.” 63 Fed. Reg. 71,998, 72,012 (Dec. 30, 1998).

Subsequently, however, NCUA has reversed its course, continually chipping away at the limiting factor of the term “local” inserted by Congress in the statute. NCUA’s gradual erosion of the Congressional “local” requirement culminated in 2016, when NCUA impermissibly expanded the terms “well-defined local community” and “rural district” to permit extremely large areas, with little commonality, to qualify as a “well-defined local community, neighborhood, or rural district”. For example, “rural districts” may now span hundreds of thousands of square miles, encompass major metropolitan areas, and exclude low-to-moderate income areas, in contravention of Congressional intent.

NCUA, in a misguided effort to promote the industry it regulates, effectively re-wrote the terms of the statute that it is charged to administer, thereby altering the competitive balance between banks and credit unions that Congress has established. NCUA’s unabashed promotion of the credit union industry contravenes Congressional intent and permits the dramatic expansion of credit unions at the expense of banks, especially small, local banks.

Nonetheless, the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) concluded that it must defer to NCUA’s new interpretation of the statute pursuant to *Chevron*. The D.C. Circuit erred in so ruling; if not, this Court

should revisit the level of deference afforded by courts to agencies pursuant to *Chevron*, particularly in this area of “deep economic and political significance”. *See King v. Burwell*, 135 S. Ct. 2480, 2488-89 (2015). NCUA’s expansive definitions of “local community” and “rural district” exceed the authority of the statute. NCUA has effectively re-written the statute by repeatedly adopting expanded fields of membership, and it will likely continue to do so. *Chevron* does not mandate or countenance this result. That cannot have been the intent of Congress.

ARGUMENTS FOR GRANTING THE PETITION

I. The Court should grant certiorari to review the level of deference afforded by the D.C. Circuit to the agency’s reinterpretation of the statute.

This case presents the issue of whether a court must defer to an agency that effectively re-writes the terms of the statute that it is charged to administer, thereby altering the competitive balance between banks and credit unions that Congress has established. Although banks and credit unions compete with each other, they are regulated by different federal agencies. NCUA is “reinterpreting” FCUA in a manner that is at odds with the intent of Congress and would permit the dramatic expansion of credit unions at the expense of banks.

This is not the first time this has happened. Congress long ago provided in section 109 of FCUA that “[f]ederal credit union membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district.” 48 Stat. 1216, 1219 (1934). But, starting in 1982, NCUA interpreted section 109 to permit credit unions to be composed of multiple unrelated employer groups, each having its own common bond of occupation. IRPS 82-1, 47 Fed. Reg. 16775 (1982). This Court struck down that interpretation, concluding that it was contrary to the unambiguously expressed intent of Congress. *See NCUA v. First Nat. Bank & Trust Co.*, 522 U.S. 479, 503 (1998).

Following that decision, Congress amended FCUA in 1998. Credit Union Membership Access Act, Pub. L. No. 105-219, 112 Stat. 913 (1998). It added the word “local” before community in 12 U.S.C. § 1759(b)(3), and made an express finding that “a meaningful affinity and bond among [credit union] members, manifested by a commonality of routine interaction, shared and related work experiences, interests, or activities, or the maintenance of an otherwise well-understood sense of cohesion and identity is essential to the fulfillment of the public mission of credit unions.” *Id.* § 2. Congress directed that NCUA prescribe, by regulation, definitions for credit union fields of membership, including: “well-defined local community, neighborhood or rural district.” 12 U.S.C. § 1759(g)(1).

NCUA promptly did so. It acknowledged that the addition of the word local “was intended as a limiting factor” and imposed a “more circumspect and restricted approach to chartering community credit unions.” Organization and Operations of Federal Credit Unions, 63 Fed. Reg. 71,998, 72,012 (Dec. 30, 1998). NCUA identified several factors to be considered in deciding whether a proposed area qualified as a well-defined local community, including (i) the presence or absence of a single major trade area, shared governmental or civic facilities, or an area newspaper, (ii) the population and geographic size of the proposed community, and (iii) the specific geographic boundaries used to define the community. *Id.* at 72,037.

NCUA identified examples of acceptable and unacceptable community fields of membership. Acceptable fields included:

- “Persons who live, work, worship, or attend school in, and businesses located in the area of Johnson City, Tennessee, bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west;
- Persons who live or work in Green County, Maine; and
- Persons who live, worship, or work in and businesses and other legal entities located in Independent School District No. 1, DuPage County, Illinois”.

Id. at 72,038-39.

Unacceptable local communities, neighborhoods, or rural districts included:

- “Persons who live or work in the Greater Boston Metropolitan Area (does not meet the definition of local community, neighborhood, or rural district); and
- Persons who live or work in the State of California (does not meet the definition of local community, neighborhood, or rural district).”

Id. at 72,039.

Although 12 U.S.C. section 1759(g)(1) has not been amended or modified since 1998, NCUA has repeatedly reinterpreted the statute to define larger and larger credit union fields of membership. Its current interpretation abandons any “circumspection” in chartering community credit unions and ignores that Congress intended the word “local” to be a limiting factor. Nonetheless, the D.C. Circuit concluded that it must defer to NCUA’s new interpretation of the statute pursuant to *Chevron*.³

³ It should be noted that, even with *Chevron* deference, the D.C. District Court determined that NCUA’s following definitions were manifestly contrary to the statute: (1) automatically qualifying any area of 2.5 million people or fewer in any Combined Statistical Area as part of a local community; and (2) automatically qualifying areas larger than states as rural districts.

A. Rural District.

NCUA's new definition of "rural district" permits areas of "any geographic size" to qualify as a rural district if:

- The proposed district has well-defined, contiguous geographic boundaries;
- The total population of the proposed district does not exceed 1,000,000;
- Either more than 50% of the proposed district's population resides in census blocks or other geographic units that are designated as rural by the Consumer Financial Protection Bureau or the United States Census Bureau, OR the district has a population density of 100 persons or fewer per square mile; and
- The boundaries of the well-defined rural district do not exceed the outer boundaries of the states that are immediately contiguous to the state in which the credit union maintains its headquarters (i.e., not to exceed the outer perimeter of the layer of

states immediately surrounding the headquarters state).

12 CFR pt. 701, App. B, ch. 2 § V.A.2 (emphasis added). This definition impermissibly expands rural districts to include vast areas encompassing several states, so long as the population is less than 1,000,000 and has at least 50% of its population living in census blocks or geographic units that are designated as rural, or the population density is less than 100 persons per square mile. *Id.*

Pursuant to NCUA’s “rural district” definition, the entire states of Alaska, South Dakota, North Dakota and Wyoming qualify as rural districts by virtue of their population density.⁴ The following percentages of each state’s population reside in urban areas: Alaska 66.02%, South Dakota 55.65%, North Dakota 59.9%, and Wyoming 64.76%.⁵ Further, those states’ rural districts include the following Metropolitan Statistical Areas with total populations of Anchorage 396,317, Fairbanks 96,849, Sioux Falls 259,094, Rapid City 142,107, Fargo 268,232, Bismarck 128,949, Grand Forks 100,815, Cheyenne

⁴ See U.S. Census Bureau, *QuickFacts South Dakota; Alaska; North Dakota; Wyoming; United States*, <https://www.census.gov/quickfacts/fact/table/ND,WY,AK,SD,US/PST045219> (last visited Apr. 2, 2020).

⁵ See U.S. Census Bureau, *2010 Census Percent Urban and Rural by State*, <https://www2.census.gov/geo/docs/reference/ua/PctUrbanRuralState.txt> (last visited Apr. 2, 2020).

99,500, and Casper 79,858.⁶ The term “rural” has been defined to mean “of or relating to the country, country people or life, or agriculture”,⁷ or similarly “living in the country.”⁸ Antonyms of rural include metropolitan, urban, city and suburban.⁹ Clearly, NCUA’s “rural district” definition permitting largely urban areas to qualify as “rural districts” is manifestly contradictory to the commonly accepted definition of the term “rural”. NCUA’s definition of “rural district” is “not even in the ballpark of the term’s standard meaning”¹⁰, is arbitrary and capricious, and is not entitled to the level of deference afforded it by the D.C. Circuit.

NCUA’s “rural district” definition is also unreasonable in geographic size and scope. Due to the relatively low population densities in certain areas of the United States, potential “rural districts” may span

⁶ See U.S. Census Bureau, *Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2019—United States—Metropolitan and Micropolitan Statistical Area; and for Puerto Rico*, <https://www.census.gov/data/tables/time-series/demo/popest/2010s-total-metro-and-micro-statistical-areas.html> (last visited Apr. 2, 2020).

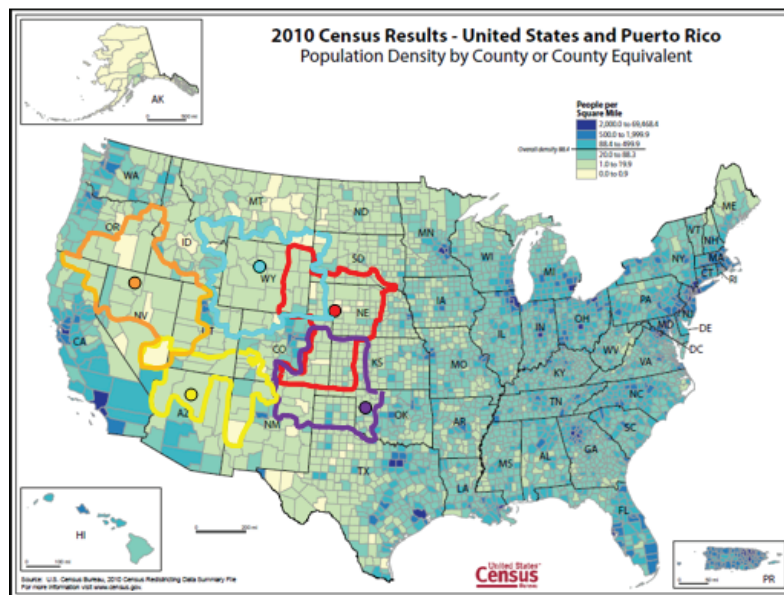
⁷ Merriam-Webster Dictionary Online, *Rural*, <https://www.merriam-webster.com/dictionary/rural> (last accessed Apr. 2, 2020).

⁸ Dictionary.com, *Rural*, <http://www.dictionary.com/browse/rural?s=t> (last accessed Apr. 2, 2020).

⁹ Thesaurus.com., *Rural*, <http://www.thesaurus.com/browse/rural?s=t> (last accessed Apr. 2, 2020).

¹⁰ *Am. Bankers Ass’n v. Nat’l Credit Union Admin.*, 306 F. Supp. 3d 44, 69 (D.D.C. 2018), rev’d and remanded, 934 F.3d 649 (D.C. Cir. 2019).

hundreds of thousands of square miles, include areas of several states, and include urban communities. The map below details five such “rural districts”. A summary of census data showing the population and square mile area of the counties that comprise each district below is attached as Exhibit C.



Supporting Information for Rural Districts			
	NV District	AZ District	WY District
States	NV, CA, OR, ID, UT	AZ, NV, UT, CO, NM	WY, ID, MT, SD, NE, CO, UT
Square Miles	176,090.55	102,101.05	181,676.00
Total Pop.	993,906	993,764	992,010
Major Metro Areas and Pop.	Carson City, NV - 55,916	Flagstaff, AZ - 143,476 Lake Havasu City, Kingman, AZ - 212,181 St. George, UT - 177,556 Farmington, NM - 123,958	Casper, WY - 79,858 Cheyenne, WY - 99,500
	OK District	NE District	
States	OK, TX, NM, CO, KS	NE, KS, CO, WY, SD	
Square Miles	117,659.79	151,698.15	
Total Pop.	984,055	969,873	
Major Metro Areas - Pop	Amarillo, TX - 265,033	Cheyenne, WY - 99,500	

NCUA's definition of "rural districts" that span hundreds of thousands of miles and include major metropolitan areas is impermissible and not entitled to the level of deference yielded by the D.C. Circuit.

NCUA's "rural district" definition also contravenes articulated Congressional intent that "Credit unions . . . have the specified mission of meeting the credit and savings needs of consumers, especially of persons of modest means." Pub. L. No. 105-219 (emphasis added); *see also First Nat. Bank and Trust Co. v. Nat. Credit Union Admin.*, 988 F.2d 1272, 1274 (D.C. Cir. 1993) ("FCUA was designed to improve access to credit for people of small means."). NCUA's "rural district" definition does not require a credit union to serve "persons of modest means". Instead, the definition permits a proposed "rural district" to circumvent areas of low or moderate income and permit operations in more affluent areas, so long as "rural district" qualifications are met.

B. Combined Statistical Areas.

Under NCUA's 2010 field of membership rule, credit unions' fields of membership for "well-defined local communities" were: (1) limited to a single permitted jurisdiction that is a city, county, or political equivalent, or any contiguous portion thereof that is designated as a Core-Based Statistical Area ("CBSA") with a population less than 2.5 million; or (2) a metropolitan division, or part thereof, subject to

a population cap of 2.5 million. However, in 2016, NCUA extended its field of membership definitions to include Combined Statistical Areas, or multiple contiguous CBSA's or metropolitan areas, subject to a population cap of 2.5 million. 12 CFR pt. 701, App. B, ch. 2 § V.A.2. Under NCUA's definition of "well-defined local community", a Combined Statistical Area may encompass a large geographic region with little commonality. NCUA's definition of "well-defined local community" to include Combined Statistical Areas is arbitrary and capricious, exceeds the authority of the statute, and is an impermissible construction of the statute. Surely, such a definition cannot be given the level of deference allowed by the D.C. Circuit.

The Amici submit that the Court should grant the Petition for a Writ of Certiorari to review NCUA's new definitions of "rural districts" and "local communities." Neither definition can by any reasonable interpretation be considered permissible within the meaning of the statute.

II. The significance of this case warrants the Court's review in light of the anti-competitive nature of NCUA's field of membership rules and their economic impact on the banking industry.

In *King v. Burwell*, 135 S. Ct. 2480 (2015), the Court determined that *Chevron* deference is inappropriate for issues of "deep economic and

political significance” where the agency’s authority has not been clearly spelled out by Congress. *Id.* at 2488-89. In such cases, it should be the courts and not the agency that determines the intent of Congress. *Id.* at 2489. NCUA’s definitions clearly go beyond the statute and, if permitted, will have a material adverse effect on the banking industry. Congress did not give NCUA carte blanche to extend the fields of membership. If the decision of the D.C. Circuit stands, however, there will be no limit on how far the agency can expand the fields of membership for credit unions. This case involves an issue of “deep economic and political significance” and NCUA cannot be the judge of its own authority under the statute.

The consequences that will flow from NCUA’s definitions of local community and rural district are of the “deep political and financial significance” variety. Credit unions are not subject to the Community Reinvestment Act (“CRA”) or any similar regulatory system and have a substantial tax advantage over banks. If credit unions are permitted to compete with banks by using NCUA’s newly defined expanded fields of membership, there will undoubtedly be substantial and irreparable damage to the banking industry.

Credit unions pay significantly less in taxes than banks and are not subject to the same level of regulatory oversight, and the costs associated therewith. Credit unions are exempt from federal and state income taxes. By contrast, banks pay both federal and state income taxes, and their shareholders pay federal and state income taxes on bank dividends

received. Credit union members pay taxes only on credit union distributions, while shareholders of Subchapter S banks pay taxes on their share of a bank's full taxable income, whether distributed or not. Further, under the CRA, banks are required to serve low-and-moderate income areas and are regularly examined to determine compliance. Community Reinvestment Act, 12 U.S.C. § 2901-2908. Credit unions are not subject to CRA and are merely reviewed annually for three years after charter approval to determine compliance with their business plans. 12 CFR pt. 701, App. B, ch. 2 § V.A.4.

NCUA's expansive definition of "rural district" and allowance of Combined Statistical Areas as a "local community" provide an unfair competitive advantage to credit unions. Rural areas, particularly in the western portion of the United States, have largely been served by small rural community banks. However, NCUA's far-reaching "rural district" definition would require small rural community banks to compete with potentially enormous "rural" credit unions. Large credit unions with substantial resources and member bases would have significant competitive advantages over small rural community banks due to: (1) their tax-exempt status; and (2) no requirement to comply with the CRA and the ability to exclude low and moderate income rural areas in favor of more affluent ones. As a result, credit unions in a rural district may offer lower rates to all potential members in the district and, in effect, "mine" members, loans and deposits from small rural community banks that have a physical presence and provide essential community services in the area. The

result will likely lead to the closure or consolidation of numerous small rural community banks due to an inability to compete with tax-exempt credit unions.

Certainly, an agency interpretation that results in such competitive advantages was not the intent of Congress. FCUA did not envision vast “communities” or “rural districts,” as NCUA itself acknowledged when it initially defined those terms after the 1998 revisions to the statute. Congress delegated limited authority to NCUA. It did not provide that FCUA means whatever NCUA says it means. Congress did not intend that the foundational provisions for chartering credit unions would mean one thing in 1998 and a completely different thing 20 years later. Neither FCUA nor *Chevron* authorizes such a result.

For the foregoing reasons, the Amici submit that ABA’s Petition for a Writ of Certiorari be granted.

CONCLUSION

For the reasons set forth in this Brief, as well as those set forth in the Petition for a Writ of Certiorari, ABA's Petition should be granted.

Respectfully submitted,

Robert A. Gamble
Julie Johnson McLean
Davis Brown Law Firm
215 10th Street, Suite 1300
Des Moines, IA 50309
Phone: (515) 288-2500
Fax: (515) 243-0654
Email: beaugamble@davisbrownlaw.com
juliemclean@davisbrownlaw.com

Steven D. Gordon
Counsel of Record
Holland & Knight LLP
800 - 17th Street N.W., Suite 1100
Washington, DC 20006
Phone: (202) 955-3000
Fax: (202) 955-5564
Email: steven.gordon@hklaw.com

ATTORNEYS FOR AMICI CURIAE

EXHIBIT A
STATE BANKERS ASSOCIATIONS

1. Alabama Bankers Association
2. Alaska Bankers Association
3. Arizona Bankers Association
4. Arkansas Bankers Association
5. California Bankers Association
6. Colorado Bankers Association
7. Connecticut Bankers Association
8. Delaware Bankers Association
9. Florida Bankers Association
10. Georgia Bankers Association
11. Hawaii Bankers Association
12. Idaho Bankers Association
13. Illinois Bankers Association
14. Indiana Bankers Association
15. Iowa Bankers Association
16. Kansas Bankers Association
17. Kentucky Bankers Association
18. Louisiana Bankers Association
19. Maine Bankers Association
20. Maryland Bankers Association
21. Massachusetts Bankers Association
22. Michigan Bankers Association
23. Minnesota Bankers Association
24. Mississippi Bankers Association
25. Missouri Bankers Association
26. Montana Bankers Association
27. Nebraska Bankers Association
28. Nevada Bankers Association
29. New Hampshire Bankers
Association
30. New Jersey Bankers Association
31. New Mexico Bankers Association

- 32. New York Bankers Association
- 33. North Carolina Bankers Association
- 34. North Dakota Bankers Association
- 35. Ohio Bankers League
- 36. Oklahoma Bankers Association
- 37. Oregon Bankers Association
- 38. Pennsylvania Bankers Association
- 39. Rhode Island Bankers Association
- 40. South Carolina Bankers Association
- 41. South Dakota Bankers Association
- 42. Tennessee Bankers Association
- 43. Texas Bankers Association
- 44. Utah Bankers Association
- 45. Vermont Bankers Association
- 46. Virginia Bankers Association
- 47. Washington Bankers Association
- 48. West Virginia Bankers Association
- 49. Wisconsin Bankers Association
- 50. Wyoming Bankers Association
- 51. Puerto Rico Bankers Association

EXHIBIT B
STATE-LEVEL COMMUNITY BANKING
ORGANIZATIONS

1. Arkansas Community Bankers
2. Bluegrass Community Bankers Association
3. California Community Banking Network
4. Independent Bankers of Colorado
5. Community Bankers Association of Georgia
6. Community Bankers Association of Illinois
7. Community Bankers Iowa
8. Community Bankers of Kansas
9. Community Bankers of Michigan
10. Independent Community Bankers of Minnesota
11. Missouri Independent Bankers Association
12. Montana Independent Bankers
13. Nebraska Independent Community Bankers
14. Independent Community Bankers Association of New Mexico
15. Independent Bankers Association of New York State
16. Independent Community Banks of North Dakota
17. Community Bankers Association of Ohio

18. Community Bankers Association of
Oklahoma
19. Pennsylvania Association of
Community Bankers
20. Independent Banks of South Carolina
21. Independent Community Bankers of
South Dakota
22. Independent Bankers Association of
Texas
23. Virginia Association of Community
Bankers
24. Community Bankers of Washington
25. Community Bankers of West Virginia

5a

EXHIBIT C
COUNTY POPULATION & SQUARE MILEAGE

County	State	Population	Square Miles
NEVADA DISTRICT			
Humboldt	NV	16,831	9,640.76
Elko	NV	52,778	17,169.83
Washoe	NV	220,521 (excluding Reno)	6,199.27
Carson City	NV	55,916	144.66
Lander	NV	5,532	5,490.11
Eureka	NV	2,029	4,175.68
Lincoln	NV	5,183	10,633.20
White Pine	NV	9,580	8,875.65
Churchill	NV	24,909	4,930.46
Pershing	NV	6,725	6,036.56
Klamath	OR	68,238	5,941.05
Lake	OR	7,869	8,138.98

6a

County	State	Population	Square Miles
Malheur	OR	30,571	9,887.53
Harney	OR	7,393	10,133.17
Grant	OR	7,199	4,528.54
Baker	OR	16,124	3,068.36
Union	OR	26,835	2,036.61
Wallowa	OR	7,208	3,146.19
Owyhee	ID	11,823	7,665.51
Payette	ID	23,951	406.87
Washington	ID	10,194	1,452.98
Adams	ID	4,294	1,363.06
Gem	ID	18,122	560.90
Twin Falls	ID	86,878	1,921.21
Cassia	ID	24,030	2,565.08
Box Elder	UT	56,046	5,745.55
Tooele	UT	72,259	6,941.35
Juab	UT	12,017	3,392.28
Millard	UT	13,188	6,572.43

7a

County	State	Population	Square Miles
Beaver	UT	6,710	2,589.88
Iron	UT	54,839	3,296.68
Lassen	CA	30,573	4,541.18
Modoc	CA	8,841	3,917.77
Siskiyou	CA	43,539	6,277.89
TOTAL		993,906	176,090.55
ARIZONA DISTRICT			
Lincoln	NV	5,532	10,633.20
Coconino	AZ	143,476	18,618.89
Mohave	AZ	212,181	13,311.08
Montezuma	CO	26,183	2,029.53
Dolores	CO	2,055	1,067.05
San Miguel	CO	8,179	1,286.61
La Plata	CO	56,221	1,692.08
Hinsdale	CO	820	1,117.25
Archuleta	CO	14,029	1,350.18
San Juan	NM	123,958	5,513.07

8a

County	State	Population	Square Miles
McKinley	NM	71,367	5,449.81
Cibola	NM	26,675	4,539.48
Rio Arriba	NM	38,921	5,860.84
Catron	NM	3,527	6,923.60
Washington	UT	177,556	2,426.36
Iron	UT	54,839	3,296.68
Kane	UT	7,886	3,990.23
San Juan	UT	15,308	7,819.99
Garfield	UT	5,051	5,175.12
TOTAL		993,764	102,101.05
OKLAHOMA DISTRICT			
Beaver	OK	5,311	1,814.67
Texas	OK	19,983	2,041.26
Cimarron	OK	2,137	1,834.74
Harper	OK	3,688	1,039.02
Ellis	OK	3,859	1,231.52
Roger Mills	OK	3,583	1,141.14

9a

County	State	Population	Square Miles
Beckham	OK	21,859	901.81
Harmon	OK	2,653	537.19
Greer	OK	5,712	639.32
Jackson	OK	24,530	802.65
Kiowa	OK	8,708	1,015.23
Tillman	OK	7,250	871.13
Washita	OK	10,916	1,003.17
Custer	OK	29,003	988.82
Dewey	OK	4,891	999.48
Woodward	OK	20,211	1,242.40
Woods	OK	8,793	1,286.45
Alfalfa	OK	5,702	866.46
Major	OK	7,629	954.99
Potter	TX	117,415	908.37
Carson	TX	5,926	920.22
Gray	TX	21,886	925.97
Wheeler	TX	5,056	914.52

10a

County	State	Population	Square Miles
Collingsworth	TX	2,920	918.44
Donley	TX	3,278	926.89
Armstrong	TX	1,887	909.11
Randall	TX	137,713	911.54
Lipscomb	TX	3,233	932.18
Ochiltree	TX	9,836	917.63
Hansford	TX	5,399	919.81
Sherman	TX	3,022	923.04
Dallam	TX	7,287	1,503.26
Hartley	TX	5,576	1,462.03
Moore	TX	20,940	899.69
Hutchinson	TX	20,938	887.42
Roberts	TX	854	924.06
Hemphill	TX	3,819	906.29
Oldham	TX	2,112	1,500.53
Deaf Smith	TX	18,546	1,496.87
Union	NM	4,059	1,066.18

11a

County	State	Population	Square Miles
Quay	NM	8,253	2,874.35
Harding	NM	625	2,125.44
Mora	NM	4,521	1,931.27
Colfax	NM	11,941	3,758.06
San Miguel	NM	27,277	4,715.82
Taos	NM	32,723	2,203.11
Costilla	CO	3,887	1,226.95
Huerfano	CO	6,897	1,591.00
Custer	CO	5,068	738.63
Las Animas	CO	14,506	4,772.67
Otero	CO	18,278	1,261.96
Bent	CO	5,577	1,512.86
Prowers	CO	12,172	1,638.40
Crowley	CO	6,061	787.42
Kiowa	CO	1,406	1,767.77
Lincoln	CO	5,701	2,577.63
Cheyenne	CO	1,831	1,778.28

12a

County	State	Population	Square Miles
Kit Carson	CO	7,097	2,160.82
Washington	CO	4,908	2,518.03
Yuma	CO	10,019	2,364.41
Cheyenne	KS	2,657	1,019.89
Rawlins	KS	2,530	1,069.42
Sherman	KS	5,917	1,056.07
Thomas	KS	7,777	1,074.69
Wallace	KS	1,518	913.65
Logan	KS	2,794	1,072.99
Greeley	KS	1,232	778.45
Wichita	KS	2,119	718.57
Hamilton	KS	2,539	996.51
Kearny	KS	3,838	870.54
Stanton	KS	2,006	680.35
Grant	KS	7,150	574.80
Morton	KS	2,587	729.73
Stevens	KS	5,485	727.29

13a

County	State	Population	Square Miles
Haskell	KS	3,968	577.52
Seward	KS	21,428	639.50
Meade	KS	4,033	978.09
Decatur	KS	2,827	893.52
Sheridan	KS	2,521	895.96
Gove	KS	2,636	1,071.67
Scott	KS	4,823	717.54
Lane	KS	1,535	717.46
Finney	KS	36,467	1,301.97
Gray	KS	5,988	868.87
Norton	KS	5,361	878.13
Graham	KS	2,482	898.52
Trego	KS	2,803	889.48
Ness	KS	2,750	1,074.75
Hodgeman	KS	1,794	859.99
Ford	KS	33,619	1,098.27
Clark	KS	1,994	974.63

14a

County	State	Population	Square Miles
Comanche	KS	1,700	788.30
Kiowa	KS	2,475	722.64
Edwards	KS	2,798	621.89
Rush	KS	3,036	717.76
TOTAL		984,055	117,659.79
WYOMING DISTRICT			
Wyoming	WY	578,759	97,093.14
Jackson	CO	1,392	1,613.72
Routt	CO	25,638	2,362.03
Moffat	CO	13,283	4,743.29
Rio Blanco	CO	6,324	3,220.93
Grand	UT	9,754	3,671.54
Uintah	UT	35,734	4,479.69
Daggett	UT	950	696.98
Duchesne	UT	19,938	3,240.95
Summit	UT	42,145	1,871.71
Rich	UT	2,483	1,028.78

15a

County	State	Population	Square Miles
Morgan	UT	12,124	609.20
Oneida	ID	4,531	1,200.06
Franklin	ID	13,876	663.65
Bear Lake	ID	6,125	974.79
Caribou	ID	7,155	1,764.15
Fremont	ID	13,099	1,863.53
Clark	ID	845	1,764.19
Beaverhead	MT	9,453	5,541.62
Madison	MT	8,600	3,587.48
Park	MT	16,606	2,803.06
Carbon	MT	10,725	2,048.79
Big Horn	MT	13,319	4,995.46
Powder River	MT	1,682	3,297.30
Carter	MT	1,252	3,340.75
Harding	SD	1,298	2,671.38
Butte	SD	10,429	2,249.90
Lawrence	SD	25,844	800.04

16a

County	State	Population	Square Miles
Custer	SD	8,972	1,557.00
Fall River	SD	6,713	1,739.92
Dawes	NE	8,589	1,396.46
Sioux	NE	1,166	2,066.74
Box Butte	NE	10,783	1,075.29
Scotts Bluff	NE	35,618	739.40
Morrill	NE	4,642	1,423.84
Cheyenne	NE	8,910	1,196.29
Banner	NE	745	746.11
Kimball	NE	3,632	951.85
Sheridan	NE	5,246	2,440.86
Garden	NE	1,837	1,704.28
Deuel	NE	1,794	439.85
TOTAL		992,010	181,676.00
NEBRASKA DISTRICT			
Dawes	NE	8,589	1,396.46
Sioux	NE	1,166	2,066.74

County	State	Population	Square Miles
Box Butte	NE	10,783	1,075.29
Scotts Bluff	NE	35,618	739.40
Morrill	NE	4,642	1,423.84
Cheyenne	NE	8,910	1,196.29
Banner	NE	745	746.11
Kimball	NE	3,632	951.85
Sheridan	NE	5,246	2,440.86
Garden	NE	1,837	1,704.28
Deuel	NE	1,794	439.85
Cherry	NE	5,689	5,960.42
Grant	NE	623	776.22
Arthur	NE	463	715.36
Keith	NE	8,034	1,061.60
Perkins	NE	2,891	883.34
Chase	NE	3,924	894.42
Dundy	NE	1,693	919.68
Hooker	NE	682	721.12

18a

County	State	Population	Square Miles
McPherson	NE	494	858.98
Lincoln	NE	34,914	2,564.07
Thomas	NE	722	713.24
Logan	NE	748	570.66
Hayes	NE	922	713.06
Frontier	NE	2,627	974.59
Hitchcock	NE	2,762	709.94
Red Willow	NE	10,724	716.99
Boyd	NE	1,919	539.94
Keya Paha	NE	806	773.07
Holt	NE	10,067	2,412.40
Rock	NE	1,357	1,008.32
Brown	NE	2,955	1,221.33
Loup	NE	664	568.29
Garfield	NE	1,969	569.79
Wheeler	NE	783	575.18
Valley	NE	4,158	568.05

County	State	Population	Square Miles
Greeley	NE	2,356	569.81
Sherman	NE	3,001	565.83
Howard	NE	6,445	569.34
Custer	NE	10,777	2,575.52
Dawson	NE	23,595	1,013.10
Buffalo	NE	49,659	968.11
Gosper	NE	1,990	458.16
Phelps	NE	9,034	539.79
Kearney	NE	6,495	516.24
Furnas	NE	4,676	719.13
Harlan	NE	3,380	553.47
Franklin	NE	2,979	575.82
Blaine	NE	465	710.87
Cheyenne	KS	2,657	1,019.89
Rawlins	KS	2,530	1,069.42
Sherman	KS	5,917	1,056.07
Thomas	KS	7,777	1,074.69

20a

County	State	Population	Square Miles
Wallace	KS	1,518	913.65
Logan	KS	2,794	1,072.99
Greeley	KS	1,232	778.45
Wichita	KS	2,119	718.57
Hamilton	KS	2,539	996.51
Kearny	KS	3,838	870.54
Stanton	KS	2,006	680.35
Grant	KS	7,150	574.80
Morton	KS	2,587	729.73
Stevens	KS	5,485	727.29
Haskell	KS	3,968	577.52
Seward	KS	21,428	639.50
Meade	KS	4,033	978.09
Decatur	KS	2,827	893.52
Sheridan	KS	2,521	895.96
Gove	KS	2,636	1,071.67
Scott	KS	4,823	717.54

21a

County	State	Population	Square Miles
Lane	KS	1,535	717.46
Finney	KS	36,467	1,301.97
Gray	KS	5,988	868.87
Costilla	CO	3,887	1,226.95
Huerfano	CO	6,897	1,591.00
Custer	CO	5,068	738.63
Las Animas	CO	14,506	4,772.67
Otero	CO	18,278	1,261.96
Bent	CO	5,577	1,512.86
Prowers	CO	12,172	1,638.40
Crowley	CO	6,061	787.42
Kiowa	CO	1,406	1,767.77
Lincoln	CO	5,701	2,577.63
Cheyenne	CO	1,831	1,778.28
Kit Carson	CO	7,097	2,160.82
Elbert	CO	26,729	1,850.85
Washington	CO	4,908	2,518.03

22a

County	State	Population	Square Miles
Yuma	CO	10,019	2,364.41
Logan	CO	22,409	1,838.55
Sedgwick	CO	2,248	548.04
Phillips	CO	4,265	687.93
Laramie	WY	99,500	2,685.91
Goshen	WY	13,211	2,225.39
Platte	WY	8,393	2,084.21
Albany	WY	38,880	4,273.84
Converse	WY	13,822	4,254.88
Niobrara	WY	2,356	2,626.04
Campbell	WY	46,341	4,802.71
Weston	WY	6,927	2,398.09
Crook	WY	7,584	2,854.41
Custer	SD	8,972	1,557.00
Fall River	SD	6,713	1,739.92

23a

County	State	Population	Square Miles
Oglala Lakota/Shannon	SD	14,177	2,093.90
Bennett	SD	3,365	1,184.71
Jackson	SD	3,344	1,863.91
Mellette	SD	2,061	1,307.31
Todd	SD	10,177	1,388.56
Tripp	SD	5,441	1,612.45
Brule	SD	5,297	817.24
Gregory	SD	4,185	1,014.96
Charles Mix	SD	9,292	1,097.49
Douglas	SD	2,921	431.80
Bon Homme	SD	6,901	563.70
Hutchinson	SD	7,291	812.90
Yankton	SD	22,814	521.16
Clay	SD	14,070	412.19
TOTAL		969,873	151,698.15