

The Burger Court Opinion Writing Database

National Independent Coal Operators' Association v. Kleppe

423 U.S. 388 (1976)

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



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

From: President Justice

Case No. 73-2066 DEC 8 1975

RECORDED

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-2066

National Independent Coal Operator's Association et al.,
Petitioners,

v.
Thomas S. Kleppe, Secretary of
the Interior, et al.

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

[December —, 1975]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

This case presents the question whether the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 742, 30 U. S. C. § 801 *et seq.*,¹ requires the Secretary of the Interior to prepare a decision with formal findings of fact before assessing a civil penalty against a mine operator absent a request by the mine operator for an administrative hearing, the penalty being enforceable only by way of a subsequent judicial proceeding in which the operator is entitled to a trial *de novo* as to the amount of the penalty.

The National Independent Coal Operator's Association sought declarative and injunctive relief on the ground that certain civil penalty assessment regulations utilized by the Secretary violated the procedural requirements of the Act. The Court of Appeals for the District of Columbia Circuit held that the regulations did not violate the Act.² 494 F. 2d 987 (1974).

¹ Consolidated with No. 74-521, *Kleppe v. Delta Mining, Inc., G. M. W. Coal Co., Inc., Edward Mears, et al.*, 495 F. 2d 38 (CA3 1974).

² In the companion to this case, No. 74-521, *Kleppe v. Delta*

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

CHAMBERS OF
THE CHIEF JUSTICE

December 16, 1975

Re: 73-2066 - National Independent Coal Operators v. Kleppe

MEMORANDUM TO THE CONFERENCE:

I am making some changes in one segment of the
above and suggest you defer consideration until I can get
my revised part out.

Regards,

WRB

Ex

Cm

Recirculated: JA 1 1975

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-2066

National Independent Coal Operator's Association et al.,
Petitioners,

v.

Thomas S. Kleppe, Secretary of
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² In the companion to this case, No. 74-521, *Kleppe v. Delta*

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

CHAMBERS OF
THE CHIEF JUSTICE

January 13, 1976

Re: 73-2066 - National Independent Coal Operators v. Kleppe

MEMORANDUM TO: Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall

A point has been raised as to the need for Note 10,
page 10, in the above.

Since it is purely explanatory, I have no objection and
will drop it. I send this only to those who have not yet acted.

Regards,

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 16, 1975

RE: No. 73-2066 National Independent Coal Operators, etc.

v. Kleppe

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 22, 1976

5-91

RE: No. 73-2066 National Independent Coal Operators'
Association v. Hathaway

Dear Chief:

I agree.

Sincerely,

W. J. Brennan, Jr.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 8, 1976

Re: No. 73-2066, National Independent Coal Operator's
Association v. Kleppe

Dear Chief,

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

Sincerely yours,

?S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

✓

January 14, 1976

Re: No. 73-2066, National Independent Coal Operator's
v. Kleppe

Dear Chief,

I have no objection to the elimination of Note 10
on page 10 of your opinion for the Court in this case.

Sincerely yours,

PS
1/14

Copies to Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

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

From: White, J.

Circulated: 12-16-7

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 73-2066

National Independent Coal Operator's Association et al.,
Petitioners,
v.
Thomas S. Kleppe, Secretary of
the Interior, et al.

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

[January —, 1976]

MR. JUSTICE WHITE, concurring. ~~in the result.~~

I concur in the judgment of the Court and in Parts 1-5 of the opinion. However, I do not join Part 6.

In Part 6, the Court concludes that a mine operator found by the Secretary after a hearing to be in violation of the terms of the Federal Coal Mine Health & Safety Act, and assessed civil penalties as a consequence, may obtain review of the finding of violation only in a United States Court of Appeals and may obtain review of the amount of the penalty assessed only in a United States District Court. This conclusion is by no means compelled by the language of the statute. 30 U. S. C. § 816 provides for review in a United States Court of Appeals of any "order or decision" of the Secretary "except an order or decision under Section 819 (a)." Section 819 (a) is the section providing for assessment of civil penalties and it expressly contemplates not only a determination of the amount of the penalty but a determination "that a violation did occur." 30 U. S. C. § 819 (a)(3). Thus it is not at all clear from the statutory language that Court of Appeals review is available in civil penalty cases. If it is not available, then *de novo* review of both the fact of the violation and the amount of the

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 22, 1976

Re: No. 73-2066 - National Independent Coal
Operator's Assn v. Kleppe

Dear Chief:

I withdraw my concurring opinion and join
your circulating opinion for the Court.

Sincerely,



The Chief Justice

Copies to Conference

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

Circulated: DEC 15 1975

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-2066

National Independent Coal Operator's Association et al.,
Petitioners,
v.
Thomas S. Kleppe, Secretary of
the Interior, et al.

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

[January —, 1976]

MR. JUSTICE MARSHALL, concurring in the judgment.

I agree with much of the Court's opinion and concur in its judgment. As I understand it, the issue in these cases is not whether, when the coal mine operator fails to request a hearing, the Secretary must nonetheless provide one—the Act is clear that he need not—but whether, in such a case, the Secretary must nonetheless prepare a decision incorporating findings of fact. Compare *ante*, at 8, with *ante*, at 1. So stated, the statutory construction issue becomes one of some difficulty, for § 109 (a)(3) appears to call, in all cases, for a Secretarial determination "by decision incorporating his findings of fact therein." 30 U. S. C. § 819 (a)(3). I agree, however, with the Court of Appeals for the District of Columbia Circuit that there is some ambiguity in the language and that heavy reliance on the legislative history is appropriate. As the Court convincingly demonstrates, *ante*, at 11-13, the legislative history offers firm proof that the findings required by § 109 (a)(3) were intended to be based solely on the record of the optional public hearing. Necessarily, therefore, no findings are required when the mine operator does not request a hearing.

This conclusion disposes of the cases before us. I

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 14, 1976

Re: No. 73-2066 -- National Independent Coal Operator's
Association v. Thomas S. Kleppe

Dear Chief:

Please join me.

Sincerely,

T.M.
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 9, 1976

Re: No. 73-2066 - Natl. Independent Coal Operators
Assn. v. Secretary of the Interior

Dear Chief:

Please join me in your circulation of January 8.

Sincerely,

Harry

The Chief Justice

cc: The Conference

December 11, 1975

No. 73-2066 National Independent Coal
Operators v. Kleppe

Dear Chief:

On the basis of an initial reading of your draft opinion, my impression is that there is some confusion as to petitioner's position.

On the first page of the draft the question is stated, correctly I think, as whether the Act requires the Secretary to prepare a decision with formal findings of fact before assessing a civil penalty. But on page 8, and elsewhere, the focus of the opinion seems different:

"The issue in this case is whether the failure of the mine operators to request an administrative hearing permits the secretary to assess a civil penalty without conducting a fact-finding hearing."

As I read petitioner's brief (p. 12 et seq.), it argues that the Act requires "both an opportunity for a hearing and a determination by the Secretary that a violation occurred". This also was the issue addressed below by CADC. In short, petitioner's position is that there must be a decision by the Secretary incorporating his findings of fact whether or not there has been a hearing. Indeed, it is conceded - as I understand it - that failure to request a hearing constitutes a waiver of the hearing, but not of the obligation on the part of the Secretary to make a formal decision incorporating his findings of fact.

I also have a question as to the discussion in Part (6) of the draft. It addresses the scope of judicial review, an issue that was neither briefed nor argued. The SG did

mention that he thought the statute should be interpreted to permit de novo review of all issues in the District Court, but I did not understand that this question was before us.

This is as dull a case as we are likely to have, and it is not clear to me what the coal operators expected to gain from litigating it. But as my perceptions of the case differ from the analysis in the first draft of your opinion, I thought it well to write you promptly - without sending a copy to the Conference.

Sincerely,

The Chief Justice

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 9, 1976

No. 73-2066, National Independent Coal
Operator's Association v.
Kleppe

Dear Chief:

Please join me.

Sincerely,

L. C.

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 9, 1976

Re: No. 73-2066 - National Independent Coal Operator's
Assoc. v. Hathaway; and No. 74-521 - Kleppe v.
Delta Mining

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

Copies to the Conference