

# The Burger Court Opinion Writing Database

*Commissioner v. Lincoln Savings & Loan Assn.*

403 U.S. 345 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



  
CHAMBERS OF  
THE CHIEF JUSTICE

Supreme Court of the United States  
Washington, D. C. 20543

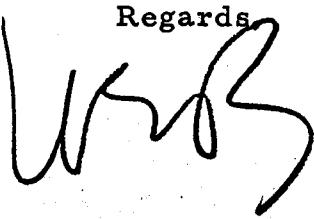
June 11, 1971

Re: No. 544 - CIR v. Lincoln Savings & Loan Assn.

Dear Harry:

Please join me.

Regards



Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HUGO L. BLACK

June 11, 1971

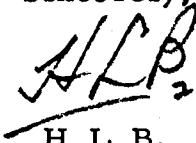
#544

Dear Harry,

Re: Commr. of Int. Rev. v. Lincoln Savings  
and Loan Association.

I agree.

Sincerely,

  
H. L. B.

Mr. Justice Blackmun

cc: Members of the Conference

for: The Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Justice Marshall  
Justice Blackmun

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 544.—OCTOBER TERM, 1970

Commissioner of Internal Revenue, Petitioner,  
v.  
Lincoln Savings and Loan Association. } On Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit.

[June —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

Respondent is a state-chartered savings and loan institution, whose deposits are insured by the Federal Savings and Loan Insurance Corporation (FSLIC). To obtain this coverage, respondent must pay two premiums. Under § 404 (b) of the National Housing Act, it pays an annual premium of  $\frac{1}{12}$  of one percent of the total amount of its savings accounts and creditor obligations. Pursuant to § 404 (d), it must also pay an additional premium equal to two percent of any net increase in the total amount of its insured accounts.<sup>1</sup> The § 404 (b) premium is considered gross income of FSLIC, approximately 95% of which is transferred to its Primary Reserve, to cover losses. These premiums must be paid by insured institutions until the Primary Reserve equals two percent of the total insured savings accounts and creditor obligations of all insured institutions. Thereafter, insured institutions need pay no premiums unless and until the Primary Reserve drops below two percent. The § 404 (d) premium is not considered gross income of FSLIC but is transferred to a Secondary Reserve, to be used to cover losses only if other accounts prove insufficient, a possibility

<sup>1</sup> This amount may be reduced by an amount equal to any requirement for the purchase of stock in the Federal Home Loan Bank of which the insured is a member.

June 10, 1971

Re: No. 144 - CTR v. Laneside Services

Dear Harry:

Please join me in your opinion.

Sincerely,

J. M. E.

Mr. Justice Holmes

CC: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 10, 1971

RE: No. 544 -C. I. R. v. Lincoln Savings

Dear Harry:

I am delighted to join your fine  
opinion in the above.

Sincerely,



W. J. B. Jr.

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

June 9, 1971

Re: No. 544 - CIR v. Lincoln S&L

Dear Harry,

I am glad to join your opinion for  
the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Blackmun

Copies to the Conference

*BR  
W*  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 10, 1971

Re: No. 544 - CIR v. Lincoln Savings  
& Loan Assn.

Dear Harry:

Please join me. And thanks  
very much.

Sincerely,

*Byron*

Mr. Justice Blackmun

Copies to Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 11, 1971

Re: No. 544 - CIR v. Lincoln Savings & Loan Assn.

Dear Harry:

Please join me.

Sincerely,



T.M.

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 9, 1971

*Joined  
6/11*

MEMORANDUM TO THE CONFERENCE

Re: No. 544 - CIR v. Lincoln Savings & Loan Assn.

This is (a) late and (b) complicated. For the former, I apologize. For the latter, you will have to blame someone else.

H. A. B.

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓

1st DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES: 6/9/71

No. 544.—OCTOBER TERM, 1970 Recipient:

Commissioner of Internal Revenue, Petitioner,  
v.  
Lincoln Savings and Loan Association. } On Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit.

[June —, 1971]

MR. JUSTICE BLACKMUN.

This case presents the question whether the "additional premium" paid in 1963 by a state-chartered savings and loan association to the Federal Savings and Loan Insurance Corporation under the compulsion of § 404 (d) of the National Housing Act, as amended, 12 U. S. C. § 1727 (d),<sup>1</sup> is deductible by the association, for income

<sup>1</sup> Section 404 (d), as amended by the Act of September 8, 1961, Pub. L. 87-210, § 6, 75 Stat. 483, read:

"(d) Each insured institution, except as otherwise provided in this section, shall annually pay to the Corporation, at such time and in such manner as the Corporation shall by regulations or otherwise prescribe, an additional premium in the nature of a prepayment with respect to future premiums of such institution under subsection (b) equal to 2 per centum of the net increase in all accounts of its insured members during the next preceding calendar year, less an amount equal to any requirement, as of the end of such calendar year, for the purchase of stock of the Federal Home Loan Bank of which such institution is a member, calculated in accordance with the provisions of subsection (c) of section 6 of the Federal Home Loan Bank Act and without regard to any net increase during such calendar year in its holdings of such stock, and such prepayments shall be credited to the Secondary Reserve . . . ."

The foregoing is the form of the statute in effect during 1963. Subsection (d) was further amended by the Act of September 21,