

# The Burger Court Opinion Writing Database

## *Navarro Savings Association v. Lee*

446 U.S. 458 (1980)

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

May 7, 1980

RE: 79-465 - Navarro Savings Assn.  
v. Lee

Dear Lewis:

I join.

Regards,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 25, 1980

RE: No. 79-465 Navarro Savings Association v. Lee

Dear Lewis:

I agree.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 30, 1980

Re: No. 79-465, Navarro Savings  
Assn. v. Lee

Dear Lewis,

I am glad to join your opinion  
for the Court.

Sincerely yours,

P.S.  
/

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 26, 1980

Re: No. 79-465 - Navarro Savings Assn. v.  
Lawrence F. Lee, Jr., et al

Dear Lewis,

Please join me.

Sincerely yours,



Mr. Justice Powell

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 14, 1980

Re: No. 79-465 - Navarro Savings Association v. Lee

Dear Lewis;

Please join me.

Sincerely,



T.M.

Mr. Justice Powell

cc; The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 25, 1980

Re: No. 79-465 - Navarro Savings Association v. Lee

Dear Lewis:

I find this case much more difficult than your opinion indicates. While I shall probably end up where you do, I am contemplating, for now, writing separately. I shall appreciate it if you will give me a few days to make up my mind whether to do this.

Sincerely,

*Harry*

*W. H. 43*

Mr. Justice Powell

cc: The Conference

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: MAY 05 1980

1st DRAFT

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## SUPREME COURT OF THE UNITED STATES

No. 79-465

Navarro Savings Association, Petitioner, v. Lawrence F. Lee, Jr. et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Fifth Circuit.
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[May —, 1980]

MR. JUSTICE BLACKMUN, dissenting.

A reader of the Court's conclusionary opinion might wonder why this heavily burdened tribunal chose to review this case. Most assuredly, we did not do so merely to reaffirm, *ante*, at 4, Mr. Chief Justice Marshall's ruling from the bench in *Chappedelaine v. Dechenaux*, 4 Cranch 306, 308 (1808), to the effect that aliens serving respectively as residuary legatee and representative of an estate, "although they sue as trustees," were entitled to bring a federal diversity action against a Georgia citizen. Rather, I had thought that we granted certiorari to resolve a significant conflict among the courts of appeals concerning the question whether the citizenship of a business trust, for purposes of establishing diversity jurisdiction, is determined by looking to the citizenship of its trustees or that of its beneficial shareholders.<sup>1</sup> I believe that the

<sup>1</sup> Compare the decision below, 597 F. 2d 421 (CA5 1979), rev'g 416 F. Supp. 1186 (ND Tex. 1976), with *Belle View Apartments v. Realty ReFund Trust*, 602 F. 2d 668 (CA4 1979), and *Riverside Memorial Mausoleum, Inc. v. UMET Trust*, 581 F. 2d 62 (CA3 1978), aff'g 434 F. Supp. 58 (ED Pa. 1977). See also cases cited in n. 6, *infra*, dealing with an analogous question presented in the context of limited partnerships.

The Court of Appeals' decision in this case also conflicts with a substantial body of recent holdings of federal district courts, that uniformly have looked to the citizenship of the beneficial shareholders, and not the trustees, in determining the existence of diversity in suits brought by or against common-law business trusts. See *National City Bank v. Fidelco*



STYLISTIC CHANGES  
4 pp. 7, 8, 11

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

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 79-465

Navarro Savings Association, Petitioner, v. Lawrence F. Lee, Jr. et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Fifth Circuit.
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[May —, 1980]

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Chief Justice  
 Brennan  
 Stewart  
 White  
 Marshall  
 Burger  
 Rehnquist  
 Stevens

4-24-80

From: Mr. Powell

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# SUPREME COURT OF THE UNITED STATES

No. 79-465

Navarro Savings Association,	} On Writ of Certiorari to the
Petitioner,	
v.	
Lawrence F. Lee, Jr. et al.	United States Court of Ap- peals for the Fifth Circuit.

[May —, 1980]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question is whether the trustees of a business trust may invoke the diversity jurisdiction of the federal courts on the basis of their own citizenship, rather than that of the trust's beneficial shareholders.

## I

The respondents are eight individual trustees of Fidelity Mortgage Investors, a business trust organized under Massachusetts law.<sup>1</sup> They hold title to real estate investments in trust for the benefit of Fidelity's shareholders.<sup>2</sup> The declaration of trust gives the respondents exclusive authority over this property "free from any power and control of the Shareholders, to the same extent as if the Trustees were the sole owners of the Trust Estate in their own right. . . ."<sup>3</sup> The respondents have power to transact Fidelity's business,

<sup>1</sup> Fidelity merged into a Delaware corporation in 1978, but Fed. Rule Civ. Proc. 25 (c) permits the original parties to continue the litigation. Jurisdiction turns on the facts existing at the time the suit commenced. *Louisville, N. A. & C. R. Co. v. Louisville Trust Co.*, 174 U. S. 552, 556 (1899).

<sup>2</sup> Fidelity Mortgage Investors Fifth Amended and Restated Declaration of Trust (hereinafter Fidelity Declaration of Trust), App. A44-A45.

<sup>3</sup> *Id.*, Art. 3.1, App. A49-A50.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 28, 1980

79-465-Navarro-Savings-Association-v.-Lee

Dear Harry:

Thank you for your note. By all means, take all  
the time you need.

Sincerely,



Mr. Justice Blackmun

lfp/ss

cc: The Conference

1/1/80  
7/2/80

4-7

Chief Justice  
Justice Brennan  
Justice Stewart  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens

5-8-80

From: Mr. Justice Powell

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2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 79-465

Navarro Savings Association,  
Petitioner,  
v.  
Lawrence F. Lee, Jr. et al. } On Writ of Certiorari to the  
United States Court of Ap-  
peals for the Fifth Circuit.

[May —, 1980]

MR. JUSTICE POWELL delivered the opinion of the Court.

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## I

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<sup>3</sup> *Id.*, Art. 3.1, App. A49-A50.

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May 15, 1980

No. 79-465 Navarro Savings Assoc. v. Lee

Dear Chief:

As I will be at the Fifth Circuit Judicial Conference on Monday, I would appreciate your announcing my decision in the above case.

We affirmed the judgment of the Court of Appeals for the Fifth Circuit. Mr. Justice Blackmun filed a dissenting opinion.

Sincerely,

The Chief Justice

LFP/lab

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 28, 1980

Re: No. 79-465 - Navarro Savings Assoc. v. Lee

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 24, 1980

Re: 79-465 - Navarro Savings v. Lee

Dear Lewis:

Please join me.

Respectfully,



Mr. Justice Powell

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