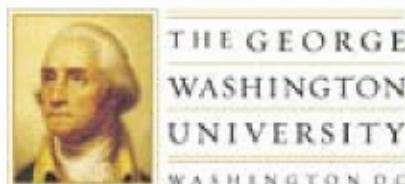


# The Burger Court Opinion Writing Database

*First Federal Savings & Loan Association of Boston v. Tax Commission of Massachusetts*

437 U.S. 255 (1978)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

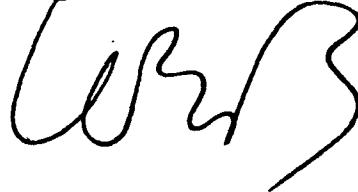
June 6, 1978

Re: 77-334 First Federal Savings and Loan Ass'n  
v. State Tax Comm'n

Dear John:

I join, but am working up a short concurrence.

Regards,



Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 9, 1978

Re: 77-334 - First Federal Savings & Loan Ass'n  
v. State Tax Comm'n

MEMORANDUM FOR THE CONFERENCE

Enclosed is a "trial balloon" which I began before Senator DeConcini invited us to give our views.

It is drawn from efforts begun long ago and now focused on the above case.

In spite of the "paper flood", I send it for possible discussion next week. Its use now may collide with a common letter signed by "All Nine".

Regards,



To: Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: The Chief Justice  
Circulated: JUN 9 1978

Recirculated: \_\_\_\_\_

Re: 77-334 - First Federal Savings & Loan Ass'n v. State  
Tax Comm'n

MR. CHIEF JUSTICE BURGER, concurring.

This case exemplifies many of the reasons why this Court should no longer be required to labor under the anachronism of obligatory jurisdiction. In its consideration of the problem, Congress should give weight to these factors and, consonant with the virtually unanimous views of all who have examined the problem of this Court's workload, eliminate entirely, or at least severely restrict, those statutes that permit litigants to bring cases here as of right and without regard to their general public importance.

Prior to 1925, virtually all of this Court's docket was comprised of cases brought under the Court's obligatory appellate jurisdiction. The Court had no discretion to decline review of such cases; it was required to decide each on its

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

June 1, 1978

RE: No. 77-334 First Federal Savings and Loan Assn.  
of Boston v. State Tax Commission

Dear John:

I agree.

Sincerely,

*W. J. Brennan, Jr.*

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 1, 1978

Re: No. 77-334, First Federal Saving & Loan  
Ass'n of Boston v. State Tax  
Comm'n

Dear John,

I am glad to join your opinion for the  
Court.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 2, 1978

Re: 77-334 — First Federal Savings and Loan  
Association of Boston v. State  
Tax Commission

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Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 1, 1978

Re: No. 77-334 - First Federal Savings and Loan  
Association of Boston v. State Tax Commission

Dear John:

Please join me.

Sincerely,

*J.M.*  
T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 4, 1978

Re: No. 77-334 - First Federal Savings & Loan  
Association v. State Tax Commission

Dear Lewis:

You and I, I believe, are the only ones on the down side of this case. If it is all right with you, I shall undertake a dissent in due course.

Sincerely,



Mr. Justice Powell

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 6/1/78

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 77-334

First Federal Savings and Loan  
Association of Boston et al.,  
Appellants,  
v.  
State Tax Commission et al. } On Appeal from the Su-  
preme Judicial Court of  
Massachusetts.

[May —, 1978]

MR. JUSTICE BLACKMUN, concurring in part and dissenting  
in part.

Section 5 (h) of the Home Owners' Loan Act of 1933, as  
amended, 12 U. S. C. § 1464 (h) (1976 ed.), reads:

"No State, county, municipal, or local taxing authority  
shall impose any tax on such associations or their fran-  
chise, capital, reserves, surplus, loans, or income greater  
than that imposed by such authority on other similar  
local mutual or cooperative thrift and home financing  
institutions."

The Court, in speaking of this statute, has said: "This provi-  
sion unequivocally bars discriminatory state taxation of the  
Federal Savings and Loan Associations." *Laurens F. S. & L.*  
*v. S. C. Tax Comm'n*, 365 U. S. 517, 523 (1961).

I agree with the Court's ruling today on the first issue,  
namely, that the lesser reserve deduction available for federal  
savings and loan associations of itself does not demonstrate  
that the associations pay a greater tax than similar Massa-  
chusetts savings banks.

On the second issue, however, I am in disagreement with  
the Court and, to that extent, dissent from its opinion. For  
this issue, the important focus of the statute is on the word  
"similar," and the measure of the Commonwealth's allowable

✓  
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 1, 1978

No. 77-334 First Federal v. State Tax Commission

Dear John:

Although my vote at the Conference was tentatively to reverse, I am now persuaded to your view of the case.

Accordingly, please join me.

Sincerely,

*Lewis*

Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 2, 1978

No. 77-334 First Federal Savings and Loan Association  
of Boston v. State Tax Commission

Dear John:

Please join me.

Sincerely,

*WR*

Mr. Justice Stevens

Copies to the Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Mr. Justice Stevens  
May 31 '76  
Circulated:

Recirculated:

77-334 - First Federal Savings and Loan Association of Boston

v. State Tax Commission

MR. JUSTICE STEVENS delivered the opinion of the Court.

This appeal challenges the power of the State of Massachusetts to impose a tax on federal savings and loan associations. Relying on a federal law forbidding states from taxing federal associations more heavily than "similar" state institutions, appellants contend that the State's tax discriminates against federal associations because: (1) the state institutions subject to the tax are allowed a larger deduction for required additions to reserves than federal associations, and (2) the state tax does not apply to credit unions, which appellants believe to be "similar" to federal savings and loan associations. We affirm.

In the Home Owners' Loan Act of 1933, Congress authorized the creation of federally chartered savings and loan associations. Section 5(h) of that Act provides:

"No State, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions." 12 U.S.C. § 1464(h).

minor stylistic changes  
throughout

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: \_\_\_\_\_

Recirculated: JUN 6 1978

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 77-334

First Federal Savings and Loan  
Association of Boston et al.,  
Appellants,  
v.  
State Tax Commission et al. } On Appeal from the Su-  
preme Judicial Court of  
Massachusetts.

[June —, 1978]

MR. JUSTICE STEVENS delivered the opinion of the Court.

This appeal challenges the power of the State of Massachusetts to impose a tax on federal savings and loan associations. Relying on a federal law forbidding States from taxing federal associations more heavily than "similar" state institutions, appellants contend that the State's tax discriminates against federal associations because: (1) the state institutions subject to the tax are allowed a larger deduction for required additions to reserves than federal associations, and (2) the state tax does not apply to credit unions, which appellants believe to be "similar" to federal savings and loan associations. We affirm.

In the Home Owners' Loan Act of 1933, Congress authorized the creation of federally chartered savings and loan associations. 48 Stat. 128. Section 5 (h) of that Act provides:

"No State, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions." 48 Stat. 133-134; 12 U. S. C. § 1464 (h).

As enacted in 1966, the Massachusetts statute imposed an excise tax, measured by deposits and income, on state coopera-