

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NATIONSBANK OF NORTH CAROLINA, N. A.,
ET AL. V. VARIABLE ANNUITY LIFE
INSURANCE CO. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

No. 93-1612. Argued December 7, 1994—Decided January 18,
1995¹

Petitioner national bank and its brokerage subsidiary applied to the Comptroller of the Currency, charged by Congress with superintendence of national banks, to allow the subsidiary to act as an agent in the sale of annuities. Under the proposed plan, bank customers could purchase a "variable annuity"—which invests payments in a designated way and yields income that varies with investment performance—a "fixed" annuity—which yields income that does not vary—or a hybrid account. Granting the application, the Comptroller typed the annuity sales "incidental" to "the business of banking" under the National Bank Act, 12 U. S. C. §24 Seventh. The Comptroller further concluded that annuities are not "insurance" within the meaning of §92; that provision, by expressly authorizing banks in towns of no more than 5,000 people to sell insurance, arguably implies that banks in larger towns may not sell insurance. Respondent Variable Annuity Life Insurance Co. (VALIC), which sells annuities, filed a suit challenging the Comptroller's decision. The District Court upheld the Comptroller's conclusions as a permissible reading of the Act. Reversing the District Court's judgment, the Court of Appeals held that §92 bars banks not located in small towns from selling insurance,

¹Together with No. 93-1613, *Ludwig, Comptroller of the Currency, et al. v. Variable Annuity Life Insurance Co. et al.*, also on certiorari to the same court.

and rejected the Comptroller's conclusion that annuities are not insurance under §92.

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Held: The Comptroller's determination that national banks may serve as agents in the sale of annuities is a reasonable construction of the Act and therefore warrants judicial deference. Pp. 3-13.

(a) If a statute is silent or ambiguous with respect to the precise question at issue, the reviewing court must determine whether the answer reached by the agency charged with the statute's enforcement is based on a permissible construction. If an expert administrator's reading fills a gap or defines a term in a way that is reasonable in light of Congress' revealed design, the administrator's judgment is given controlling weight. Pp. 4-5.

(b) The Court respects as reasonable the Comptroller's conclusion that brokerage of annuities is an "incidental power . . . necessary to carry on the business of banking" under §24 Seventh. In interpreting "the business of banking" to include brokerage of financial investment instruments, the Comptroller better comprehends the Act's terms than does VALIC, whose reading confines national banks to the five activities listed in §24 Seventh's first sentence and endeavors incidental thereto: discounting and negotiating evidences of debt; receiving deposits; buying and selling money; making loans; and obtaining, issuing, and circulating notes. The section's second sentence, which limits banks' "dealing in securities," recognizes that banks otherwise have the authority the sentence addresses, even though that authority is not specifically enumerated; Congress thus evidenced its intent to accord banks authority "to carry on the business of banking" through customer services not circumscribed by the five listed activities. The Comptroller therefore has discretion, within reasonable bounds, to permit banking activities beyond those the statute sets forth as exemplary. Here, the Comptroller reasonably concluded that the authority to sell annuities qualifies as part of the authority to purchase and sell financial investment instruments. Modern annuities, though more sophisticated than the standard savings bank deposits of old, answer essentially the same need. By providing customers with the opportunity to invest in one or more annuity options, banks are essentially offering financial investment instruments of the kind congressional authorization permits them to broker. Pp. 5-8.

(b) The Court further defers to the Comptroller's determination that annuities are properly classified as investments, not "insurance" within §92's meaning. The Comptroller's classification of annuities, based on the tax deferral and investment features that distinguish them from insurance, is at least a reasonable interpretation of the

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controlling legislation. A key feature of insurance is that it indemnifies loss. As the Comptroller observes, annuities serve an important investment purpose and are functionally similar to other investments that banks typically sell. And though fixed annuities more closely resemble insurance than do variable annuities, fixed annuities too have significant investment features and are functionally similar to debt instruments. Moreover, mindful that fixed annuities are often packaged with variable annuities, the Comptroller reasonably chose to classify the two together. In light of the foregoing, the Court need not reach the question whether §92, by negative implication, precludes national banks in places more populous than 5,000 from selling insurance. Pp. 8-12.

998 F. 2d 1295, reversed.

GINSBURG, J., delivered the opinion for a unanimous Court.